

Thames Water Utilities Limited: Statement of Case
11 April 2024

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Notice of variation with introductory note

The Environmental Permitting (England & Wales) Regulations 2016

Thames Water Utilities Limited

Reading Sludge Treatment Centre
Reading Sewage Treatment Works
Island Road
Reading, Berkshire
RG2 0RP

Variation application number

EPR/MP3338LU/V004

Permit number

EPR/MP3338LU

Reading Sludge Treatment Centre

Permit number EPR/MP3338LU

Introductory note

This introductory note does not form a part of the permit

The Industrial Emissions Directive (IED) came into force on 7 January 2014 with the requirement to implement all relevant Best Available Techniques (BAT) Conclusions as described in the Commission Implementing Decision. The schedule of waste management activities includes the recovery of non-hazardous waste with a capacity exceeding 75 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving biological treatment, but excludes activities covered by the Urban Waste Water Treatment Directive (UWWTD). However, UK environmental regulators concluded that the biological treatment of waste sewage sludge is not an activity covered by the UWWTD and is therefore within the scope of the IED. The BAT Conclusions for Waste Treatment (the BREF) was published on 17 August 2018 following a European Union wide review of BAT, implementing decision (EU) 2018/1147 of 10 August 2018. BAT applies to new waste sewage sludge treatment not covered by the UWWTD. The operations at Reading sewage treatment works are existing but will be brought into environmental regulation for the first time and are required to operate using BAT.

Brief description of the process

Reading Sludge Treatment Centre (STC) is located south of Reading, close to the A33. The facility is in the grounds of the wider Reading Wastewater Treatment Works (WwTW). The central point of the site is NGR SU 70724 70623.

The site will accept up to 915,000 tonnes per annum of indigenous and imported waste sludge. Sewage sludge produced at Reading WwTW (indigenous sludge), and sewage sludge produced at Thames Water satellite sites (imported sludge) is received at the two primary sludge tanks where it is transferred to two primary belt thickeners. Polymer is added to the two primary belt thickeners and liquor produced in the thickening process is discharged to the WwTW (which does not form part of the permit boundary) by emission point T3 and sampled at point S3.

Indigenous surplus activated sludge (SAS) is received at the SAS belt thickeners where polymer is added. Liquor produced in the thickening process is discharged to the WwTW (which does not form part of the permit boundary) by emission point T2 and sampled at point S2.

Once waste has been thickened and excess liquor removed, the thickened sludge is transferred into one of two sludge blending tanks before being transferred into two small and two large pasteurisation tanks which operate 24/7. Following pasteurisation, sludge is fed into one of four primary digesters where it then undergoes biological treatment in the form of mesophilic anaerobic digestion (AD). Digesters are capable of treating up to 600 tonnes per day. Digested sludge is then transferred to two digested sludge buffer tanks. The treatment of sludge in a biological AD process is a Section 5.4 Part A (1)(b)(i) scheduled activity of the above regulations. This variation adds the section 5.4 activity to the permit and consolidates the combustion activities which now form directly associated activities (DAA) to the installation.

Biogas produced as part of the AD process is stored in one of two double membraned gas holders prior to being used for combustion in two combined heat and power (CHP) engines (with a thermal input of 1.344 MWth each), and three dual fuel boilers (with a thermal input of 0.837MWth each). The electrical energy and heat produced, is used to power on-site processes and provide heat to pre digestion pasteurisation processes.

In the event of emergency, biogas is flared in a waste gas burner.

Biogas condensate produced from the CHP and boilers is discharged to sewer and returned to the Reading WwTW via emission point T1 and sampled at point S1.

Following AD treatment, the sludge is transferred to two dewatering centrifuges to produce a cake. Cake is stored in three cake silo's prior to being exported offsite for land spreading under the Sludge use in agriculture

regulations (SUiAR) and undergoes quality assurance under the Biosolids Assurance Scheme (BAS). Liquor produced from the dewatering of sludge is discharged to the WwTW (which does not form part of the permit boundary) by emission point T1 and sampled at point S1.

The site operates one odour control unit (OCU) at emission point A15 on the site plan in schedule 7, this unit uses a single wet scrubber to treat malodorous air before emitting it via a stack. The OCU also has one standby carbon filter if required.

This permit also allows a waste operation relating to the import of wastes sludge and liquid wastes to the head of works. Tankered wastes are discharged into the waste water treatment works directly and is subsequently mixed within the incoming sewer delivered urban waste water directive (UWWTD) main flow, and at this point and cease to be covered by this permit.

The head of works effluents in the form of sludge and liquid will be delivered by tanker to the head if the works import point. This activity involves a discharge to the main WwTW which is classed as an indirect emissions to water at emission point T5. We have imposed improvement conditions in the permit to determine the impact on the River Kennet from the tankered wastes imported and subsequently discharged to the WwTW.

There one special protection area (SPA), Thames Basin Heaths situated within 8,500m of the site and eight local wildlife sites within relevant screening distances of the installation.

The status log of the permit sets out the permitting history, including any changes to the permit reference number.

Status log of the permit		
Description	Date	Comments
Application EPR/MP3338LU/A001	Duly made 29/03/2006	Application for inert and excavation waste transfer station and composting facility (EAWML 400034)
Additional information received	03/07/2006	Received 13/07/2006
Request to extend determination period	14/08/2006	Responded 15/08/2006
Request to extend determination period	01/11/2006	Responded 03/11/2006
Permit determined	19/12/2006	--
Application EPR/MP3338LU/V003 (variation and consolidation)	Application Withdrawn 09/05/2022	Application to vary the permit to installation activity from a waste activity
Application EPR/MP3338LU/V004 (variation and consolidation)	Duly made 30/01/2023	Application to vary the permit to installation activity from a waste activity
Additional Information received	31/03/2023	Response to Schedule 5 Notice dated 02/03/2023.
Additional Information received	18/05/2023	Response to requested for further information dated 26/04/2023.
Additional Information received	30/05/2023	Response to requested for further information dated 23/05/2023.
Additional Information received	05/06/2023	Response to requested for further information dated 31/05/2023.
Additional Information received	12/06/2023	Response to requested for further information dated 02/06/2023.
Variation determined EPR/MP3338LU/V004 (Billing Ref: LP3649QA)	25/07/2023	Notice of variation issued

End of introductory note

Notice of variation

The Environmental Permitting (England and Wales) Regulations 2016

The Environment Agency in exercise of its powers under regulation 20 of the Environmental Permitting (England and Wales) Regulations 2016 varies

Permit number

EPR/MP3338LU

Issued to

Thames Water Utilities Limited (“the operator”)

whose registered office is

Clearwater Court

Vastern Road

Reading

Berkshire

RG1 8DB

company registration number 02366661

to operate a regulated facility at

Reading Sludge Treatment Centre

Reading Sewage Treatment Works

Island Road

Reading, Berkshire

RG2 0RP

to the extent set out in the schedules.

The notice shall take effect from 25/07/2023

Name	Date
Peter Maksymiw	25/07/2023

Authorised on behalf of the Environment Agency

Schedule 1

All conditions have been varied by the consolidated permit as a result of the application made by the operator.

Schedule 2 – consolidated permit

Consolidated permit issued as a separate document.

Permit

The Environmental Permitting (England and Wales) Regulations 2016

Permit number

EPR/MP3338LU

The Environment Agency hereby authorises, under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2016

Thames Water Utilities Limited (“the operator”),

whose registered office is

Clearwater Court

Vastern Road

Reading

Berkshire

RG1 8DB

company registration number 02366661

to operate an installation and waste operations at

Reading Sludge Treatment Centre

Reading Sewage Treatment Works

Island Road

Reading, Berkshire

RG2 0RP

to the extent authorised by and subject to the conditions of this permit.

Name	Date
Peter Maksymiw	25/07/2023

Authorised on behalf of the Environment Agency

Conditions

Management

1.1 General management

- 1.1.1 The operator shall manage and operate the activities:
- (a) in accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints; and
 - (b) using sufficient competent persons and resources.
- 1.1.2 Records demonstrating compliance with condition 1.1.1 shall be maintained.
- 1.1.3 Any person having duties that are or may be affected by the matters set out in this permit shall have convenient access to a copy of it kept at or near the place where those duties are carried out.
- 1.1.4 The operator shall comply with the requirements of an approved competence scheme.

1.2 Energy efficiency

- 1.2.1 For the following activities referenced in schedule 1, table S1.1, AR1 to AR10, the operator shall:
- (a) take appropriate measures to ensure that energy is used efficiently in the activities;
 - (b) review and record at least every four years whether there are suitable opportunities to improve the energy efficiency of the activities; and
 - (c) take any further appropriate measures identified by a review.

1.3 Efficient use of raw materials

- 1.3.1 For the following activities referenced in schedule 1, table S1.1, AR1 to AR10, the operator shall:
- (a) take appropriate measures to ensure that raw materials and water are used efficiently in the activities;
 - (b) maintain records of raw materials and water used in the activities;
 - (c) review and record at least every four years whether there are suitable alternative materials that could reduce environmental impact or opportunities to improve the efficiency of raw material and water use; and
 - (d) take any further appropriate measures identified by a review.

1.4 Avoidance, recovery and disposal of wastes produced by the activities

- 1.4.1 The operator shall take appropriate measures to ensure that:
- (a) the waste hierarchy referred to in Article 4 of the Waste Framework Directive is applied to the generation of waste by the activities; and
 - (b) any waste generated by the activities is treated in accordance with the waste hierarchy referred to in Article 4 of the Waste Framework Directive; and
 - (c) where disposal is necessary, this is undertaken in a manner which minimises its impact on the environment.

- 1.4.2 The operator shall review and record at least every four years whether changes to those measures should be made and take any further appropriate measures identified by a review.

Operations

2.1 Permitted activities

- 2.1.1 The operator is only authorised to carry out the activities specified in schedule 1 table S1.1 (the “activities”).
- 2.1.2 For the following activities referenced in schedule 1, table S1.1, AR1 to AR10, the activities shall be undertaken in accordance with best available techniques.
- 2.1.3 All process plant and equipment shall be commissioned, operated and maintained and shall be fully documented and recorded in accordance with the manufacturer’s recommendations.
- 2.1.4 For the following activities referenced in schedule 1, table S1.1, AR1 to AR10, waste authorised by this permit shall be clearly distinguished from any other waste on the site.

2.2 The site

- 2.2.1 The activities shall not extend beyond the site, being the land shown edged in green on the site plan at schedule 7 to this permit.

2.3 Operating techniques

- 2.3.1 The activities shall, subject to the conditions of this permit, be operated using the techniques and in the manner described in the documentation specified in schedule 1, table S1.2, unless otherwise agreed in writing by the Environment Agency.
- 2.3.2 If notified by the Environment Agency that the activities are giving rise to pollution, the operator shall submit to the Environment Agency for approval within the period specified, a revision of any plan or other documentation (“plan”) specified in schedule 1, table S1.2 or otherwise required under this permit which identifies and minimises the risks of pollution relevant to that plan, and shall implement the approved revised plan in place of the original from the date of approval, unless otherwise agreed in writing by the Environment Agency.
- 2.3.3 Any raw materials or fuels listed in schedule 2 table S2.1 shall conform to the specifications set out in that table.
- 2.3.4 Waste shall only be accepted if:
- (a) it is of a type and quantity listed in schedule 2 tables S2.2 and S2.3; and
 - (b) it conforms to the description in the documentation supplied by the producer and holder.
 - (c) the facility has sufficient free capacity to store and treat the waste.
- 2.3.5 The operator shall ensure that where waste produced by the activities is sent to a relevant waste operation, that operation is provided with the following information, prior to the receipt of the waste:
- (a) the nature of the process producing the waste;
 - (b) the composition of the waste;
 - (c) the handling requirements of the waste;
 - (d) the hazardous property associated with the waste, if applicable; and
 - (e) the waste code of the waste.

- 2.3.6 The operator shall ensure that where waste produced by the activities is sent to a landfill site, it meets the waste acceptance criteria for that landfill.
- 2.3.7 For the following activities referenced in schedule 1, table S1.1, AR1 to AR10, waste pre-acceptance and acceptance procedures shall be undertaken in accordance with best available techniques.
- 2.3.8 For the following activities referenced in schedule 1, table S1.1 (AR4):
- (a) each MCP must be operated in accordance with the manufacturer's instructions and records must be made and retained to demonstrate this.
 - (b) the operator must keep periods of start-up and shut-down of each MCP as short as possible.
 - (c) there must be no persistent emission of 'dark smoke' as defined in section 3(1) of the Clean Air Act 1993.

2.4 Improvement programme

- 2.4.1 The operator shall complete the improvements specified in schedule 1 table S1.3 by the date specified in that table unless otherwise agreed in writing by the Environment Agency.
- 2.4.2 Except in the case of an improvement which consists only of a submission to the Environment Agency, the operator shall notify the Environment Agency within 14 days of completion of each improvement.

Emissions and monitoring

3.1 Emissions to water, air or land

- 3.1.1 There shall be no point source emissions to water, air or land except from the sources and emission points listed in schedule 3 tables S3.1 and S3.2.
- 3.1.2 The limits given in schedule 3 shall not be exceeded.
- 3.1.3 Periodic monitoring shall be carried out at least once every 5 years for groundwater and 10 years for soil, unless such monitoring is based on a systematic appraisal of the risk of contamination.

3.2 Emissions of substances not controlled by emission limits

- 3.2.1 Emissions of substances not controlled by emission limits (excluding odour, but including ammonia) shall not cause pollution. The operator shall not be taken to have breached this condition if appropriate measures, including, but not limited to, those specified in any approved emissions management plan, have been taken to prevent or where that is not practicable, to minimise, those emissions.
- 3.2.2 The operator shall:
- (a) if notified by the Environment Agency that the activities are giving rise to pollution, submit to the Environment Agency for approval within the period specified, an emissions management plan which identifies and minimises the risks of pollution from emissions of substances not controlled by emission limits;
 - (b) implement the approved emissions management plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.
- 3.2.3 Subject to condition 3.2.4, below, all liquids in containers, whose emission to water or land could cause pollution, shall be provided with secondary containment, unless other appropriate measures to prevent or where that is not practicable, to minimise, leakage and spillage from the primary container have been agreed in writing with the Environment Agency.
- 3.2.4 Condition 3.2.3, above, shall apply unless the operator strictly complies in full with IC9 below.

- 3.2.5 The operator shall implement a leak detection and repair (LDAR) programme to detect and mitigate the release of volatile organic compounds, including methane from diffuse sources.

3.3 Odour

- 3.3.1 Emissions from the activities shall be free from odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved odour management plan, to prevent or where that is not practicable to minimise the odour.

3.4 Noise and vibration

- 3.4.1 Emissions from the activities shall be free from noise and vibration at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved noise and vibration management plan to prevent or where that is not practicable to minimise the noise and vibration.
- 3.4.2 The operator shall:
- (a) if notified by the Environment Agency that the activities are giving rise to pollution outside the site due to noise and vibration, submit to the Environment Agency for approval within the period specified, a noise and vibration management plan which identifies and minimises the risks of pollution from noise and vibration;
 - (b) implement the approved noise and vibration management plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.

3.5 Monitoring

- 3.5.1 The operator shall, unless otherwise agreed in writing by the Environment Agency, undertake the monitoring specified in the following tables in schedule 3 to this permit:
- (a) point source emissions specified in tables S3.1 and S3.2;
 - (b) process monitoring specified in table S3.3;
 - (c) bioaerosols monitoring specified in tables S3.5.
- 3.5.2 The operator shall maintain records of all monitoring required by this permit including records of the taking and analysis of samples, instrument measurements (periodic and continual), calibrations, examinations, tests and surveys and any assessment or evaluation made on the basis of such data.
- 3.5.3 Monitoring equipment, techniques, personnel and organisations employed for the emissions monitoring programme and the environmental or other monitoring specified in condition 3.5.1 shall have either MCERTS certification or MCERTS accreditation (as appropriate), where available, unless otherwise agreed in writing by the Environment Agency.
- 3.5.4 Permanent means of access shall be provided to enable sampling/monitoring to be carried out in relation to the emission points specified in schedule 3 tables S3.1, S3.2, S3.3, S3.4, S3.5 and S3.6 unless otherwise agreed in writing by the Environment Agency.
- 3.5.5 Monitoring shall not take place during periods of start up or shut down.

3.6 Bioaerosols

- 3.6.1 The operator shall take all appropriate measures, to prevent or where that is not practicable to minimise the release of bioaerosols. Emissions of bioaerosols from the operational activities shall not exceed the emission action levels specified in tables S3.5.
- 3.6.2 The operator shall where the emission action levels are exceeded:

- (a) notify the Environment Agency and investigate and take remedial action;
- (b) submit to the Environment Agency for approval within the period specified, a bioaerosols management plan which identifies and minimises the risks of pollution from bioaerosols; and
- (c) implement the bioaerosols management plan from the date of approval and revise the plan periodically, unless otherwise agreed in writing by the Environment Agency.

3.7 Pests

3.7.1 The activities shall not give rise to the presence of pests which are likely to cause pollution, hazard or annoyance outside the boundary of the site. The operator shall not be taken to have breached this condition if appropriate measures, including, but not limited to, those specified in any approved pests management plan, have been taken to prevent or where that is not practicable, to minimise the presence of pests on the site.

3.7.2 The operator shall:

- (a) only use approved products for pest control;
- (b) treat pest infestations promptly;
- (c) reject pest-infected incoming waste;
- (d) if notified by the Environment Agency, submit to the Environment Agency for approval within the period specified, a pests management plan which identifies and minimises risks of pollution from pests;
- (e) implement the pests management plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.

3.8 Fire prevention

3.8.1 The operator shall take all appropriate measures to prevent fires on site and minimise the risk of pollution from them including, but not limited to, those specified in any approved fire prevention plan.

3.8.2 The operator shall:

- (a) if notified by the Environment Agency that the activities are giving rise to a risk of fire, submit to the Environment Agency for approval within the period specified, a fire prevention plan which prevents fires and minimises the risk of pollution from fires;
- (b) implement the fire prevention plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.

3.8.3 The operator shall undertake a DSEAR assessment and maintain an accident management plan.

Information

4.1 Records

4.1.1 All records required to be made by this permit shall:

- (a) be legible;
- (b) be made as soon as reasonably practicable;
- (c) if amended, be amended in such a way that the original and any subsequent amendments remain legible, or are capable of retrieval; and

(d) be retained, unless otherwise agreed in writing by the Environment Agency, for at least 6 years from the date when the records were made, or in the case of the following records until permit surrender:

- (i) off-site environmental effects; and
- (ii) matters which affect the condition of the land and groundwater.

4.1.2 The operator shall keep on site all records, plans and the management system required to be maintained by this permit, unless otherwise agreed in writing by the Environment Agency.

4.1.3 The operator shall maintain a record of the type and quantity of fuel used and the total annual hours of operation of each MCP.

4.2 Reporting

4.2.1 The operator shall send all reports and notifications required by the permit to the Environment Agency using the contact details supplied in writing by the Environment Agency.

4.2.2 For the following activities referenced in schedule 1, table S1.1, AR1 to AR10, a report or reports on the performance of the activities over the previous year shall be submitted to the Environment Agency by 31 January (or other date agreed in writing by the Environment Agency) each year. The report(s) shall include as a minimum:

- (a) a review of the results of the monitoring and assessment carried out in accordance with the permit including an interpretive review of that data;
- (b) the annual production/treatment data set out in schedule 4 table S4.2; and
- (c) the performance parameters set out in schedule 4 table S4.3 using the forms specified in table S4.4 of that schedule.

4.2.3 Within 28 days of the end of the reporting period the operator shall, unless otherwise agreed in writing by the Environment Agency, submit reports of the monitoring and assessment carried out in accordance with the conditions of this permit, as follows:

- (a) in respect of the parameters and emission points specified in schedule 4 table S4.1;
- (b) for the reporting periods specified in schedule 4 table S4.1 and using the forms specified in schedule 4 table S4.4; and
- (c) giving the information from such results and assessments as may be required by the forms specified in those tables.

4.2.4 The operator shall, unless notice under this condition has been served within the preceding four years, submit to the Environment Agency, within six months of receipt of a written notice, a report assessing whether there are other appropriate measures that could be taken to prevent, or where that is not practicable, to minimise pollution.

4.2.5 Within 1 month of the end of each quarter, the operator shall submit to the Environment Agency using the form made available for the purpose, the information specified on the form relating to the site and the waste accepted and removed from it during the previous quarter.

4.2.6 The operator shall keep records of non-waste materials leaving the site, including the type of material, the batch number, the date of export off-site and the tonnage exported on that date. These records shall be maintained for at least 2 years.

4.2.7 The operator shall submit an annual report detailing the efficiency of removal of non-digestible materials from feedstock prior to processing and the level of contamination in the final recovered digestate.

4.3 Notifications

4.3.1 In the event:

- (a) that the operation of the activities gives rise to an incident or accident which significantly affects or may significantly affect the environment, the operator must immediately—
 - (i) inform the Environment Agency,
 - (ii) take the measures necessary to limit the environmental consequences of such an incident or accident, and
 - (iii) take the measures necessary to prevent further possible incidents or accidents;
- (b) of a breach of any permit condition the operator must immediately—
 - (i) inform the Environment Agency, and
 - (ii) take the measures necessary to ensure that compliance is restored within the shortest possible time;
- (c) of a breach of permit condition which poses an immediate danger to human health or threatens to cause an immediate significant adverse effect on the environment, the operator must immediately suspend the operation of the activities or the relevant part of it until compliance with the permit conditions has been restored.

4.3.2 Any information provided under condition 4.3.1 (a)(i), or 4.3.1 (b)(i) where the information relates to the breach of a limit specified in the permit, shall be confirmed by sending the information listed in schedule 5 to this permit within the time period specified in that schedule.

4.3.3 Following the detection of an issue listed in condition 4.3.1, the operator shall review and revise the management system and implement any changes as necessary to minimise the risk of re-occurrence of the issue.

4.3.4 Where the Environment Agency has requested in writing that it shall be notified when the operator is to undertake monitoring and/or spot sampling, the operator shall inform the Environment Agency when the relevant monitoring and/or spot sampling is to take place. The operator shall provide this information to the Environment Agency at least 14 days before the date the monitoring is to be undertaken.

4.3.5 The Environment Agency shall be notified within 14 days of the occurrence of the following matters, except where such disclosure is prohibited by Stock Exchange rules:

Where the operator is a registered company:

- (a) any change in the operator's trading name, registered name or registered office address; and
- (b) any steps taken with a view to the operator going into administration, entering into a company voluntary arrangement or being wound up.

Where the operator is a corporate body other than a registered company:

- (a) any change in the operator's name or address; and
- (b) any steps taken with a view to the dissolution of the operator.

In any other case:

- (a) the death of any of the named operators (where the operator consists of more than one named individual);
- (b) any change in the operator's name(s) or address(es); and
- (c) any steps taken with a view to the operator, or any one of them, going into bankruptcy, entering into a composition or arrangement with creditors, or, in the case of them being in a partnership, dissolving the partnership.

- 4.3.6 Where the operator proposes to make a change in the nature or functioning, or an extension of the activities, which may have consequences for the environment and the change is not otherwise the subject of an application for approval under the Regulations or this permit:
- (a) the Environment Agency shall be notified at least 14 days before making the change; and
 - (b) the notification shall contain a description of the proposed change in operation.
- 4.3.7 The Environment Agency shall be given at least 14 days' notice before implementation of any part of the site closure plan.
- 4.3.8 The operator shall notify the Environment Agency as soon as is practicable, in writing of any change of medium combustion plant.

4.4 Interpretation

- 4.4.1 In this permit the expressions listed in schedule 6 shall have the meaning given in that schedule.
- 4.4.2 In this permit references to reports and notifications mean written reports and notifications, except where reference is made to notification being made "immediately", in which case it may be provided by telephone.

Schedule 1 – Operations

Table S1.1 activities			
Activity reference	Activity listed in Schedule 1 of the EP Regulations	Description of specified activity and WFD Annex I and II operations	Limits of specified activity and waste types
AR1	S5.4 A(1) (b) (i) Recovery or a mix of recovery and disposal of non-hazardous waste with a capacity exceeding 75 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving biological treatment	R3: Recycling/reclamation of organic substances which are not used as solvents	From receipt of waste through to digestion and recovery of by-products (waste treated by digestate). Anaerobic digestion of waste in four tanks followed by burning of biogas produced from the process. Anaerobic digestion shall be limited to 600m ³ /day. Waste types suitable for acceptance are limited to those specified in Table S2.2.
Directly Associated Activity			
AR2	Storage of waste pending recovery or disposal	R13: Storage of waste pending the operations numbered R1 and R3 (excluding temporary storage, pending collection, on the site where it is produced)	Undertaken in relation to Activity AR1. From the receipt of permitted waste to pre-treatment and despatch for anaerobic digestion on site. Storage of residual wastes from pre-treatment to despatch off-site for recovery. Storage of waste in an enclosed building fitted with appropriate odour abatement and on an impermeable surface with a sealed drainage system. Waste types suitable for acceptance are limited to those specified in Table S2.2.
AR3	Physical treatment for the purpose of recycling	R3: Recycling/reclamation of organic substances which are not used as solvents	Undertaken in relation to Activity AR1. From the receipt of waste to despatch for anaerobic digestion or despatch off site for recovery. Pre-treatment of waste in enclosed building fitted with appropriate odour abatement and on an impermeable surface with a sealed drainage system, including shredding, sorting, screening, compaction, baling, mixing and maceration.

Table S1.1 activities			
Activity reference	Activity listed in Schedule 1 of the EP Regulations	Description of specified activity and WFD Annex I and II operations	Limits of specified activity and waste types
			<p>Post-treatment of digestate in an enclosed building fitted with appropriate odour abatement and on an impermeable surface with a sealed drainage system, including separation, screening to remove contraries, centrifuge or pressing and addition of thickening agents (polymers) or drying for use as a fertiliser or soil conditioner (drying for the purpose of use as a fuel is not permitted).</p> <p>Heat treatment (pasteurisation) of waste in four tanks for the purpose of recovery.</p> <p>Gas cleaning by biological or physical (carbon filtration) or chemical scrubbing.</p> <p>Waste types suitable for acceptance are limited to those specified in Table S2.2.</p>
AR4	Steam and electrical power supply	R1: Use principally as a fuel to generate energy	<p>Undertaken in relation to Activity AR1.</p> <p>From the receipt of biogas produced at the on-site anaerobic digestion process to combustion with the release of combustion gases.</p> <p>Combustion of biogas in two combined heat and power (CHP) engines with an aggregated thermal input of 2.688 MWth.</p> <p>Combustion of biogas in three auxiliary boilers with an aggregated thermal input of 2.511 MWth.</p>
AR5	Emergency flare operation	D10: Incineration on land	<p>Undertaken in relation to Activity AR1.</p> <p>From the receipt of biogas produced at the on-site anaerobic digestion process to incineration with the release of combustion gases.</p> <p>There shall be no venting or flaring of gas for disposal.</p>

Table S1.1 activities			
Activity reference	Activity listed in Schedule 1 of the EP Regulations	Description of specified activity and WFD Annex I and II operations	Limits of specified activity and waste types
			Use of one auxiliary flare required only during periods of breakdown or maintenance of the CHP engines, and/or auxiliary boilers.
AR6	Raw material storage	Storage of raw materials including lubrication oil, antifreeze, ferric chloride, activated carbon, diesel.	From the receipt of raw materials to despatch for use within the facility.
AR7	Gas storage	R13: Storage of waste pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where it is produced)	<p>Undertaken in relation to Activity AR1.</p> <p>Storage of biogas produced from on-site anaerobic digestion of permitted waste in two stand-alone tanks or roof space of digesters.</p> <p>From the receipt of biogas produced at the on-site anaerobic digestion process to despatch for use within the facility.</p> <p>Emissions of unburnt biogas shall be minimised.</p>
AR8	Digestate storage	R13: Storage of waste pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where it is produced)	<p>Undertaken in relation to Activity AR1.</p> <p>From the receipt of processed uncertified digestate produced from the on-site anaerobic digestion process to despatch for use off-site.</p> <p>Storage of processed uncertified liquid digestate in two digested sludge buffer tanks.</p> <p>Storage of processed uncertified solid digestate in three cake silos and on an impermeable surface with sealed drainage system.</p>
AR9	Surface water collection and storage	Collection and storage of uncontaminated roof and site surface water	From the collection of uncontaminated roof and site surface water from non-operational areas only to re-use within the facility or discharge off-site.
AR10	Air abatement	Collection and treatment of air from the buildings or plant using abatement system [carbon filter, and wet scrubber]	From the collection of air from site processes to treatment and release of treated air to atmosphere.

Table S1.1 activities			
Activity reference	Activity listed in Schedule 1 of the EP Regulations	Description of specified activity and WFD Annex I and II operations	Limits of specified activity and waste types
		prior to release to atmosphere.	Collection and treatment of air from the buildings, tanks or plant using abatement system – [1x wet scrubber and one standby carbon filter]
Activity reference	Description of activities for waste operations		Limits of activities
A11 – Acceptance of waste at the head of works prior to discharge to the WwTW.	D13: D 13 Blending or mixing prior to submission to any of the operations numbered D 1 to D 12		<p>Operations shall be limited to the import of tankered liquid and sludge waste discharged directly into the head of works.</p> <p>There shall be no treatment of incoming wastes.</p> <p>Discharge of tankered liquid and sludge waste shall take place on an impermeable surface with a sealed drainage system.</p> <p>Waste types as specified in Table 2.3</p>

Table S1.2 Operating techniques		
Description	Parts	Date Received
Application EPR/MP3338LU/V004	Appendix H - Leak Detection and Repair Plan (LDAR) dated 1/7/2022	11/07/2022
Application EPR/MP3338LU/V004 Response to request for further information dated 04/01/2023	Response to section 3a – technical standards, Part C3 of the application form. Best available techniques as described in the BAT Reference Document for Waste Treatment (the BREF) and BAT conclusions. Reading Sludge Treatment Facility Environmental Permit Site Condition Report, dated January 2023.	18/01/2023
Response to request for further information dated 20/01/2023	Reading STC Bioaerosol Risk Assessment date 27/01/2023.	30/01/2023
Response to Schedule 5 Notice dated 02/03/2023	Response to question 8 'Waste water emissions during storm conditions at the WwTW'. Application Variation OMP Reading STW RA. Application Variation OMP Reading STW-OIP.	31/03/2023
Response to request for further information dated 26/04/2023	Figure 2 Installation boundary and air emissions points.	18/05/2023
Response to request for further information dated 23/05/2023	Process flow diagram. Asset Management Asset Standard Odour Management Plan, dated March 2023. Reading STC – Containment Options Report, dated May 2023.	30/05/2023
Response to request for further information dated 02/06/2023	Acceptance of Third-Party Waste Imports, dated 12/06/2023. Acceptance of TWUL Inter-site Sludge, Cake and Sludge Liquors, dated 12/06/2023.	12/06/2023

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
IC1	<p>The operator shall develop a monitoring plan to be submitted to the Agency in writing, that shall detail the proposed methodology's to be used within the installation to carry out the monitoring of air emissions and performance measure identified within Tables S3.1, S4.1 and S4.4. The methodology for the monitoring of the emissions to air from emission points A1-A5 shall comply with the requirements of Agency monitoring guidance documents:</p> <ul style="list-style-type: none"> • M1 – Sampling Requirements For Stack Emission Monitoring; • M2 – Monitoring Of Stack Emissions To Air; and • Section 2.10 of Agency Combustion Technical Guidance Note. <p>The plan shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
IC2	<p>A written report shall be submitted to the Agency for approval, detailing the measures to be taken to ensure that the containment for the storage of all liquids, in the tanks detailed below, used at the installation (including drums and IBCs) meet the requirements given in Box 5 of Agency Technical Guidance Note IPPC H7:</p> <ul style="list-style-type: none"> • Lubrication oil storage tank • Waste lubrication oil storage tank • Gas oil storage tank <p>Special note should be taken of the requirements for fill points and outlets.</p> <p>The plan shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
IC3	<p>A written plan shall be submitted to the Agency for approval detailing the installation of oil/water interceptors or any other pollution prevention measures at the fuel delivery area to prevent contamination of surface water. The operator shall use the guidelines within the Agency Combustion Technical Guidance Note and the Agency PPG03 Guidance Note.</p> <p>The plan shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
IC4	<p>The Operator shall review the level of NOx and SO2 emissions following completion of the monitoring exercise carried out in accordance with IC1 above to determine actual values for the releases to air.</p> <p>The Operator shall use this detailed release data to establish the actual impact on air quality through the use of an appropriate air dispersion model.</p> <p>The results of the review and modelling shall be submitted to the Agency in a written report.</p>	Completed

IC5	<p>A revised Accident Management Plan shall be submitted to the Agency for approval, and the measures to comply with the requirements set out in Section 2.8 of the Agency Combustion Technical Guidance Note, such that environmental accidents are adequately addressed. Where appropriate the plan shall contain dates for the implementation of individual measures.</p> <p>The plan shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
IC6	<p>A written training plan shall be submitted to the Agency for approval, and the measures to comply with the requirements set out in Section 2.3 of the Agency Combustion Technical Guidance Note.</p> <p>The plan shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
IC7	<p>The Operator shall undertake a review to identify all options for reducing the emissions to air to the benchmark standards in the Agency Technical Guidance Note for Combustion and to ensure that the releases to air do not result in a significant contribution to an exceedance of an air quality standard, objective or European Union Limit Value. Where an exceedance of an EU limit Value is predicted and the operations would provide a significant contribution to the exceedance, then the review shall assess whether it is necessary to implement measures beyond indicative BAT in order to ensure that the contribution is minimised.</p> <p>The review shall include, but not be limited to, the primary and secondary measures for the reduction of the relevant pollutants listed in the Agency Technical Guidance Note for Combustion identification of the most appropriate stack height for dispersion of the waste gases and either pre-treatment of fuel or abatement of releases to air post combustion as appropriate. Where measures can be undertaken to limit the impact on air quality in the short term whilst long term solutions are implemented then the report should include proposals for both short term and long term measures as appropriate.</p> <p>The operator shall submit a written report detailing the elements of the review and its conclusions and shall include a programme for implementation of the appropriate measures, including a timetable for their implementation.</p> <p>The programme shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
IC8	<p>A written Site Closure Plan shall be submitted to the Agency for approval, and the measures to comply with the requirements set out in Section 2.11 of the Agency Combustion Technical Guidance Note.</p> <p>The plan shall be implemented by the operator from the date of approval in writing by the Agency.</p>	Completed
Improvement condition for secondary containment design		
IC9	<p>The operator shall submit a written 'secondary containment implementation plan' and shall obtain the Environment Agency's written approval to it. The plan shall contain the finalised designs and an implementation schedule for the identified secondary containment systems proposed in the document, <i>Reading STC – Containment Options Report</i>, dated May 2023. The finalised design(s) and specifications shall be produced by appropriate competent individuals</p>	6 months of permit issue or such other date as agreed in writing with the Environment Agency

	<p>(qualified civil or structural engineer), in accordance with the risk assessment methodology detailed within CIRIA C736 (2014) guidance. The plan should include but not be limited to the following components:</p> <ul style="list-style-type: none"> • An updated BAT assessment with specific regard to BAT 19 of the Waste Treatment BREF. • An assessment of the suitability for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure. • Finalised designs and specifications of the proposed secondary containment proposal completed by appropriate competent individuals. • A program of works with timescales for the commissioning of the secondary containment systems to comply with CIRIA C736 (2014) guidance, or equivalent. • An updated site and infrastructure plan. • A preventative maintenance and inspection regime. <p>The plan shall be implemented in accordance with the Environment Agency's prior written approval.</p>	<p>Implementation of all required and approved containment improvements must be completed by 31/12/2024</p>
<p>Improvement conditions for primary containment tanks</p>		
<p>IC10</p>	<p>The operator shall submit a written 'primary containment plan' and shall obtain the Environment Agency's written approval to it. The plan shall contain the results of an inspection and program of works undertaken by an appropriately qualified engineer and shall assess the extent, design specification and condition of primary containment systems (including associated pipework) where polluting liquids and solids are being stored, treated, and/or handled.</p> <p>The plan shall include:</p> <ul style="list-style-type: none"> • An assessment of the physical condition of all primary containment systems (storage and treatment vessels and associated pipework) using a Written Scheme of Examination and their suitability for providing primary containment when subjected to dynamic and static loads. • A program of works with timescales for the implementation of individual improvement measures necessary to demonstrate that the primary containment is fit for purpose or alternative appropriate measures to ensure all polluting materials will be contained on site. • A preventative maintenance and inspection regime. <p>The plan shall be implemented in accordance with the Environment Agency's written approval.</p>	<p>12 months of permit issue or such other date as agreed in writing with the Environment Agency.</p>
<p>Improvement conditions for establishing an inventory of liquid waste water discharged from anaerobic digestion and associated activities (AR1 – AR10)</p>		
<p>IC11a</p>	<p>The operator shall submit a sampling programme in relation to waste water streams and shall obtain the Environment Agency's written approval to it. The sampling programme shall be designed to fully characterise the waste water emissions discharged to Reading</p>	<p>A sampling programme shall be submitted within 6</p>

	<p>wastewater treatment works (WwTW) from sampling points S1, S2, and S3 in (table S3.2 of this permit).</p> <p>The programme should include but not be limited to a methodology for a minimum of one 24-hour flow proportional sample a month, for each emission point, for a period of 12 months. The programme shall detail the sampling methods/standards used. Sampling methods shall be in line with BAT conclusion 20 of the Waste Treatment BREF. The programme shall include the National Grid Reference (NGR) of the sampling point(s) location(s).</p> <p>The programme shall establish the characteristics of the liquid waste water streams and shall include as a minimum for each emission point:</p> <ul style="list-style-type: none"> • Average values and variability of flow, pH, temperature and conductivity. • Average concentration and load values of all relevant substances and their variability. • Data on bioeliminability. <p>The programme shall sample for all relevant substances which must include:</p> <ul style="list-style-type: none"> • Hydrocarbon oil index (HOI) (mg/l) • Free cyanide (CN⁻) (mg/l) • Adsorbable organically bound halogens (AOX) (mg/l) • Metals and metalloids; arsenic (expressed as As), cadmium (expressed as Cd), chromium (expressed as Cr), hexavalent chromium (expressed as Cr(VI)), copper (expressed as Cu), lead (expressed as Pb), nickel (expressed as Ni), mercury (expressed as Hg), zinc (expressed as Zn) (µg/l) <p>The operator shall submit the collected monitoring data in writing to the Environment Agency according to agreed reporting periods.</p> <p>The sampling programme shall be produced in line with Environment Agency guidance:</p> <ul style="list-style-type: none"> • Specific substances and priority hazardous substances – <i>Surface water pollution risk for your environmental permit</i> <u>Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk)</u>. • <i>Monitoring discharges to water: guidance on selecting a monitoring approach</i> <u>Monitoring discharges to water: guidance on selecting a monitoring approach - GOV.UK (www.gov.uk)</u> <p>The programme must be carried out as approved or agreed in advance in writing by the Environment Agency.</p> <p>The monitoring programme shall be carried out and the monitoring data submitted in accordance with the Environment Agency's written approval.</p>	<p>months of issue of this permit</p>
<p>Improvement conditions for indirect discharges to water discharged from anaerobic digestion and associated activities (AR1 – AR10)</p>		
<p>IC11b</p>	<p>The operator shall submit a report for approval by the Environment Agency, following completion of the sampling programme referred to in IC11a. The report shall include but not be limited to; a summary of the</p>	<p>Within 12 months of the Environment Agency's</p>

	<p>sample results, a completed H1 risk assessment(s) and modelling outputs where appropriate.</p> <p>The operator shall provide conclusions on whether the waste waters discharged from S1, S2 and S3 will have any adverse impact on the receiving waters once discharged from Reading WwTW. An assessment shall be made against the parameters specified in the relevant environmental standards as specified within our guidance as follows:</p> <ul style="list-style-type: none"> • Specific substances and priority hazardous substances – <u>Surface water pollution risk for your environmental permit</u> <u>Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk)</u>. • Sanitary substances – <u>H1 annex D2: assessment of sanitary and other pollutants in surface water discharges 1076 14 H1 Annex D2 - Assessment of sanitary and other pollutants within Surface Water Discharges (publishing.service.gov.uk)</u> <p>The report shall include any proposals and/or additional measures required to prevent or minimise any significant emissions from the installation along with timescales for implementation.</p>	<p>written approval of the sampling programme submitted under IC11a or such other date as agreed in writing with the Environment Agency</p>
IC11c	<p>The operator shall implement any improvements identified within the report approved under IC11b in accordance with the Environment Agency's written approval and provide written confirmation to the Environment Agency that the improvements have been completed.</p>	<p>Within 12 months of the report in relation to IC11b being submitted to the Environment Agency or such other date as agreed in writing with the Environment Agency</p>
<p>Improvement condition to address methane slip emissions from gas engines burning biogas</p>		
IC12	<p>The operator shall establish the methane emissions in the exhaust gas from engines burning biogas and compare these to the manufacturer's specification agreed in writing with the Environment Agency. The operator shall, as part of the methane leak detection and repair (LDAR) programme, develop proposals to assess the potential for methane slip and take corrective actions where emissions above the manufacturer's specification are identified.</p>	<p>Within 12 months of the permit issue or such other date as agreed in writing with the Environment Agency</p>
<p>Improvement condition for review of effectiveness of abatement plant</p>		
IC13	<p>The operator shall carry out a review of the abatement plant at emission point A15 on the site plan in schedule 7, to determine whether the measures have been effective and adequate to prevent and where not possible minimise emissions released to air including but not limited to odour and ammonia.</p> <p>The operator shall submit a written report to the Environment Agency following this review for assessment and approval.</p>	<p>6 months of permit issue or such other date as agreed in writing with the Environment Agency</p>

	<p>The report shall include but not be limited to the following aspects:</p> <ul style="list-style-type: none"> • Full investigation and characterisation of the waste gas streams. • Evidence that the pollutants of the waste gas stream will be controlled and/or abated either by the abatement plant or by the proposed abatement systems. • Abatement stack monitoring results (including but not limited to odour and ammonia). • Abatement process monitoring results (including but not limited to odour and ammonia). • Details of air quality quantitative impact assessment including modelling and a proposal for site-specific “action levels” (not limited to odour concentration, hydrogen sulphide and ammonia). • Odour monitoring results at the site boundary. • Records of odour complaints and odour related incidents. • Recommendations for improvement including the replacement or upgrading of the abatement plant. • Timescales for implementation of improvements to the abatement plant. <p>The operator shall implement the improvements in line with the timescales as approved by the Environment Agency.</p>	
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Improvement condition for establishing an inventory of liquid waste water discharged from the Head of works waste operation (AR11)

<p>IC14a</p>	<p>The operator shall submit a sampling programme in relation to waste water streams and shall obtain the Environment Agency’s written approval to it. The sampling programme shall be designed to fully characterise the waste waters discharged to Reading wastewater treatment works (WwTW) from emission point T5 in (table S3.2 of the permit).</p> <p>The programme should include but not be limited to a methodology for a minimum of one 24-hour flow proportional sample a month, for the emission point, for a period of 12 months. The programme shall detail the sampling methods/standards used. Sampling methods shall be in line with Non-hazardous and inert waste: appropriate measures for permitted facilities (https://www.gov.uk/guidance/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities).</p> <p>The programme shall include the National Grid Reference (NGR) of the sampling point(s) location(s).</p> <p>The programme shall establish the characteristics of the liquid waste water streams and shall include as a minimum for each emission point:</p> <ul style="list-style-type: none"> • Average values and variability of flow, pH, temperature and conductivity. • Average concentration and load values of all relevant substances and their variability. • Data on bioeliminability. 	<p>Within 6 months of issue of the permit</p>
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	<p>The operator shall submit the collected monitoring data in writing to the Environment Agency according to agreed reporting periods.</p> <p>The sampling programme shall be produced in line with Environment Agency guidance:</p> <ul style="list-style-type: none"> • Specific substances and priority hazardous substances – <u>Surface water pollution risk for your environmental permit</u> <u>Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk)</u>. • <u>Monitoring discharges to water: guidance on selecting a monitoring approach</u> <u>Monitoring discharges to water: guidance on selecting a monitoring approach - GOV.UK (www.gov.uk)</u> <p>The monitoring programme shall be carried out and the monitoring data submitted in accordance with the Environment Agency's written approval.</p>	
<p>Improvement conditions for indirect discharges to water discharged from the Head of works waste operation (AR11)</p>		
IC14b	<p>The operator shall submit a report for audit and approval by the Environment Agency, following completion of the sampling programme referred to in IC14a. The report shall include but not be limited to; a summary of the sample results, a completed H1 risk assessment(s) and modelling outputs where appropriate.</p> <p>The operator shall provide conclusions on whether the waste waters discharged to T5 will have any adverse impact on the receiving waters once discharged from Reading WwTW. An assessment shall be made against the parameters specified in the relevant environmental standards as specified within our guidance as follows:</p> <ul style="list-style-type: none"> • Specific substances and priority hazardous substances – <u>Surface water pollution risk for your environmental permit</u> <u>Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk)</u>. • Sanitary substances – <u>H1 annex D2: assessment of sanitary and other pollutants in surface water discharges 1076 14 H1 Annex D2 - Assessment of sanitary and other pollutants within Surface Water Discharges (publishing.service.gov.uk)</u> <p>The report shall include any proposals and/or additional measures required to prevent or minimise any significant emissions from the installation along with timescales for implementation.</p>	<p>Within 12 months of the Environment Agency's written approval of the sampling programme submitted under IC14a or such other date as agreed in writing by the Environment Agency</p>
IC14c	<p>The operator shall implement the improvements identified within the report approved under IC14b in accordance with the Environment Agency's written approval and provide written confirmation to the Environment Agency that the improvements have been completed.</p>	<p>Within 6 months of the report in relation to IC14b being submitted to the Environment Agency or such other date as agreed</p>

		in writing with the Environment Agency
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Schedule 2 – Waste types, raw materials and fuels

Table S2.1 Raw materials and fuels	
Raw materials and fuel description	Specification
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Table S2.2 Permitted waste types and quantities for anaerobic digestion (AR1 – AR10)	
Maximum quantity	Annual throughput shall not exceed 915,000 tonnes
Exclusions	<p>Wastes having any of the following characteristics shall not be accepted:</p> <ul style="list-style-type: none"> • Biodegradable wastes that is significantly contaminated with non-compostable or digestible contaminants, in particular plastic and litter shall be no more than 5% w/w and shall be as low as reasonably practicable by 31 December 2025. • Wastes containing wood-preserving agents or other biocides and post-consumer wood. • Wastes containing persistent organic pollutants. • Wastes containing Japanese Knotweed or other invasive plant species listed in the Invasive Species (Amendment etc.) (EU Exit) Regulations 2019. • Manures, slurries and spoiled bedding and straw from farms where animals have notifiable diseases as stipulated in the Animal By-Products (Enforcement) (England) Regulations 2013. • Pest infested waste.
Waste code	Description
19	Wastes from waste management facilities, off-site waste water treatment plants and the preparation of water intended for human consumption and water for industrial use
19 02	wastes from physico/chemical treatments of waste (including dechromatation, decyanidation, neutralisation)
19 02 06	sludges from physico/chemical treatment other than those mentioned in 19 02 05 (sewage sludge only)
19 06	wastes from anaerobic treatment of waste
19 06 06	digestate from anaerobic treatment of animal and vegetable waste (digested sewage sludge only)
19 08	wastes from waste water treatment plants not otherwise specified
19 08 05	sludges from the treatment of urban waste water
19 12	wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified
19 12 12	other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11 (sewage sludge only) subjected to mechanical treatment only from a process that treats waste which are listed in this table, Table S2.3

Table S2.3 Permitted waste types and quantities for Non-Hazardous Waste Storage and Treatment (AR11)

Maximum quantity	Annual throughput shall not exceed 100,000 tonnes per annum
Exclusions	<p>Wastes having any of the following characteristics shall not be accepted:</p> <ul style="list-style-type: none"> • Wastes containing persistent organic pollutants. • Wastes containing Japanese Knotweed or other invasive plant species listed in the Invasive Species (Amendment etc.) (EU Exit) Regulations 2019. • Manures, slurries and spoiled bedding and straw from farms where animals have notifiable diseases as stipulated in the Animal By-Products (Enforcement) (England) Regulations 2013. • Pest infested waste. • Hazardous waste • Solid wastes (only wastes of liquid free flowing form shall be accepted)
Waste code	Description
16	Wastes not otherwise specified in the list
16 10	aqueous liquid wastes destined for off-site treatment
16 10 02	Aqueous liquid wastes other than those mentioned in 16 10 01

Schedule 3 – Emissions and monitoring

Table S3.1 Point source emissions to air – emission limits and monitoring requirements						
Emission point ref. & location	Source	Parameter	Limit (including unit)	Reference period	Monitoring frequency	Monitoring standard or method
Point A1 on site plan in Schedule 7	CHP engine 1 stack [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	1,033 mg/m ³ [Note 2]	--	Annual	BS EN 14792
Point A2 on site plan in Schedule 7	CHP engine 2 stack [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	1,033 mg/m ³ [Note 2]	--	Annual	BS EN 14792
Point A1 on site plan in Schedule 7	CHP engine 1 stack [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	500 mg/m ³ [note 3]	Average over sample period	Annual	BS EN 14792
		Sulphur dioxide	162 mg/m ³ [note 3]			BS EN 14791 or CEN TS 17021 or by calculation based on fuel sulphur
		Carbon monoxide	1400 mg/m ³ [note 3]			BS EN 15058
		Total VOCs	No limit set [note 3]	--	--	BS EN 12619
Point A2 on site plan in Schedule 7	CHP engine 2 stack [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	500 mg/m ³ [note 3]	Average over sample period	Annual	BS EN 14792
		Sulphur dioxide	162 mg/m ³ [note 3]			BS EN 14791 or CEN TS 17021 or by calculation based on fuel sulphur
		Carbon monoxide	1400 mg/m ³ [note 3]			BS EN 15058
		Total VOCs	No limit set [note 3]	--	--	BS EN 12619

Table S3.1 Point source emissions to air – emission limits and monitoring requirements

Emission point ref. & location	Source	Parameter	Limit (including unit)	Reference period	Monitoring frequency	Monitoring standard or method
Point A3 on site plan in Schedule 7	Boiler 2a stack [burning biogas or gas oil] [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	150 mg/m ³	--	Annual	BS EN 14792
Point A4 on site plan in Schedule 7	Boiler 2b stack [burning biogas or gas oil] [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	150 mg/m ³	--	Annual	BS EN 14792
Point A5 on site plan in Schedule 7	Boiler 2c stack [burning biogas or gas oil] [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	150 mg/m ³	--	Annual	BS EN 14792
Point A6 on site plan in schedule 7	Emergency flare stack [note 1]	Oxides of Nitrogen (NO and NO ₂ expressed as NO ₂)	150 mg/m ³	Average over sample period	[note 4]	BS EN 14792
		Carbon monoxide	50 mg/m ³			BS EN 15058
		Total VOCs	10 mg/m ³			BS EN 12619
Point A15 on site plan in schedule 7	Channelled emissions such as odour abatement stack [note 6]	Hydrogen sulphide	No limit set	Average over sample period	Once every 6 months	CEN TS 13649 for sampling NIOSH 6013 for analysis
		Ammonia	20 mg/m ³	Average over sample period	Once every 6 months	EN ISO 21877
		Odour concentration	No limit set	--	Once every 6 months	BS EN 13725
Point A15 on site plan in schedule 7	Channelled emissions to air from treatment of water-based liquid waste	Hydrogen chloride (HCl) [note 5]	5 mg/m ³ [note 5]	Average over sample period	Once every 6 months	EN 1911
		TVOC	20 mg/m ³ [note 5]	Average over sample period	Once every 6 months	EN 12619
Pressure relief valves [Point A11 – A14 on site plan in schedule 7]	Digesters	Biogas release and operational events	No limit set	Recorded duration and frequency	Daily inspection	--
Pressure relief valves [Point A9 & A10 on site]	Biogas holder	Biogas release and operational events	No limit set	Recorded duration and frequency	Daily inspection	--

Table S3.1 Point source emissions to air – emission limits and monitoring requirements						
Emission point ref. & location	Source	Parameter	Limit (including unit)	Reference period	Monitoring frequency	Monitoring standard or method
plan in schedule 7						
Vents from tanks	Oil/Fuel Storage tank	No parameter set	No limit set	--	--	--
<p>Note 1 – These emission limits are based on normal operating conditions and load - temperature 0°C (273 K); pressure 101.3 kPa and oxygen 5% (for gas engines burning biogas) and oxygen 3% (for emergency flares and medium combustion plants other than engines and gas turbines burning biogas or gas oil such as boilers).</p> <p>Note 2 – This emission limit applies until 31 December 2029, unless the gas engine is replaced.</p> <p>Note 3 – This emission limit applies from 1 January 2030, unless otherwise advised by the Environment Agency.</p> <p>Note 4 – Monitoring to be undertaken in the event the emergency flare has been operational for more than 10 per cent of a year (876 hours). Record of operating hours to be submitted annually to the Environment Agency.</p> <p>Note 5 – Monitoring and limits only apply where the substance concerned is identified as relevant in the waste gas inventory IC13.</p> <p>Note 6 -The monitoring of NH3 and H2S can be used as an alternative to the monitoring of the odour concentration.</p>						

Table S3.2 Point source emissions to sewer, effluent treatment plant or other transfers off-site – emission limits and monitoring requirements						
Emission point ref. & location	Source	Parameter [Note 1]	Limit (incl. unit) [Note 1]	Reference Period	Monitoring frequency [Note 2]	Monitoring standard or method
S1, S2 and S3 on site plan in schedule 7 emission to River Kennet via Reading WwTW	Post digestion liquors, SAS thickener liquors and sludge dewatering centrifuge liquors	Oil and grease	No visible oil or grease	--	Weekly	Visual assessment
		Benzene, toluene, ethylbenzene, xylene (BTEX)	--	Spot sample or flow-proportional composite sample	Once every month	EN ISO 15680
		Hydrocarbon oil index (HOI)	10 mg/l		Once every day	EN ISO 9377-2
		Free cyanide (CN ⁻)	0.1 mg/l			EN ISO 14403-1 or EN ISO 14403-2
		Adsorbable organically bound halogens (AOX)	1 mg/l			EN ISO 9562
		Arsenic (As)	0.1 mg/l	Spot sample or flow-proportional composite sample	Once every day	EN ISO 11885,
		Cadmium (Cd)	0.1 mg/l			EN ISO 17294-2 or
		Chromium (Cr)	0.3 mg/l			EN ISO 15586

Table S3.2 Point source emissions to sewer, effluent treatment plant or other transfers off-site – emission limits and monitoring requirements

Emission point ref. & location	Source	Parameter [Note 1]	Limit (incl. unit) [Note 1]	Reference Period	Monitoring frequency [Note 2]	Monitoring standard or method
		Copper (Cu)	0.5 mg/l			
		Lead (Pb)	0.3 mg/l			
		Nickel (Ni)	1 mg/l			
		Zinc (Zn)	2 mg/l			
		Mercury (Hg)	10 µg/l	Spot sample or flow-proportional composite sample	Once every day	EN ISO 17852 or EN ISO 12846
		Manganese (Mn)	--			EN ISO 11885, EN ISO 17294-2 or EN ISO 15586
		Hexavalent chromium (Cr(VI))	0.1 mg/l			EN ISO 10304-3 or EN ISO 23913
	PFOA and PFOS	--		Once every six months	--	
T4 on site plan in schedule 7 emission to River [Reading WwTW]	Uncontaminated site surface water from roofs and non-operational areas	Oil and grease	No visible oil or grease	--	Weekly	Visual assessment
T5 on site plan in schedule 7 emission to River [Reading WwTW]	Discharge of tankered effluent to the head of works	-- [Note 3]	-- [Note 3]	-- [Note 3]	-- [Note 3]	-- [Note 3]

Note 1 – Monitoring and limits only apply where the substance concerned is identified as relevant in the waste water inventory as determined by improvement condition IC11b

Note 2 – Monitoring frequency as specified unless the Environment Agency has agreed in writing other alternative appropriate monitoring frequencies.

Note 3 – Emission limits and monitoring requirements to be set following the completion of IC14a, IC14b and IC14c.

Table S3.3 Process monitoring requirements				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
Digester feed (digestion process)	pH	As described in site operating techniques	As described in site operating techniques	Process monitoring to be recorded using a SCADA system where relevant.
	Alkalinity			
	Temperature			
	Hydraulic loading rate			
	Organic loading rate			
	Volatile fatty acids concentration			
	Ammonia			
Liquid /foam level				
Biogas in digester & Biogas storage holders	Flow	Continuous	In accordance with EU weights and measures Regulations	Process monitoring to be recorded using a SCADA system where relevant. Gas monitors to be calibrated every 6 months or in accordance with the manufacturer's recommendations.
	Methane	Continuous	None specified	
	CO ₂	Continuous	None specified	
	O ₂	Continuous	None specified	
	Hydrogen sulphide	Daily	None specified	
	Pressure	Continuous	None specified	
Digestate batch	Volatile fatty acids concentration	One sample at the end of each batch (hydraulic retention time) cycle.	As described in site operating techniques	--
	Ammonia			
Digesters and storage tanks	Integrity checks	Weekly	Visual assessment	In accordance with design specification and tank integrity checks.
Digesters	Agitation /mixing	Continuous	Systems controls	Records maintained in daily operational records.
	Tank capacity and sediment assessment	Once every 5 years from date of commission	Non-destructive pressure testing integrity assessment every 5 years or as specified	In accordance with design specification and tank integrity checks.

Table S3.3 Process monitoring requirements				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
			by manufacturers technical specification.	
Waste reception building or area; Digesters and storage tanks	Odour	Daily	Olfactory monitoring	Odour detection at the site boundary.
Diffuse emissions from all sources identified in the Leak Detection and Repair (LDAR) programme	VOCs including methane	Every 6 months or otherwise agreed in accordance with the LDAR programme	BS EN 15446 In accordance with the LDAR programme	Monitoring points as specified in a DSEAR risk assessment and LDAR programme. Limit as agreed with the Environment Agency as a percentage of the overall gas production.
CHP engine stacks	VOCs including methane	Annually	BS EN 12619	Total annual VOCs emissions from the CHP engine(s) to be calculated and submitted to the Environment Agency.
	Exhaust gas temperature		Traceable to National Standards	--
	Exhaust gas pressure		Traceable to National Standards	--
	Exhaust gas water vapour content		BS EN 14790-1	Unless gas is dried before analysis of emissions.
	Exhaust gas oxygen		BS EN 14789	--
	Exhaust gas flow		BS EN 16911-1	--
Meteorological conditions	Wind speed, air temperature, wind direction	Continuous	Method as specified in management system	Conditions to be recorded in operational diary and records. Equipment shall be calibrated on a 4 monthly basis,

Table S3.3 Process monitoring requirements				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
				in accordance with manufacturer's recommendations or as agreed in writing by the Environment Agency.
Emergency flare	Operating hours	Continuous	Recorded duration and frequency. Recording using a SCADA system or similar system	Date, time and duration of use of auxiliary flare shall be recorded.
	Quantity of gas sent to emergency flare			Quantity can be estimated from gas flow composition, heat content, ratio of assistance, velocity, purge gas flow rate, pollutant emissions.
Pressure relief valves and vacuum systems	Gas pressure	Continuous	Recording using a SCADA system	Continuous gas pressure shall be monitored.
	Re-seating	Weekly inspection	Visual	Operator must ensure that valves are re-seated after release in accordance with the manufacturer's design.
	Inspection, maintenance, calibration, repair and validation	Following foaming or overtopping or at 3 yearly intervals whichever is sooner	Written scheme of examination in accordance with condition 1.1.1	After a foaming event or sticking, build-up of debris, obstructions or damage, operator must ensure that pressure relief valve function remains within designed gas pressure in accordance with the manufacturer's design by suitably trained and qualified personnel.

Table S3.3 Process monitoring requirements				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
	Inspection, calibration and validation report	In accordance with design and construction specifications or after over topping or foaming event	Written scheme of examination in accordance with condition 1.1.1	<p>Operator must ensure that valves are re-seated after release, after a foaming event or sticking, build-up of debris, obstructions or damage.</p> <p>Operator must ensure that PRV function remains within designed operation gas pressure in accordance with the manufacturer's design by suitably trained/qualified personnel.</p> <p>Inspection, calibration and validation report. In accordance with industry Approved Code of Practice</p>
Storage tanks	Volume	Daily	Visual or flow meter measurement	.Records of volume must be maintained.

Table S3.4 Process monitoring requirements – odour abatement				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
Odour abatement plant				
Scrubbers (water/chemical/dry)				
Scrubber 1 (A15 on site plan in schedule 7)	Gas temperature – inlet and outlet	Continuous	Temperature probe / Traceable to national standards	Odour abatement plant shall be regularly checked and maintained to ensure appropriate temperature and moisture content.
	Gas flow rate – inlet and outlet	Continuous	Gas flow meter / EN 16911-1 and MID for EN 16911-1	

Table S3.4 Process monitoring requirements – odour abatement				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
	Moisture content or humidity – inlet and outlet (for dry scrubbers only)	Daily	Moisture meter	Odour abatement plant shall be managed in accordance with permit condition 3.3, the odour management plan and manufacturer's recommendations.
	Moisture content or humidity – outlet (for wet scrubbers if used before other abatement systems)	Daily	Moisture meter	
	Back pressure	Weekly	Pressure differential using sensors	Equipment shall be calibrated on a 4 monthly basis, or as agreed in writing by the Environment Agency.
	Efficiency assessment	Annual	Emission removal efficiency (BS EN 13725 for odour removal)	
	pH scrubber solution (pre-abatement)	Continuous	pH meter	
	pH scrubber solution (post-abatement)	Continuous	pH meter	
	Hydrogen sulphide – inlet and outlet gas stream	Every 6 months or as agreed in writing by the Environment Agency.	CEN TS 13649 for sampling NIOSH 6013 for analysis	
	Ammonia – inlet	Every 6 months or as agreed in writing by the Environment Agency.	EN ISO 21877	Action levels to be agreed on completion of IC13 as approved in writing by the Environment Agency. Action levels to be achieved in accordance with permit condition 3.2 and the odour management plan.
	Ammonia – inlet	Every 6 months or as agreed in writing by the Environment Agency.	EN ISO 21877	Action levels to be agreed on completion of IC13 as approved

Table S3.4 Process monitoring requirements – odour abatement				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
				in writing by the Environment Agency. Action levels to be achieved in accordance with permit condition 3.2 and the odour management plan.
Carbon filters				
Carbon filter (A15 on site plan in schedule 7)	Carbon bed temperature – inlet and outlet	Continuous	Temperature probe	Odour abatement plant shall be managed in accordance with permit condition 3.3, the odour management plan and manufacturer's recommendations.
	Gas flow rate – inlet and outlet	Continuous	Gas flow meter	
	Moisture or humidity	Daily	Moisture meter	
	Back pressure	Weekly	Recognised industry method	
	Efficiency assessment	Annual	Emission removal efficiency (BS EN 13725 for odour removal)	Carbon filter to be replaced in accordance with manufacturer's recommendations. Equipment shall be calibrated on a 4 monthly basis, or as agreed in writing by the Environment Agency.
	Hydrogen sulphide – inlet and outlet gas stream	Every 6 months or as agreed in writing by the Environment Agency.	CEN TS 13649 for sampling NIOSH 6013 for analysis	Action levels to be agreed on completion of ICX13 as approved in writing by the Environment Agency. Action levels to be achieved in accordance with permit condition 3.2 and the odour management plan

Table S3.4 Process monitoring requirements – odour abatement				
Emission point reference or source or description of point of measurement	Parameter	Monitoring frequency	Monitoring standard or method	Other specifications
	Ammonia – inlet	Every 6 months or as agreed in writing by the Environment Agency.	EN ISO 21877	Action levels to be agreed on completion of IC13 as approved in writing by the Environment Agency. Action levels to be achieved in accordance with permit condition 3.2 and the odour management plan.
	Odour concentration – inlet and outlet gas stream	Every 6 months or as agreed in writing by the Environment Agency.	BS EN 13725	Action levels to be agreed on completion of IC13 as approved in writing by the Environment Agency. Action levels to be achieved in accordance with permit condition 3.2 and the odour management plan.

Table S3.5 Bioaerosols monitoring requirements – ambient monitoring					
Location or description of point of measurement	Parameter	Bioaerosols action levels (CFU m⁻³)	Monitoring frequency	Monitoring standard or method	Other specifications
Upwind of the operational area, as described in the Technical	Total bacteria	1000 ^{Note 1}	Quarterly for the first year of operation and twice a year thereafter, unless another frequency is agreed	In accordance with Technical Guidance Note M9 – Environmental monitoring of	As described in the Technical Guidance Note M9, including all the

Location or description of point of measurement	Parameter	Bioaerosols action levels (CFU m⁻³)	Monitoring frequency	Monitoring standard or method	Other specifications
Guidance Note M9 Downwind of the operational area, as described in the Technical Guidance Note M9	Aspergillus Fumigatus	500 ^{Note 1}	in writing by the Environment Agency ^{Note 2}	bioaerosols at regulated facilities.	additional data requirements specified therein.
<p>Note 1 – The bioaerosols action levels are only applicable at downwind sampling locations equivalent to the distance of the nearest sensitive receptor. Where these action levels are elevated, the operator must take action to mitigate the impact on sensitive receptors. Assessment of compliance will be based on risk and in line with guidance.</p> <p>Note 2. Where the bioaerosols action levels are exceeded, then monitoring remain quarterly until such time that it is demonstrated that the site has adequate mitigation for a 12 month period.</p>					

Effluent(s) and discharge point(s)	Monitoring type	Monitoring point NGR	Monitoring point reference
T1 on site plan in schedule 7 emission to River Kennet [Reading WwTW]	Effluent monitoring	SU 70715 70637	Point S1 [Discharge to WwTW] in Schedule 7
T2 on site plan in schedule 7 emission to River Kennet [Reading WwTW]	Effluent monitoring	SU 70685 70588	Point S2 [Discharge to WwTW] in Schedule 7
T3 on site plan in schedule 7 emission to River Kennet [Reading WwTW]	Effluent monitoring	SU 70692 70585	Point S3 [Discharge to WwTW] in Schedule 7
T4 on site plan in schedule 7 emission to River Kennet [Reading WwTW]	Effluent monitoring	SU 70768 70652	Point T4 [Discharge to WwTW] in Schedule 7
T5 on site plan in schedule 7 emission to River Kennet [Reading WwTW]	Effluent monitoring	SU 70893 70751	Point T5 [Discharge to WwTW] in Schedule 7

Schedule 4 – Reporting

Parameters, for which reports shall be made, in accordance with conditions of this permit, are listed below.

Table S4.1 Reporting of monitoring data			
Parameter	Emission or monitoring point/reference	Reporting period	Period begins
Emissions to air from CHP engines and boilers Parameters as required by condition 3.5.1.	A1, A2, A3, A4 and A5	Every 12 months	1 January
Emissions to air from odour abatement plant Parameters as required by condition 3.5.1.	A15	Every 6 months	1 January, 1 July
IC13 for effectiveness of air abatement systems for waste water treatment plant. Parameters as required by condition 3.5.1.	A15	Every 6 months	1 January, 1 July
Emissions to sewer Parameters as required by condition 3.5.1	S1, S2, S3 and T5	Upon completion of IC11 and IC 14	Upon completion of IC11 and IC14
Process monitoring – digester tank integrity Parameters as required by condition 3.5.1	As specified in schedule 3 table S3.3	Every 5 years from the date of commissioning or as per the manufacturer's recommendation, whichever is sooner	1 January
Process monitoring – under and over pressure relief systems Parameters as required by condition 3.5.1	As specified in schedule 3 table S3.3	Every 12 months Yearly summary report of over-pressure and under-pressure events detailing mass balance release	1 January
Process monitoring – leak detection and repair (inspection, calibration and maintenance) Parameters as required by condition 3.5.1	As specified in schedule 3 table S3.3	Every 3 years	1 January
Process monitoring – use of emergency flare Parameters as required by condition 3.5.1	As specified in schedule 3 table S3.3	Every 12 months	1 January
Total annual VOCs emissions from gas engines (calculated)	As specified in schedule 3 table S3.3	Every 12 months	1 January
Bioaerosols monitoring Parameters as required by condition 3.5.1	As specified in schedule 3 table S3.5	Every 3 months or as agreed in writing by the	1 January, 1 April, 1 July, 1 October

Table S4.1 Reporting of monitoring data			
Parameter	Emission or monitoring point/reference	Reporting period	Period begins
		Environment Agency	

Table S4.2 Annual production/treatment	
Parameter	Units
Electricity generated	MWh
Liquid digestate	m ³
Solid digestate	tonnes
Recovered outputs	tonnes or m ³

Table S4.3 Performance parameters		
Parameter	Frequency of assessment	Units
Water usage	Annually	tonnes or m ³
Energy usage	Annually	MWh
Raw material usage	Annually	tonnes or m ³
Emergency flare operation	Annually	hours
Electricity exported	Annually	MWh
CHP engine usage	Annually	hours
CHP engine efficiency	Annually	%
Auxiliary boiler usage	Annually	hours

Table S4.4 Reporting forms		
Media/parameter	Reporting format	Date of form
Air	Form air 1 or other form as agreed in writing by the Environment Agency	25/07/2023
Bioaerosols	As specified in the Technical Guidance Note M9 or other form as agreed in writing by the Environment Agency	--
Process monitoring	Form process 1 or other form as agreed in writing by the Environment Agency	25/07/2023
Sewer	Form sewer 1 or other form as agreed in writing by the Environment Agency	25/07/2023
Energy usage	Form energy 1 or other form as agreed in writing by the Environment Agency	25/07/2023
Other performance indicators	Form performance 1 or other form as agreed in writing by the Environment Agency	25/07/2023
Waste returns	E-waste Return Form or other form as agreed in writing by the Environment Agency	--

Schedule 5 – Notification

These pages outline the information that the operator must provide.

Units of measurement used in information supplied under Part A and B requirements shall be appropriate to the circumstances of the emission. Where appropriate, a comparison should be made of actual emissions and authorised emission limits.

If any information is considered commercially confidential, it should be separated from non-confidential information, supplied on a separate sheet and accompanied by an application for commercial confidentiality under the provisions of the EP Regulations.

Part A

Permit Number	
Name of operator	
Location of Facility	
Time and date of the detection	

(a) Notification requirements for any malfunction, breakdown or failure of equipment or techniques, accident, or emission of a substance not controlled by an emission limit which has caused, is causing or may cause significant pollution	
To be notified within 24 hours of detection	
Date and time of the event	
Reference or description of the location of the event	
Description of where any release into the environment took place	
Substances(s) potentially released	
Best estimate of the quantity or rate of release of substances	
Measures taken, or intended to be taken, to stop any emission	
Description of the failure or accident.	

(b) Notification requirements for the breach of a limit	
To be notified within 24 hours of detection unless otherwise specified below	
Emission point reference/ source	
Parameter(s)	
Limit	
Measured value and uncertainty	
Date and time of monitoring	

(b) Notification requirements for the breach of a limit	
To be notified within 24 hours of detection unless otherwise specified below	
Measures taken, or intended to be taken, to stop the emission	

Time periods for notification following detection of a breach of a limit	
Parameter	Notification period

(c) Notification requirements for the detection of any significant adverse environmental effect	
To be notified within 24 hours of detection	
Description of where the effect on the environment was detected	
Substances(s) detected	
Concentrations of substances detected	
Date of monitoring/sampling	

Part B – to be submitted as soon as practicable

Any more accurate information on the matters for notification under Part A.	
Measures taken, or intended to be taken, to prevent a recurrence of the incident	
Measures taken, or intended to be taken, to rectify, limit or prevent any pollution of the environment which has been or may be caused by the emission	
The dates of any unauthorised emissions from the facility in the preceding 24 months.	

Name*	
Post	
Signature	
Date	

* authorised to sign on behalf of the operator

Schedule 6 – Interpretation

“accident” means an accident that may result in pollution.

“anaerobic digestion” means a process of controlled decomposition of biodegradable materials under managed conditions where free oxygen is absent, at temperatures suitable for naturally occurring mesophilic or thermophilic anaerobes and facultative anaerobe bacteria species, which convert the inputs to a methane-rich biogas and whole digestate.

“animal waste” means any waste consisting of animal matter that has not been processed into food for human consumption.

“application” means the application for this permit, together with any additional information supplied by the operator as part of the application and any response to a notice served under Schedule 5 to the EP Regulations.

“appropriate abatement system” means the appropriate treatment technique for channelled emissions to air defined in 6.6.1 ‘Channelled emissions to air’ from the ‘Best Available Techniques (BAT) Reference Document for Waste Treatment’.

“authorised officer” means any person authorised by the Environment Agency under section 108(1) of The Environment Act 1995 to exercise, in accordance with the terms of any such authorisation, any power specified in section 108(4) of that Act.

“Best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

(a) ‘techniques’ includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

(b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator;

(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole.

“bioaerosols action levels” mean the acceptable bioaerosols concentrations at the nearest sensitive receptor, or at an equivalent distance downwind of the biowaste treatment operations, which are attributable to the biowaste treatment operations. The acceptable concentrations are respectively 1000 and 500 CFU m⁻³ for total bacteria and *Aspergillus fumigatus*. Where these action levels are elevated, the operator must take action to mitigate the impact on sensitive receptors.

“Biodegradable” means a material is capable of undergoing biological anaerobic or aerobic degradation leading to the production of CO₂, H₂O, methane, biomass, and mineral salts, depending on the environmental conditions of the process.

“building” means a construction that has the objective of providing sheltering cover and minimising emissions of noise, particulate matter, odour and litter.

“BREF” means Best Available Techniques (BAT) Reference Document.

“Capacity” means the potential capacity and not historical or actual production levels or throughput. This means that the designed capacity is the maximum rate at which the site can operate. Biological treatment of waste usually takes place over more than one day, so the physical daily capacity can be calculated by dividing the maximum quantity of waste that could be subject to biological treatment at any one time by the minimum residence time. For in-vessel composting, the residence time for sanitisation should be calculated separately and then aggregated to the complete composting time. Further guidance [‘RGN2: Understanding the meaning of regulated facility Definition of regulated facility’](#) is available.

“channelled emissions” means the emissions of pollutants into the environment through any kind of duct, pipe, stack, etc. This also includes emissions from open top biofilters.

“combined heat and power” (CHP) or Cogeneration means the simultaneous generation in one process of thermal energy and electrical or mechanical energy.

“competent persons and resources” means that a technically competent person accredited to a relevant scheme must attend site and record their attendance, and that all roles and responsibilities are clearly stated in the management systems along with records of operatives’ training. See the guidance on the [level of competence and duration of attendance](#)

“compost” means solid particulate material that is the result of composting, which has been sanitised and stabilised, and which confers beneficial effects when added to soil, used as a component of growing media or used in another way in conjunction with plants.

“compostable plastics” means waste containing packaging or non-packaging items (or both) with a valid certificate of conformity to EN 13432 or an equivalent standard for compostable and digestible items, the certificate issued by an independent certification body capable of fully biodegrading by a biological process to create compost or digest.

“composting” means the managed biological decomposition of biodegradable waste organic materials, under conditions that are predominantly aerobic and that allow the development of thermophilic temperatures as a result of biologically produced heat and that result in compost.

“composting batch” means an identifiable quantity of material that progresses through the composting system and when fully processed has similar characteristics throughout. For composting systems that operate on a continuous- or plug-flow basis, batches will be taken to mean a series of “portions of production”.

“direct discharge” means discharge to a receiving water body.

“diffuse emissions” mean non-channelled emissions (e.g. of dust, organic compounds, odour) which can result in ‘area’ sources (e.g. tanks) or ‘point’ sources (e.g. pipe flanges). This also includes emissions from open-air windrow composting.

“digestate” means material resulting from an anaerobic digestion process.

“disposal” means any of the operations provided for in Annex I to Directive 2008/98/EC of the European Parliament and of the Council on waste.

“DSEAR” means the Dangerous Substances and Explosive Atmospheres Regulations 2002.

“emissions of substances not controlled by emission limits” means emissions of substances to air, water or land from the activities, either from the emission points specified in schedule 3 or from other localised or diffuse sources, which are not controlled by an emission limit.

“emissions to land” includes emissions to groundwater.

“EP Regulations” means The Environmental Permitting (England and Wales) Regulations SI 2016 No.1154 and words and expressions used in this permit which are also used in the Regulations have the same meanings as in those Regulations.

“existing medium combustion plant” means an MCP which was put into operation before 20 December 2018.

“generator” means any combustion plant which is used to generate electricity, excluding mobile, unless it is connected to the national grid.

“groundwater” means all water, which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

“head of works” means the discharge location where imported wastes are discharged into the WwTW. The waste operations associated with the head of works is either via the direct discharge of tankered waste into the WwTW or the temporary storage of waste in a storage tank before discharge of waste into the WwTW. The waste water treatment works are operated under the requirements of the Urban Waste Water Treatment Directive.

“impermeable surface” means a surface or pavement constructed and maintained to a standard sufficient to prevent the transmission of liquids beyond the pavement surface.

“Indirect discharge” means a discharge to a sewer or off-site waste water treatment plant.

“Industrial Emissions Directive” and/or “IED” means DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions, as read in accordance with Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016.

“Leak detection and repair (LDAR) programme” means a structured approach to reduce fugitive emissions of organic compounds by detection and subsequent repair or replacement of leaking components. Currently, sniffing (described by EN 15446) and optical gas imaging methods are available for the identification of leaks as set out in BAT 14 and section 6.6.2 of the Waste Treatment BAT Conclusions.

“maturation” means optional period of treatment or storage of separated fibre digestate under predominantly aerobic conditions.

“MCERTS” means the Environment Agency’s Monitoring Certification Scheme.

“medium combustion plant” or “MCP” means a combustion plant with a rated thermal input equal to or greater than 1 MW but less than 50 MW.

“Medium Combustion Plant Directive” or “MCPD” means Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants, as read in accordance with Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016.

“new medium combustion plant” means an MCP which was put into operation after 20 December 2018. This includes replacement MCP and Generators.

“operational area” means any part of a facility used for the handling, storing and treatment of waste.

“operator” means in relation to a regulated facility:

- (a) the person who has control over the operation of the regulated facility,
- (b) if the regulated facility has not yet been put into operation, the person who will have control over the regulated facility when it is put into operation, or
- (c) if a regulated facility authorised by an environmental permit ceases to be in operation, the person who holds the environmental permit

“pests” means Birds, Vermin and Insects.

“PFOA” means Perfluorooctanoic acid.

“PFOS” means Perfluorooctanesulphonic acid.

“pollution” means emissions as a result of human activity which may—

- (a) be harmful to human health or the quality of the environment,
- (b) cause offence to a human sense,
- (c) result in damage to material property, or
- (d) impair or interfere with amenities and other legitimate uses of the environment.

“quarter” means a calendar year quarter commencing on 1 January, 1 April, 1 July or 1 October.

“recovery” means any of the operations provided for in Annex II to Directive 2008/98/EC of the European Parliament and of the Council on waste.

“sanitisation” means the actively managed and intensive stage of composting, lasting for at least 5 days, characterised by high oxygen demand and temperatures of over 55°C, during which biological processes, together with conditions in the composting mass, eradicate human and animal pathogens or reduce them to acceptably low levels. The operator also needs to meet ABPR requirements.

“sealed drainage system” in relation to an impermeable surface, means a drainage system with impermeable components which does not leak and which will ensure that:

- no liquids will run off the surface otherwise than via the system
- all liquids entering the system are collected in a sealed sump, except where liquids may be lawfully discharged to foul sewer.

“specified generator” means a group of generators other than excluded between 1 and 50 megawatts or less than 50 megawatts as defined in Schedule 25B(2) of SI 2018 No.110 of the EPR.

“stable” and/or “stabilised” means the degree of processing and biodegradation at which the rate of biological activity has slowed to an acceptably low and consistent level and will not significantly increase under favourable, altered conditions.

“VOC” means Volatile organic compounds as defined in Article 3(45) of Directive 2010/75/EU – ‘volatile organic compound’ means any organic compound as well as the fraction of creosote, having at 293.15K a vapour pressure of 0.01 kPa or more, or having a corresponding volatility under the particular conditions of use.

“Waste code” means the six-digit code referable to a type of waste in accordance with the List of Wastes (England) Regulations 2005, or List of Wastes (Wales) Regulations 2005, as appropriate, and in relation to hazardous waste, includes the asterisk.

“Waste Framework Directive” and/or “WFD” means Waste Framework Directive 2008/98/EC of the European Parliament and of the Council on waste, as read in accordance with Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016.

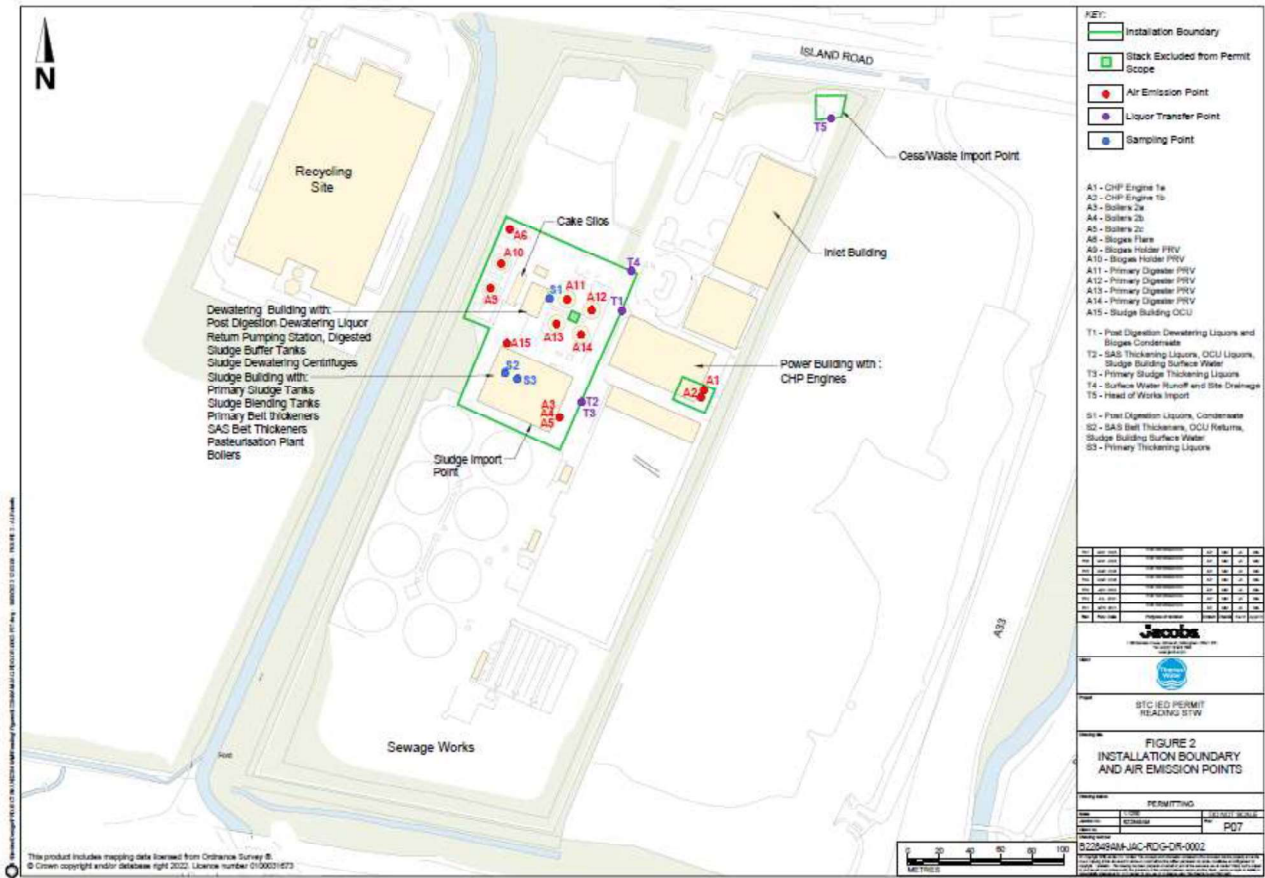
Where a minimum limit is set for any emission parameter, for example pH, reference to exceeding the limit shall mean that the parameter shall not be less than that limit.

Unless otherwise stated, any references in this permit to concentrations of substances in emissions into air means:

- in relation to emissions from combustion processes, the concentration in dry air at a temperature of 273K, at a pressure of 101.3 kPa and with an oxygen content of 3% dry for liquid fuels and gaseous fuels, 6% dry for solid fuels; and/or
- in relation to emissions from non-combustion sources, the concentration at a temperature of 273K and at a pressure of 101.3 kPa, with no correction for water vapour content.

“year” means a calendar year ending on 31 December.

Schedule 7 – Site plan



Annex 1 of MCP

<p>1. Rated thermal input (MW) of the medium combustion plant.</p>	<p>CHP 1- 1.344 MWth CHP 2 - 1.344 MWth</p>
<p>2. Type of the medium combustion plant (diesel engine, gas turbine, dual fuel engine, other engine or other medium combustion plant).</p>	<p>2 x CHP engines on Biogas</p>
<p>3. Type and share of fuels used according to the fuel categories laid down in Annex II.</p>	<p>Gaseous fuels other than natural gas</p>
<p>4. Date of the start of the operation of the medium combustion plant or, where the exact date of the start of the operation is unknown, proof of the fact that the operation started before 20 December 2018.</p>	<p>CHP 1 - 2006 CHP 2 - 2006</p>
<p>5. Sector of activity of the medium combustion plant or the facility in which it is applied (NACE code).</p>	<p>37.00</p>
<p>6. Expected number of annual operating hours of the medium combustion plant and average load in use.</p>	<p>CHP 1- 8,760 hours per year CHP 2 - 8,760 hours per year</p>
<p>7. Where the option of exemption under Article 6(3) or Article 6(8) is used, a declaration signed by the operator that the medium combustion plant will not be operated more than the number of hours referred to in those paragraphs.</p>	<p>N/A</p>
<p>8. Name and registered office of the operator and, in the case of stationary medium combustion plants, the address where the plant is located.</p>	<p>Company name and registered office: Thames Water Utilities Limited, Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB</p> <p>Address where the plant is located: Thames Water Utilities Limited Reading Sludge Treatment Centre, Reading Sewage Treatment Works, Island Road, Reading, Berkshire, RG2 0RP</p>

END OF PERMIT



Secondary Containment Discussion - Reading STC IED permit

Agenda

- Introductions and update on IED permit application submissions
- Background – Secondary containment
- Current proposal
- Assessment and an alternative approach
- Discussion
- Additional questions on:
 1. Sampling Plans for IC11a and IC14a for Reading
 2. Odour Monitoring/Management for Reading (IC13)
 3. LDAR/Methane Slip testing (IC12)
 4. Reading CAR – integrity tests
- Next Steps



Background

Improvement Condition for secondary containment design

The plan should include but not be limited to the following components:

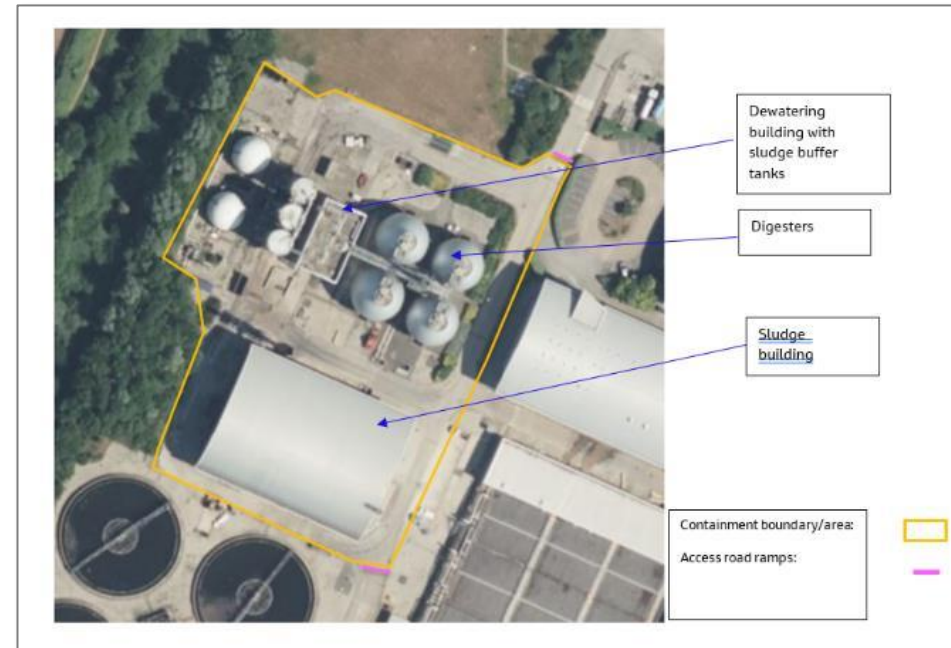
- An updated BAT assessment with specific regard to BAT 19 of the Waste Treatment BREF.
- An assessment of the suitability for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure.
- Finalised designs and specifications of the proposed secondary containment proposal completed by appropriate competent individuals.
- A program of works with timescales for the commissioning of the secondary containment systems to comply with CIRIA C736 (2014) guidance, or equivalent.
- An updated site and infrastructure plan.
- A preventative maintenance and inspection regime.

The plan shall be implemented in accordance with the Environment Agency's prior written approval.

- Improvement Condition (IC) 9 requires these 6 points to be delivered by the 24th January 2024
- The IC states the plan shall contain the finalised designs and an implementation schedule for the identified secondary containment systems proposed in the document, 'Reading STC – Containment Options Report' (May 2023)

Current Proposal – catastrophic failure

- Reading STC – Containment Options Report' (May 2023), submitted as part of the permit application identified a secondary containment system based on:
 - A single feasible solution, but on the worst-case failure scenario.
 - Assuming catastrophic failure of largest (concrete) tank and requirement to contain 25% of total tank volumes.
 - Previous assessment gave site hazard rating 'Medium' (from ADBA)



Current proposal - 350m long bund wall (500 - 1000mm high)

BAT Risk Assessment – change in approach

- The BAT risk assessment approach seeks to identify relevant provisions within BAT reference document for waste treatment, other guiding documents and CIRIA736. Appropriate Measures - implement CIRIA736 – allows risk-based approach:

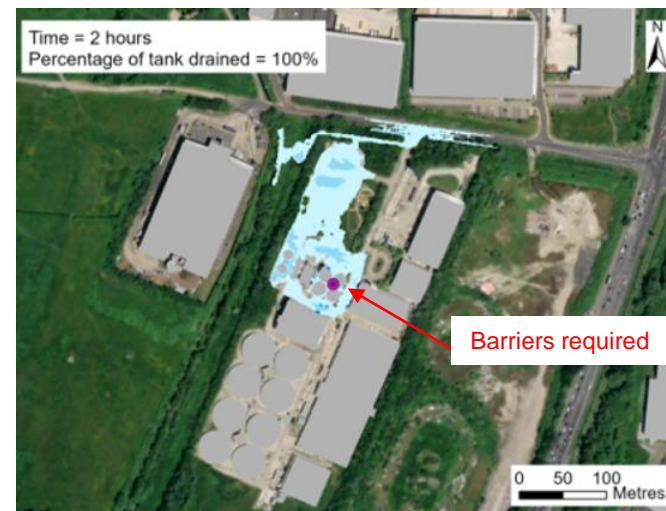
Clause 1.3.3 states that “*The application of this guidance to existing facilities should be **based on risk**, and any upgrades completed to reduce risk sufficiently to satisfy the law and to be in accordance with guidance under the relevant legislative regime. Upgrades may be subject to as **low as reasonably practicable (ALARP) and/ or best available techniques (BAT)** ‘tests’ and **supporting cost-benefit analyses (CBA)** depending on the legislative regime (COMAH, EPR etc). It is, however, recognised that **the costs of upgrading existing facilities might outweigh the environmental benefits**, and therefore not be viable, or that other equally effective risk reduction measures to those suggested in this guidance may be implemented”.*

- This assessment has identified opportunities that will determine how we deliver the remainder of the IC. It has:
 - considered credible failure scenarios, and therefore the containment provision to be applied.
 - suggested a smaller volume of containment and further consideration of local containment and/or with operational intervention.
 - not changed the site hazard rating – it remains at ‘Medium’



Alternative solution – credible failure

- The risk-based assessment concluded:
 - a) to contain only 100% of the largest tank (concrete digester)
 - b) Concluded 3 x medium risk and 7 x low risk events. The medium events being:
 - i. Failure at a penetration (pipe or mixer e.g. flow of 250l/s)
 - ii. Leak (e.g. flow of 10l/s)
 - iii. Operator / human error (e.g. flow of 250 or 10 l/s)
- This could facilitate an operational solution (10l/s) whereby the spill is managed by temporary bunding, directed to tertiary containment or controlled return to the adjacent WwTWs.
- For the 250l/s event – allow a wider spill area.



250l/s after 2 hours

Or 350m long bund wall (height reduced with lower volume adopted)



Discussion Points

EA Initial thoughts on alternative solution?

- Discussion is specifically for Reading, but also applies to how we address BAT risk assessments for all 24 STC sites and how that affects the secondary containment solutions.

Timing

- Reading IC9 (secondary containment) is to be submitted by 24th January 2024
- The subsequent 5 steps of the IC will be addressed in the finalised designs – but rely on feedback from the EA on the first step = BAT assessment
- Request an extension on delivering the 5 subsequent steps of IC9





Additional Questions

- 1) IC11a and IC14a – liquor sampling plans
- 2) Odour monitoring and management IC13
- 3) LDAR/methane slip IC12
- 4) Reading STC – CAR notice, in regards digester capacity and inspection

1) Questions on Reading IC11a & 14a – liquor sample plans

- Reading IED IC11a and 14a sample plans to characterise wastewater streams (150+ contaminants (through SW guidelines)) is due 24th January.
- Can we get a statement from the EA putting these sample plan ICs ‘on hold’ due to combined EA / industry concerns of UK lab capacity and capability to sample and analyse to the required standards?
- Please note: we have had WRc investigating for a sampling/analysis plan. Initial cost estimate are £7000/sample for characterisation – not including H1 or WM3 assessments.
- In addition - we understand the purpose of the sample plan submission IC11a and IC14a is to demonstrate how the 150+ contaminants may be reduced to a smaller number, although the exact number of elements and compounds to be considered will vary from site to site, based on the catchment and what is imported to the site.
- We would like to request guidance on what would the EA consider to be robust justification for the exclusion of any parameter?



2) Questions on Odour Monitoring/Management

- We seek clarity on the classification of the waste treatment process:
 - We have both 'Biological treatment of waste' and 'water-based liquid waste' referenced in the permit.
 - What is the waste treatment process in relation to monitoring requirements
 - If assessment of BAT for our permit conditions assesses against both waste treatment processes, please define what aspects of STCs are considered for Treatment of water-based liquid waste and biological treatment of waste. As it is not clear in the guidance or BAT any key differentiation to understand the expected monitoring frequency and methods.

Please note: there are different requirements on frequency and monitoring requirements – e.g. with regards to odour monitoring: Biological treatment of waste / water-based liquid waste requires monitoring of HCl/TVOC

- We would like to request a review on the monitoring requirement of the standby carbon OCU at Reading, which is only in use less than once in 10-year operation – is this required?
- Can we request the process monitoring requirements of OCUs on table S3.4 be reviewed? Our specialist contractors have suggested that in general these are excessive.
- BAT does not specify a frequency for Sniff Testing – our current OMP states that it “is to be undertaken in response to complaints or if a risk of odour nuisance at sensitive receptors is expected and/or has been substantiated” – is this acceptable?
- We would like to request an extension to IC13 (due January 24th)
 - We need to redo the odour monitoring of the OCU – will delay the monitoring and finalising full report against IC13 – could we get extension until end of March 2024 (we will submit as soon as received from Olfasense)



3) LDAR / Methane Slip (IC12)

- We would like to request an extension to IC12 (due January 24th)
 - Activity outside of existing frameworks
 - We have engaged Socotec to carry out the LDAR/methane slip testing for Reading.
 - Socotec's programme is 44 working days to deliver a final report being issued once they commence work.
 - Could IC12 be delivered by end of March 2024?



4) Questions on Reading CAR – integrity tests

- In Table S3.3 Process Monitoring requirements, and a subsequent CAR for Reading, we have the requirement for:

- Digesters tank capacity and sediment assessment – permit requires non destructive pressure testing every 5 years or as specified by manufacturers technical specification. TWUL propose capacity and integrity checks every 10 years as per industry wide approach unless PPM requires further investigation.

- We would like to seek clarity on what this permit requirement is measuring?
 - Is it to measure the working volume of the tank / how quickly it will fill with grit? If so, why does it refer to integrity checks?
- A subsequent action in the Reading CAR:

ACTION - The permit requires testing every 5 years OR as specified by manufacturers technical specifications. If you are proposing every 10 years, please provide evidence from the manufacturer that this is in accordance with their technical specifications. If this is not provided and agreed then we will require testing every 5 years.

- Can this action be dealt with under IC10 for primary containment plan? Tank integrity will be assessed within the primary containment assessments.



Next steps – post meeting with EA

- Thames Water to submit paper on BAT risk assessment approach to secondary containment to the EA local officer / Site inspector (IC9-first)
- Feedback requested from the EA local officer on risk assessment approach and applicability to Reading and meeting subsequent BAT19 requirements, which will affect the delivery of Reading IC9 final 5 steps
- Thames Water to issue this slide deck to all attendees with the outstanding queries for EA - on Reading IC11a and 14a – sample plans; odour monitoring/management and Reading CAR
- Thames Water to formally write to Holly Linham to request extensions to:
 - IC9 (final 5 steps)
 - IC11a and 14a,
 - IC12 and
 - IC13





Clearwater Court,
Vastern Road,
Reading
RG1 8DB

Gareth.Parry@Thameswater.co.uk

Holly Linham
Environment Agency
Howbery Business Park
Address: Red Kite House, Howbery
Business Park, Benson Ln, Crowmarsh
Gifford, Wallingford
OX10 8BD

17th January 2024

Dear Holly Linham,

**RE: Improvement Conditions (9, 11, 13 and 14) for Reading IED Permit
EPR/MP338LU/V004**

Thank you for meeting with us on the 3rd January 2024 to discuss the general risk assessment approach to secondary containment of Thames Water Utilities Limited's (TWUL) Sludge Treatment Centres (and specifically to that at TWUL's Reading Site) and the additional questions we raised on the Reading IED Permit and the Improvement Conditions which included deadlines (for certain aspects of those Improvement Conditions) of 24 January 2024. We thought it was a useful and productive meeting.

As discussed in the meeting, we would like to formally request extensions to the deadlines set in the Reading IED Permit for the following Improvement Conditions,:

1. IC9 - Improvement condition for secondary containment design
2. IC11 - Improvement conditions for establishing an inventory of liquid waste water discharged from anaerobic digestion and associated activities (AR1 – AR10) – (a) Sampling programme
3. IC13 - Improvement condition for review of effectiveness of abatement plan
4. IC14 - Improvement condition for establishing an inventory of liquid waste water discharged from the Head of works waste operation/installation activity - (AR11) – (a) Sampling programme

The following sections sets out the rationale behind each extension request, the actions we are currently undertaking and the date we anticipate we will be able to achieve delivery.

1. IC9 - Improvement condition for secondary containment design

The Improvement Condition IC9 is as follows, with a current deadline for submission to the Environment Agency (EA) of the 'secondary containment implementation plan' by the 24th January 2024 (being 6 months after permit issue):

Ref	Requirement	Date
IC9	<p>The operator shall submit a written 'secondary containment implementation plan' and shall obtain the Environment Agency's written approval to it. The plan shall contain the finalised designs and an implementation schedule for the identified secondary containment systems proposed in the document <i>Reading STC IED Containment Options Report, dated May 2023</i>. The finalised design(s) and specifications shall be produced by appropriate competent individuals (qualified civil or structural engineer), in accordance with the risk assessment methodology detailed within CIRIA C736 (2014) guidance.</p> <p>The plan shall include but not be limited to the following components:</p> <ul style="list-style-type: none"> • An updated BAT assessment with specific regard to BAT 19 of the Waste Treatment BREF. • An assessment of the suitability for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure. • Finalised designs and specifications of the proposed secondary containment proposal completed by appropriate competent individuals. • A program of works with timescales for the commissioning of the secondary containment systems to comply with CIRIA C736 (2014) guidance, or equivalent. • An updated site and infrastructure plan. • A preventative maintenance and inspection regime 	<p>6 months of permit issue or such other date as agreed in writing with the EA</p> <p>Implementation of all required and approved containment improvements must be completed by 31/12/2024</p>

As discussed in the presentation provided by TWUL on the 3rd January and the accompanying paper, TWUL have been developing the 'secondary containment implementation plan' and as part of this have reviewed the risk-based assessment that was included in the Reading STC IED Containment Options Report, dated May 2023. We would like to request that TWUL is granted an extended deadline to submit the Secondary Containment Implementation Plan to the EA, of 30th June 2024 for the following reasons:

- a) as discussed in the meeting we said that it would take around 4 months to complete a detailed design and we have added an additional month to cover the quotation and instruction period.
- b) The updated BAT assessment has identified opportunities that will determine how we deliver the remainder of IC9. It has considered credible failure scenarios, and therefore the containment provision that is required. This review (which we submit to satisfy the first requirement of IC9 of an updated BAT assessment with specific regard to BAT19) concludes that a different risk assessment approach than stated in the permit is appropriate, i.e., a smaller volume of containment and further consideration of local containment and/or with operational intervention. Alternatives being considered are at the concept stage. Please see the paper included in

Appendix A. This makes clear that there are alternative options which may provide the same degree of environmental protection but at a lower cost.

- c) TWUL met with Defra, Ofwat and the EA on the 13th December 2023 to discuss the assumptions underlying the scope of the IED Enhancement Case in the PR24 submission. Questions were raised on the CIRIA C736 guidance on credible failure, which could not be answered in the meeting. TWUL were asked to follow-up with an email query to all attendees. The questions were directed to Clive Humphreys on the 14th December and acknowledged on the same day, but a formal response is yet to be received. This could impact the approach to risk assessment in the updated BAT assessment.
- d) In order to prepare finalised design(s) and specifications including the five subsequent bullet point actions required to be included in the containment plan under IC9, we require the EA’s feedback on the paper included as Appendix A so as to revise the final containment options accordingly.

As such, we request that TWUL is granted an extension of 5 months to the deadline applicable to its submission of the plan to the EA. This is likely to have a potential delay to the implementation programme and timescale.

In addition to the above, we would like to apply the approach to risk assessment of secondary containment to all TWUL IED facilities, as you are likely aware currently 23 of TWUL’s permit applications for such facilities are being considered by the EA, and 2 have currently been granted (Reading, see above and Camberley). As such, this has wider application and it is critical to TWUL to fully understand how to approach this issue.

2. IC11a – for establishing an inventory of liquid waste water discharged from anaerobic digestion and associated activities (AR1 – AR10)

The Improvement Condition IC11a is as follows, with a current deadline for TWUL to submit a sampling programme by the 24th January 2024:

Ref	Requirement	Date
IC11a	<p>The operator shall submit a sampling programme in relation to waste water streams and shall obtain the Environment Agency’s written approval to it. The sampling programme shall be designed to fully characterise the waste waters discharged to Reading wastewater treatment works (WwTW) from emission points S1, S2 and S3 in (table S3.2 of this permit).</p> <p>The programme shall include but not be limited to a methodology for a minimum of one 24-hour flow proportional sample a month, for each emission point, for a period of 12 months. The programme shall detail the sampling methods/standards used. Sampling methods shall be in accordance with BAT conclusion 20 of the Waste Treatment BREF.</p> <p>The programme shall include the National Grid Reference (NGR) of the sampling point(s) location(s). The programme shall establish the characteristics of the liquid waste water streams and shall include as a minimum for each emission point:</p> <ul style="list-style-type: none"> • Average values and variability of flow, pH, temperature and conductivity. • Average concentration and load values of all relevant substances and their variability. 	<p>A sampling programme shall be submitted within 6 months of issue of this permit</p>

	<ul style="list-style-type: none"> • Data on bioeliminability. <p>The programme shall sample for all relevant substances and must include:</p> <ul style="list-style-type: none"> • Hydrocarbon oil index (HOI) (mg/l) • Free cyanide (CN⁻) (mg/l) • Adsorbable organically bound halogens (AOX) (mg/l) • Metals and metalloids; arsenic (expressed as As), cadmium (expressed as Cd), chromium (expressed as Cr), hexavalent chromium (expressed as Cr(VI)), copper (expressed as Cu), lead (expressed as Pb), nickel (expressed as Ni), mercury (expressed as Hg), zinc (expressed as Zn) (µg/l) <p>The operator shall submit the collected monitoring data in writing to the EA according to agreed reporting periods.</p> <p>The sampling programme shall be produced in accordance with EA guidance:</p> <ul style="list-style-type: none"> • Specific substances and priority hazardous substances – Surface water pollution risk for your environmental permit Surface water pollution risk assessment for your environmental permit – GOV.UK (www.gov.uk). • Monitoring discharges to water: guidance on selecting a monitoring approach Monitoring discharges to water: guidance on selecting a monitoring approach – GOV.UK (www.gov.uk). The programme must be carried out as approved or agreed in advance in writing by the Environment Agency. <p>The monitoring programme shall be carried out and the monitoring data submitted in accordance with the Environment Agency’s written approval.</p>	
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As discussed in our meeting with you on the 3rd January we would like to request this IC is put ‘on hold’ pending the outcome of the Water UK/EA Task & Finish (TaF) Group discussions, which the National EA is involved in. Those discussions will impact how the sampling programme is designed. Alternatively, a delayed delivery date could be included (e.g. the delivery date extended by 4 months). However, there is a risk that if there is not a resolution as part of the wider discussions this may need to be delayed further. The key reasons for this request are:

- UKAS labs are not able to assess a waste sample to the accredited method for all the parameters (~156 parameters including specific substances and priority hazardous substances) detailed in the EA’s guidance on Surface water pollution risk assessment for your environmental permit.
- Discussions are ongoing with the Water UK/EA Task & Finish (TaF) Group as to the UK lab capacity and its capability to sample and analyse to the required standards and the industry’s proposal is that a site-specific sample list be determined.
- Pending the outcome of these discussions with the Water UK/EA Task and Finish (TaF) group the liquor sampling requirements may change and the practicalities of the forthcoming IC deadlines has been recognised by the National EA (Clive Humphreys). The WaSCs (Water and Sewerage Companies) are providing a briefing paper on this and this issue has been

discussed at every TaF meeting since September with the practical issues being highlighted. Clive confirmed in the TaF sessions on the 17th January that he would contact the Area Sludge Leads about the technical challenges and difficulties in meeting IC deadlines.

3. IC14a – Improvement condition for establishing an inventory of liquid waste water discharged from the Head of works waste operation/installation activity (AR11)

The Improvement Condition IC14a is as follows, with a deadline of the 24th January 2024:

Ref	Requirement	Date
IC14a	<p>The operator shall submit a sampling programme in relation to waste water streams and shall obtain the EA’s written approval to it. The sampling programme shall be designed to fully characterise the waste waters discharged to Reading wastewater treatment works (WwTW) from emission point T5 in (table S3.2 of the permit).</p> <p>The programme should include but not be limited to a methodology for a minimum of one 24-hour flow proportional sample a month, for the emission point, for a period of 12 months. The programme shall detail the sampling methods/standards used. Sampling methods shall be in line with Non-hazardous and inert waste: appropriate measures for permitted facilities https://www.gov.uk/guidance/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities).</p> <p>The programme shall include the National Grid Reference (NGR) of the sampling point(s) location(s).</p> <p>The programme shall establish the characteristics of the liquid waste water streams and shall include as a minimum for each emission point:</p> <ul style="list-style-type: none"> • Average values and variability of flow, pH, temperature and conductivity. • Average concentration and load values of all relevant substances and their variability. • Data on bioeliminability. <p>The operator shall submit the collected monitoring data in writing to the EA according to agreed reporting periods.</p> <p>The sampling programme shall be produced in accordance with EA guidance:</p> <ul style="list-style-type: none"> • Specific substances and priority hazardous substances – <i>Surface water pollution risk for your environmental permit</i> Surface water pollution risk assessment for your environmental permit – GOV.UK (www.gov.uk). • Monitoring discharges to water: <i>guidance on selecting a monitoring approach</i> Monitoring discharges to water: guidance on selecting a monitoring approach – GOV.UK (www.gov.uk). <p>The monitoring programme shall be carried out and the monitoring data submitted in accordance with the Environment Agency’s written approval.</p>	Within 6 months of issue of this permit

As discussed in our meeting with you on the 3rd January and again as per the reasoning for IC11a, we would like to request this IC is put 'on hold' pending the outcome of the Water UK/EA Task & Finish (TaF) Group discussions. Those discussions will impact how the sampling programme is designed. Alternatively, a delayed delivery date could be included (e.g. the delivery date extended by 4 months). However, there is a risk that if there is not a resolution as part of the wider discussions this may need to be delayed further. The key reasons for this request are:

- UKAS labs are not able to assess a waste sample to the accredited method for all the parameters (~156 parameters including specific substances and priority hazardous substances) detailed in the EA's guidance on Surface water pollution risk assessment for your environmental permit.
- Discussions are ongoing with the Water UK/EA Task & Finish Group as to UK lab capacity and its capability to sample and analyse to the required standards and the industry's proposal is that a site-specific sample list be determined.
- Pending the outcome of these discussions with the Water UK/EA Task & Finish (TaF) Group the effluent sampling requirements may change and the practicalities of the forthcoming IC deadlines has been recognised by National EA (Clive Humphreys). The WaSCs are providing a briefing paper on this and this issue has been discussed at every TaF meeting since September with the practical issues being highlighted. Clive confirmed in the TaF sessions on the 17th January that he would contact the Area Sludge Leads about the technical challenges and difficulties in meeting IC deadlines.

4. IC13 – Improvement condition for review of effectiveness of abatement plant

The Improvement Condition IC13 is as follows, with a deadline of the 24th January 2024:

Ref	Requirement	Date
IC13	<p>The operator shall carry out a review of the abatement plant at emission points A15 on the site plan in schedule 7, to determine whether the measures have been effective and adequate to prevent and where not possible minimise emissions released to air including but not limited to odour and ammonia. The operator shall submit a written report to the EA following this review for assessment and approval. The report shall include but not be limited to the following aspects:</p> <ul style="list-style-type: none"> • Full investigation and characterisation of the waste gas streams. • Evidence that the pollutants of the waste gas stream will be controlled and/or abated either by the abatement plant or by the proposed abatement systems. • Abatement stack monitoring results (including but not limited to odour and ammonia). • Abatement process monitoring results (including but not limited to odour and ammonia). • Details of air quality quantitative impact assessment including modelling and a proposal for site-specific “action levels” (including but not limited to odour concentration, hydrogen sulphide and ammonia). • Odour monitoring results at the site boundary. • Records of odour complaints and odour related incidents. • Recommendations for improvement including the replacement or upgrading of the abatement plant. • Timescales for implementation of improvements to the abatement plant. <p>The operator shall implement the improvements in line with the timescales as approved by the EA.</p>	6 months of permit issue or such other date as agreed in writing with the Environment Agency

As discussed in our meeting with you on the 3rd January we would like to request that TWUL is granted an extended deadline to submit the written report of the review of the abatement plant to the EA, until the 30th April 2024 for the following reasons:

- Parts required for rehabilitation works to fix the OCU came with long lead times to procure. There was then limited availability of framework suppliers to fit the parts.
- We had some outstanding queries following advice from our specialist contractors on the process monitoring requirements of the Odour Control Units (OCUs) (Table S3.4) and on the monitoring requirement of the standby carbon OCU at Reading, which is only in use less than once in every 10-years of operation. These were discussed with yourselves on the 3rd January.
- As such we need to redo the odour monitoring of the OCU and this will delay the impact assessment and finalising the full report as required by IC13. We will, of course, endeavour to submit the report ahead of this extended deadline, if possible.

We would also like to request the following considerations:

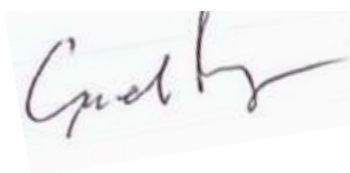
Thames Water Utilities Limited, a company registered in England and Wales with company number 02366661.
Registered office address: Clearwater Court, Vastern Road, Reading RG1 8DB. VAT registration number: GB 537-4569-15.

- This is our first IED permit and IC on IED odour measurements.
- The IED programme team were focused on ensuring all 18 IED permit applications were submitted by the deadline of 20th December.

We thank you for your time on the 3rd January and for your consideration of these IC extensions. Given the impending deadline for these IC's we would really appreciate a prompt response at the earliest opportunity as to whether these requests are acceptable to the EA.

Whilst our discussions specifically relate to the Reading STC, this also has implications as to how we deal with comparable ICs which are likely to be included in our other IED permits and/or how we address BAT risk assessments for all 25 STC sites and the secondary containment solutions proposed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gareth Parry', is written on a light-colored rectangular background.

Gareth Parry
Director of Scientific and Environmental Assurance

Appendix A

Reading STW – IED Containment Technical Note

Raymond, Sarah

Subject: FW: Thames Water IED Permit - Improvement Conditions for Reading IED Permit
EPR/MP338LU/V004

From: Linham, Holly
Sent: Tuesday, January 23, 2024 12:17 PM
To: Nicola Telcik <Nicola.Telcik@thameswater.co.uk>
Cc: Gareth 1 Parry (Guest) <gareth.parry@thameswater.co.uk>
Subject: RE: Thames Water IED Permit - Improvement Conditions for Reading IED Permit EPR/MP338LU/V004

Dear Nicola

I have reviewed your request for an extension of 4 of the improvement conditions in Readings permit with colleagues from our National team.

A CAR form will be produced and sent in the next few weeks. However, as the deadline is tomorrow I wanted to provide a quick response on our decision. We agree to an extension for IC11 and IC14. A new deadline will be set and detailed in the CAR form. We do not agree to extending the deadline for IC9 or IC13. Again, further details on this will be included in the CAR form.

Kind regards

Holly

From: Nicola Telcik <Nicola.Telcik@thameswater.co.uk>
Sent: Wednesday, January 17, 2024 1:21 PM
To: Linham, Holly <Holly.Linham@environment-agency.gov.uk>
Cc: Gareth 1 Parry (Guest) <gareth.parry@thameswater.co.uk>; Chiverton, Colin <colin.chiverton@environment-agency.gov.uk>
Subject: Thames Water IED Permit - Improvement Conditions for Reading IED Permit EPR/MP338LU/V004
Importance: High

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Good afternoon Holly,

Thanks again for the meeting with yourself and Colin Chiverton on the 3rd January.

Please find attached a letter and appendix formally requesting acceptance of the risk-assessment approach for secondary containment we would like to follow for all 25 Sites requiring IED Permits and specifically for Reading.

We would also like to formally request the extension of the Improvement Conditions which are due on the 24th January 2024.

Kind Regards,

Nicola

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This form will report compliance with your permit as determined by an Environment Agency officer

Site	Reading Sludge Treatment Centre - EPR/MP3338LU		Permit Ref	MP3338LU		
Operator/ Permit holder	THAMES WATER UTILITIES LIMITED					
Date	07/02/2024		Time in	10:00	Out	15:00
What parts of the permit were assessed	Improvement condition 9, 11, 13 and 14					
Assessment	Report/data review	EPR Activity:	Installation	X	Waste Op	Water Discharge
Recipient's name/position	Manager					
Officer's name	Holly Linham		Date issued	08/02/2024		

Section 1 - Compliance Assessment Summary

This is based on the requirements of the permit under the Environmental Permitting Regulations (EPR). A detailed explanation and any action you may need to take are given in the "Detailed Assessment of Compliance" (section 3). This summary details where we believe any non-compliance with the permit has occurred, the relevant condition and how the non-compliance has been categorised using our [Compliance Classification Scheme](#) (CCS). CCS scores can be consolidated or suspended, where appropriate, to reflect the impact of some non-compliances more accurately. For more details of our CCS scheme, contact your [local office](#).

Permit Conditions and Compliance Summary			Condition(s) breached
a) Permitted activities	1. Specified by permit	N	
b) Infrastructure	1. Engineering for prevention & control of pollution	N	
	2. Closure & decommissioning	N	
	3. Site drainage engineering (clean & foul)	N	
	4. Containment of stored materials	N	
	5. Plant and equipment	N	
c) General management	1. Staff competency/ training	N	
	2. Management system & operating procedures	C2	2.4.1
	3. Materials acceptance	N	
	4. Storage handling, labelling, segregation	N	
d) Incident management	1. Site security	N	
	2. Accident, emergency & incident planning	N	
e) Emissions	1. Air	N	
	2. Land & Groundwater	N	
	3. Surface water	N	
	4. Sewer	N	
	5. Waste	N	
f) Amenity	1. Odour	N	
	2. Noise	N	
	3. Dust/fibres/particulates & litter	N	
	4. Pests, birds & scavengers	N	
	5. Deposits on road	N	
g) Monitoring and records, maintenance and reporting	1. Monitoring of emissions & environment	N	
	2. Records of activity, site diary, journal & events	N	
	3. Maintenance records	N	
	4. Reporting & notification	N	
h) Resource efficiency	1. Efficient use of raw materials	N	
	2. Energy	N	

KEY: C1, C2, C3, C4 = CCS breach category (* suspended scores are marked with an asterisk),
A = Assessed (no evidence of non-compliance), N = Not assessed, NA = Not Applicable, O = Ongoing non-compliance – not scored
MSA, MSB, TCM = Management System condition A, Management System Condition B and Technically Competent Manager condition which are environmental permit conditions from Part 3 of schedule9 EPR (see notes in Section 5/6).

Number of breaches recorded	1	Total compliance score (see section 5 for scoring scheme)	31
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If the Total No Breaches is greater than zero, then please see Section 3 for details of our proposed enforcement response

Section 2 – Compliance Assessment Report Detail

This section contains a report of our findings and will usually include information on:

- the part(s) of the permit that were assessed (e.g. maintenance, training, combustion plant, etc)
- where the type of assessment was 'Data Review' details of the report/results triggering the assessment
- any non-compliances identified
- any non-compliances with directly applicable legislation
- details of any multiple non-compliances
- information on the compliance score accrued inc. details of suspended or consolidated scores.
- details of advice given
- any other areas of concern
- all actions requested
- any examples of good practice.
- a reference to photos taken

This report should be clear, comprehensive, unambiguous and normally completed within 14 days of an assessment.

Introduction

This CAR form covers improvement conditions 9, 11, 13 and 14. On the 17 January 2024 TWUL requested an extension to these improvement conditions. The request was submitted via email and included a letter titled "TWUL letter to EA regarding Reading IED permit ICs" and "Appendix A – TW IED Permit Reading secondary containment review".

A meeting had been held between the EA and TWUL on the 3 January 2024 to discuss the improvement conditions.

The deadline for submission of IC9, IC11, IC13 and IC14 was within 6 months of permit issue, and the permit was issued on the 25 July 2023.

On the 23 January 2024 I replied to the email request for an IC extension and confirmed that a follow up CAR form would be produced. An extension was granted for IC11 and IC14, but no extension was given for IC9 or IC13.

Non-compliance

C2: Management systems and operating procedures – I have scored you a CCS2 (31 points) for non-compliance with permit condition 2.4.1 which states "The operator shall complete improvements specified in schedule 1 table S3.1 by the date specified in that table unless otherwise agreed in writing by the Environment Agency".

IC9 requires the operator to submit a written "secondary containment implementation plan" and obtain the EA's written approval to it. The written containment plan was not submitted and an extension of 5 months was requested to allow TWUL to complete a detailed design and obtain quotation and instruction.

A deadline was not agreed, as detailed in the email to TWUL on the 23 January 2024. The reasons for this are below.

In the letter TWUL state that they are considering alternative solutions based on a different risk assessment approach. The details of this were included as Appendix A which concludes that a risk based approach would still need secondary containment but smaller than the current permit requirements. It also concludes that the most credible failure scenario is not catastrophic tank failure, but a slower escape of material over time due to leakage or failure at pipe penetration. The report states that this could allow spills to be managed by temporary bunding directed towards tertiary containment or controlled return to the WwTWs.

Secondary containment is covered by BAT 19 which requires the operator to prevent or where that is not practicable, reduce emissions to soil and water. BAT 19d lists a number of techniques which can be used in combination to reduce the likelihood and impact of overflows and failures from tanks and vessels. This includes suitable secondary containment. We use CIRIA C736 as the standard for best available techniques for secondary containment. CIRIA uses the 110% of the capacity of the largest tank within the bund or 25% of the total capacity of all the tanks within the same bund

rule.

As part of the permitting process TWUL provided a document titled “Reading STC – Containment Options Report”, dated May 2023. Spill modelling in this report shows that the potential sludge spill from one of the digestors would not be contained on site, highlighting the need for additional containment. The report concludes that the preferred options was wide containment approach with the volume for containment driven by the 25% rule. This would include installation of bund walls and impermeable surfacing at modelled locations.

Secondary containment is a fundamental principle of pollution prevention. TWUL’s facilities store and treat significant volumes of waste sludge and liquids that have the potential to cause significant pollution to land, air and water.

TWUL are now looking at “credible scenario” approach and not the previously submitted 25% secondary containment. This is a significant change and not what was submitted at the time of permit application.

We provided advice to the industry regarding secondary containment including at a workshop held by Water UK in February 2020, written advice in March 2021 and a presentation in July 2021 delivered to Water UK. TWUL has had years to plan and prepare for the requirements of this improvement condition. As such an extension is not agreed.

As set out in the information supplied to TWUL by Clive Humphries on the 17 January 2024, we do not accept that the concept of credible scenarios offers an opportunity to reduce secondary containment capacity. However, we are open to proposals that may deviate without compromising the level of environmental protection.

With regards to temporary bunding, we do not accept this as a suitable method for containment. It relies on TWUL staff to correctly erect the barriers in time to prevent escape of liquids. We do not consider this an appropriate alternative.

A CCS2 score is given as the reasonably foreseeable impact of not having secondary containment is that tank or pipe failure could lead to a significant environmental impact. The spill modelling shows that the sludge from one of the digestors would escape the site boundary within 15 minutes following failure. The spill modelling shows that it would flow onto the adjacent grassland, the haul road and then Island Road. There is also a small stream running adjacent to the site and the civic amenity facility opposite. The spill modelling shows the digestate flows into this channel which in turn flows directly into the River Kennet around 250m downstream. A digestate spill into the stream would have significant impact on the local water courses. The digestate would also enter drains on site which could impact the sewage works. Without containment the digestate would also spill onto Island Road which could potentially prevent access to nearby businesses.

A spill of digestate from one of the digestors is likely to have a significant impact on the local land, water course and businesses. It could also impact the sewage works itself resulting in the potential for further pollution from the sewage discharge.

ACTION – Submit the requirements under IC9 for our approval. We can consider alternatives to BAT so long as they maintain the same or higher environmental protection. We cannot consider any alternatives which offer a lower level of environmental protection.

IC13 requires the operator to carry out a review of the abatement plant at emission point A15. TWUL requested an extension until the 30 April 2024 for the following reasons.

Parts required for the rehabilitation works to fix the OCU came with long lead times. TWUL had outstanding queries linked to some of the process monitoring requirements and the monitoring of the carbon OCU which is a back up unit. As such the odour monitoring needed to be re-done.

An extension to this IC was not granted. The OCU should have critical spares on site to account for any delays with acquiring parts. The query on process monitoring was the requirement to continuously monitor pH scrubber solution pre-abatement. This should not impact or delay the submission of IC13 as only forms a very small part of process monitoring. Please provide further information on why you cannot complete this monitoring. I can then raise the query with our national odour team.

The monitoring requirements of the standby carbon OCU are set out in Table S3.4 under “Carbon Filters – A15 on site plan. Although the carbon filter is a standby, TWUL have not provided evidence to demonstrate that the wet scrubber is sufficient. BAT 34 and 53 state that wet scrubbing should be used in conjunction with a biofilter, thermal oxidation or adsorption on activated carbon. As such, wet scrubbing alone does not demonstrate BAT. IC13 would provide information to check the effectiveness of the abatement system to ensure compliance with BAT. Until IC13 is agreed, we cannot accept any changes to the monitoring frequencies listed in the process monitoring tables.

ACTION – In the letter you state that the report of the abatement plant would be submitted by the 30 April 2024. We look forward to receiving it by this date.

Agreement to extend deadline for IC11a and 14a

As detailed in the email sent on the 23 January 2024, we agree to extending the deadline for submission of information under IC11a and IC14a. A new deadline of 31 March 2024 to submit the sampling programme is given. This will then allow the required minimum of 12 months sampling to be completed by the 31 March 2025.

Total non-compliance score for this inspection is 31. This puts you in compliance band D and will impact your subsistence. We are now considering our enforcement response in line with our Enforcement and Sanctions Policy.

Section 3- Enforcement Response	Only one of the boxes below should be ticked
<p>You must take immediate action to rectify any non-compliance and prevent repetition. Non-compliance with your permit conditions constitutes an offence* and can result in criminal prosecutions and/or suspension or revocation of a permit. Please read the detailed assessment in Section 2 and the steps you need to take in Section 4 below.</p> <p><i>*Non-compliance with MSA, MSB & TCM do not constitute an offence but can result in the service of a compliance, suspension and/or revocation notice.</i></p>	
Other than the provision of advice and guidance, at present we do not intend to take further enforcement action in respect of the non-compliance identified above. This does not preclude us from taking enforcement action if further relevant information comes to light or advice isn't followed.	<input type="checkbox"/>
In respect of the above non-compliance you have been issued with a warning. At present we do not intend to take further enforcement action. This does not preclude us from taking additional enforcement action if further relevant information comes to light or offences continue.	<input type="checkbox"/>
We will now consider what enforcement action is appropriate and notify you, referencing this form.	<input checked="" type="checkbox"/>

Section 4- Action(s)			
Where non-compliance has been detected and an enforcement response has been selected above, this section summarises the steps you need to take to return to compliance and also provides timescales for this to be done.			
Criteria Ref.	CCS Category	Action Required / Advised	Due Date
See Section 1 above			
C2	C2	Submit requirements for IC9 and IC13	N/A

Section 5 - Compliance notes for the Operator

To ensure you correct actual or potential non-compliance we may

- advise on corrective actions verbally or in writing
- require you to take specific actions in writing
- issue a notice
- require you to review your procedures or management system
- change some of the conditions of your permit
- decide to undertake a full review of your permit

Any breach of a permit condition is an offence* and we may take legal action against you.

- We will normally provide advice and guidance to assist you to come back into compliance either after an offence is committed or where we consider that an offence is likely to be committed. This is without prejudice to any other enforcement response that we consider may be required.
- Enforcement action can include the issue of a formal caution, prosecution, the service of a notice and or suspension or revocation of the permit.
- A civil sanction Enforcement Undertaking (EU) offer may also be available to you as an alternative enforcement response for this/these offence(s).

See our Enforcement and Civil Sanctions guidance for further information

**A breach of permit condition MSA, MSB & TCM is not an offence but may result in the service of a notice requiring compliance and/or suspension or revocation of the permit.*

This report does not relieve the site operator of the responsibility to

- ensure you comply with the conditions of the permit at all times and prevent pollution of the environment
- ensure you comply with other legislative provisions which may apply.

Non-compliance scores and categories

CCS category	Description	Score
C1	A non-compliance which could have a major environmental effect	60
C2	A non-compliance which could have a significant environmental effect	31
C3	A non-compliance which could have a minor environmental effect	4
C4	A non-compliance which has no potential environmental effect	0.1

Operational Risk Appraisal (Opra) - Compliance assessment findings may affect your Opra score and/or your charges. This score influences the resource we use to assess permit compliance.

MSA, MSB & TCM are conditions inserted into certain permits by Schedule 9 Part 3 EPR

MSA requires operators to manage and operate in accordance with a written management system that identifies and minimises risks of pollution.

MSB requires that the management system must be reviewed, kept up-to-date and a written record kept of this.

TCM requires the submission of technical competence information.

Section 6 – General Information

Data protection notice

The information on this form will be processed by the Environment Agency to fulfill its regulatory and monitoring functions and to maintain the relevant public register(s). The Environment Agency may also use and/or disclose it in connection with:

- offering/providing you with its literature/services relating to environmental matters
- consulting with the public, public bodies and other organisations (e.g. Health and Safety Executive, local authorities) on environmental issues
- carrying out statistical analysis, research and development on environmental issues
- providing public register information to enquirers
- investigating possible breaches of environmental law and taking any resulting action
- preventing breaches of environmental law
- assessing customer service satisfaction and improving its service
- Freedom of Information Act/Environmental Information Regulations request.

The Environment Agency may pass it on to its agents/representatives to do these things on its behalf. You should ensure that any persons named on this form are informed of the contents of this data protection notice.

Disclosure of information

The Environment Agency will provide a copy of this report to the public register(s). However, if you consider that any information contained in this report should not be released to the public register(s) on the grounds of commercial confidentiality, you must write to your local area office within 28 days of receipt of this form indicating which information it concerns and why it should not be released, giving your reasons in full.

Customer charter

What can I do if I disagree with this compliance assessment report?

A permit holder can challenge any part of the CAR form by writing to the Environment Agency office local to the site within 28 days of receipt. If the issue cannot be resolved by the local office, a permit holder may request an appeal of the regulatory decision by emailing enquiries@environment-agency.gov.uk within 14 days of receipt of the outcome.

If you are still dissatisfied, you can make a complaint to the Ombudsman. For advice on how to complain to the Parliamentary and Health Service Ombudsman phone their helpline on 0345 015 4033.



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6th March 2024

Dear Holly,

RE: CAR received 07/02/24 - Reading IED Permit – Report ID (MP3338LU/0492048)

Thank you for your EPR Compliance Assessment Report (CAR) for Reading Sludge Treatment Centre (STC) dated 7th February (sent by email on 8th February 2024). This was the formal response to our request of 17th January 2024 to extend the Improvement Condition (IC) deadline for IC 9, 11, 13 and 14.

After our productive meeting with the Environment Agency on the 3rd January 2024, we were disappointed, that although an extension was granted for IC11a and IC14a, that no extension was given for IC9 or IC13. As such, we have been scored a Compliance Classification Scheme (CCS) C2 breach category (31 points) for non-compliance with permit condition 2.4.1 which states "*The operator shall complete improvements specified in schedule 1 table S3.1 by the date specified in that table unless otherwise agreed in writing by the Environment Agency*".

While we understand the need to issue a CAR form, we would like the EA to reconsider the scoring applied on this occasion. In addition, we would also like the EA to consider suspension of the scoring until the matters of issue within the CAR form are resolved. As you are aware, the issues raised are of a complex nature and until a decision is made on the appeal of the Permit itself (from which these alleged compliances stem), we ask that the scoring is temporarily suspended. This matter is unlikely to be fully resolved quickly and, as you are aware, we are very much taking steps to comply. We have had open and ongoing engagement in relation to these issues for some time now and we would therefore hope that all scores can be suspended pending the permit appeal and reviewed by the EA in due course. In relation to the level of scoring, we challenge the following points in the CAR:

1. IC9 – Improvement condition for secondary containment design

IC9 requires a written “secondary containment implementation plan’ which consists of six listed components. The first component is an updated Best Available Technique (BAT) assessment with specific regard to BAT 19 of the Waste Treatment BREF.

We requested an extension to IC9 because we revised our BAT 19 assessment to follow the site-specific risk-based approach as recommended in CIRIA C736 and we need for it to be accepted by the Environment Agency (EA) before we can satisfy the subsequent components of IC9, which includes the finalised designs and specifications.

Our updated BAT 19 assessment was presented to the EA at the meeting on the 3rd January 2024. We subsequently submitted this formally with our IC extension request letter on the 17th January 2024 and identified a credible failure scenario approach and why this is in accordance with the CIRIA C736 guidance.

The following reasons are cited by the EA, in the CAR issued to us on the 8th February, for not accepting our updated BAT 19 assessment for containment:

- a. *Spill modelling in the “Reading STC – Containment Options Report”, dated May 2023 shows that the potential sludge spill from one of the digestors would not be contained on site, **highlighting the need for additional containment**.With regards to **temporary bunding, we do not accept this as a suitable method for containment**. It relies on TWUL staff to correctly erect the barriers in time to prevent escape of liquids. We do not consider this an appropriate alternative.*
- b. *The updated “credible scenario” approach and not the previously submitted 25% secondary containment ...is a **significant change and not what was submitted at the time of permit application**....TWUL has had years to plan and prepare for the requirements of this improvement condition. As such an extension is not agreed.*

In addition, there is reference to the email from Clive Humphreys on the 17th January. This communication includes a statement that *the requirement for secondary containment is not dependent on a risk assessment*.

- c. *As set out in the information supplied to TWUL by Clive Humphreys on the 17 January 2024, **we do not accept that the concept of credible scenarios offers an opportunity to reduce secondary containment capacity**. However, we are open to proposals that may deviate **without compromising the level of environmental protection**.*

Further – in the communication from Clive Humphreys on the 17th January, he states: *For the 25% rule the assumption is that not all the tanks within the secondary containment are expected to fail at the same time. However, **there could be credible scenarios where this assumption might not hold, such as an explosion damaging multiple tanks, implying that for some***

credible scenarios you may conclude that containment needs to be increased above the standard 25% of total tank volume.

- d. *A spill of digestate from one of the digesters is likely to have a significant impact on the local land, water course and businesses. It could also impact the sewage works itself resulting in the potential for further pollution from the sewage discharge.*

We will address each point in turn and respectfully request the updated BAT 19 assessment for Reading is reviewed for acceptance.

- a. **Addressing the need for additional containment and not accepting temporary bunding:**

Our updated BAT 19 assessment concludes:

The review demonstrates that a risk-based approach at Reading would still need secondary containment but smaller than the current permit requirements and further consideration of local containment and/or with operational intervention.

We understand that the EA will not accept 'operational intervention' and since the submission of our updated BAT 19 site-specific risk assessment, we have a revised concept for Reading's secondary containment – please refer to Appendix A.

Our revised concept is in accordance with CIRIA C736 and consists of built containment. It includes installing of High Gain Vehicle (HGV) kerbs, Legarto Precast Concrete Blocks (PCB) and impermeable surfaces to contain any possible spill from leaving the site and therefore **does not compromise the level of environmental protection** offered in the option provided in May 2023 but at a lower cost and risk to the operational wastewater facility, which balances the potential harm against the resources required i.e. measures that are proportionate to the risk. The C736 guidance notes in Section 1.1.3 that the “costs of upgrading existing facilities might outweigh the environmental benefits, and therefore not be viable, or that other equally effective risk reduction measures to those suggested in this guidance may be implemented”.

- b. **Addressing significant change / not what was submitted at the time of permit application....TWUL has had years to plan:**

We have been submitting containment risk assessments to the EA since December 2021 – please refer to Appendix B. In 2021 and 2022, only the Camberley and Slough IED permit applications were reviewed and commented on by the EA National Permitting Officers. Through responses from the EA to multiple iterations of the Camberley containment risk assessment, we were guided by the EA to move away from the recommended CIRIA C736 site-specific risk assessment towards the EA's interpretation of the CIRIA C736 guidance of the 110% and 25% rule. All subsequent IED permit applications, including Reading, have been driven by the EA to follow this approach if the permit applications were to achieve duly made status.

However, we do not believe the approach we have been guided towards by the EA follows the recommend CIRIA C736 guidance and believe that subsequent containment will be **oversized without offering any more environmental protection**.

Our updated BAT 19 assessment for Reading **has returned** to following the recommended CIRIA C736 site-specific risk approach. This was our original approach since December 2021 - albeit it was missing the 10% rainfall contribution, which is now included in our updated BAT 19 assessment.

Whilst undertaking further assessment of the design submitted in May 2023, we undertook a wider operational assessment for the whole of Reading STW. This identified that should the bunded area around the digesters fill, it would inhibit access to the rest of the site and would potentially lead to issues with the activated sludge process that could impact on final effluent compliance. We assessed that this was not an acceptable situation which gave further reasoning behind looking at an alternative containment solution.

c. Addressing we do not accept that the concept of credible scenarios offers an opportunity to reduce secondary containment capacity:

We would like to reiterate the sections 3.3.1 and 3.3.2 from our updated BAT 19 assessment for Reading:

3.3.1 The '110%' and '25%' rules

*Within CIRIA there is reference to a simplified sizing method has been used as an industry 'rule of thumb' historically, however this **does not follow the CIRIA recommended risk-based approach** (see CIRIA C736 section 4.2.1 paragraph 1).*

This method employs:

- *Where a single bulk liquid tank is bunded, the recommended minimum bund capacity is 110% of the capacity of the tank.*
- *Where two or more tanks are installed within the same bund, the recommended capacity of the bund is the greater of:*
 - *110% of the capacity of the largest tank within the bund.*
 - *25% of the total capacity of all of the tanks within the bund, except where tanks are hydraulically linked in which case they should be treated as if they were a single tank.*

3.3.2 CIRIA C736 Recommended Approach

The CIRIA C736 recommendations on estimating capacity for local systems (designated areas surrounding primary storage vessel to contain spills) can be summarised as follows:

- Allowance based on risk assessment of a credible spill scenario while accounting for tertiary containment (measures for additional level of spill protection such as diversion tanks and lagoons) and where applicable fire-fighting waters.
 - For single-tank installations minimum capacity of 100% of the primary containment volume.
 - For multi-tank installation capacity **based on risk assessment around credible scenario**
- Allowance for total volume of accumulated rainfall with annual exceedance probability (AEP) of 10% (if uncovered) with a minimum retention period of eight days.
- Minimum freeboard (increased height to account for uncertainty factors) of 100 mm for firefighting agents (e.g., foams).
- Freeboard allowance for dynamic effects which varies depending on the type of containment structure e.g., 250 mm for secondary containment tanks.

Additional allowances, such as the provision of sufficient capacity to manage firefighting and cooling water, are also included in containment capacity estimates for remote systems (designated areas located away from spilling or leaking equipment) and combined systems, which contain elements of both local and remote systems along with the means of collecting and transferring spills.

The CIRIA C736 further states:

“The designer of the containment system should take into account the probability of a number of events occurring simultaneously. The worst-case scenario for containment is represented by the design return period rainfall (e.g., the rainfall that is likely to occur, e.g., once in 10 years) coinciding with the sudden and total loss of primary containment and a fire involving applied firefighting water. At low-risk sites or sites where it can be demonstrated that the probability of a simultaneous occurrence of events is sufficiently low, it may be possible to apply less stringent capacity requirements. Such relaxations should be subject to the designer’s and site operator’s discretion and the agreement of the various regulatory bodies in the light of the particular circumstances.”

Which implies that if the designer can demonstrate that the risk of worse-case scenario is low then a lower level of containment could be proposed.

Site-specific containment failure risk at Reading

As presented in the updated BAT 19 assessment, the **most credible failure mode is not a catastrophic tank failure**, but rather a slower escape of material over time, due to leakage or a failure of pipe penetration **on only one tank**. The only scenario

identified that could lead to a catastrophic failure of multiple tanks would be due to explosion in one tank leading to damage to other tanks.

In addressing the statement from Clive Humphreys that “..credible scenarios where this assumption might not hold, such as an explosion damaging multiple tanks”:

CIRIA C736 was written following the Buncefield incident and was written for tanks storing flammable materials. **Tank contents at sludge treatment works are not flammable** - risk of gas gives explosion, but materials do not burn.

An analysis of the risk of explosion leading to a catastrophic failure of a concrete tank **was assessed as negligible**. Whilst there have been instances of chemical tanks exploding (Buncefield and Avonmouth as examples) **there is no evidence that a concrete digester containing biogas and sewage sludge have ever failed in this manner**.

The only ‘medium likelihood’ risks for spills at Reading and the subsequent spill volume to be contained are provided on the next page.

Provision of capacity for firefighting water is not required in our secondary containment volumes as the **contained material is not flammable** and therefore only **consideration** of the **stored capacity and management of rainwater needs to be considered**.

In addition - CIRIA specifically states that “**sewage and sewage effluents**, farm waste and related materials” are **excluded** as “**Stored inventory**” in section 1.2.

Credible Failure Modes with a Medium Likelihood:

Failure at a penetration (pipe or mixer)	Reading site specific impact	There are low level penetrations into the tanks for the feed pipe and the mixing system. These were cast during the construction of the insitu reinforced concrete tank with correctly designed thrust and water stops. On the glass fused to steel tanks, these were all installed during manufacture/construction and have the correct level of strengthening around the opening. The stub pipes have bolted flanges attached to isolation valves. The orientation of the pipes is away from the bank of tanks, thus reducing risk of jetting adversely impacting/damaging other tanks. The tanks have been in service for 20-years and have not shown any sign of failure of these penetrations. Visual inspection is carried out during site walk arounds to look for sign of damage, missing bolts, leakage and none have been identified.
	Loss of liquid	Potential for release of 90%+ of tank contents is real from lower penetrations. - Rate of discharge depends upon depth of liquid in the tank. Rate could be in range 500-700 l/s for the likely orifice size. - Risk is low due to rate of flow, time for tank to empty and directional nature of flow. - Risk to adjacent structures depend on pressure behind the flow and the direction of impact on adjacent structures - unlikely to have any impact on concrete structures only glass coated tanks
	Failure to more than one tank	Tanks are not hydraulically linked so very unlikely, so largest loss would be 1 tank volume. The orientation of the pipes is away from the bank of tanks, thus reducing risk of jetting adversely impacting/damaging other tanks.
Leaks	Reading site specific impact	Potential risk around joint failures, especially of construction mastic. Periodic replacement and resealing and monitoring for visual indication
	Loss of liquid	Low rates of escape flow and low volumes escaping
	Failure to more than one tank	Tanks are not hydraulically linked, so largest loss would be 1 tank volume.
Operator / human error	Reading site specific impact	Potential for operator error, but online instrument and monitoring should identify process parameters before failure occurs.
	Loss of liquid	Low rates of escape flow and low volumes escaping
	Failure to more than one tank	Tanks are not hydraulically linked, so largest loss would be 1 tank volume.

d. Addressing “A spill of digestate from one of the digestors is likely to have a significant impact on the local land, water course and businesses”:

We presented the Reading spill modelling at the meeting on the 3rd January and it is also provided in Appendix A.

We note that the EA acknowledges potential failure of **only one digester**. The key point being that it is **very unlikely** that we will get failure from more than one tank from any of the failure modes (listed above and in our updated BAT 19 assessment). Which is why the secondary containment volume we are addressing is 110% (following the recommended CIRIA C736 site-related risk approach) and not the greater of the 110% of largest tank or 25% of total tank volume.

2. [IC13 – Improvement Condition for review of effectiveness of abatement plan](#)

Our request for the IC13 extension to 30th April 2024 (i.e., only a 3-month extension) on the grounds of outstanding queries on process monitoring requirements and the associated lead-in times for the parts required for the rehabilitation works to fix the Odour Control Unit (OCU) and associated lead-in times was rejected.

We would like to highlight the following in relation to this IC:

- The CAR form states that the OCU should have critical spares on site to account for delays - this is specialist equipment that would not ordinarily be held on site, in particular, some parts needed to be manufactured specifically (e.g. gas inlet isolation dampers). In addition, the issues with the OCU were not simple (e.g., fan replacements) and there were issues with the Programmable Logic Controller (PLC) where the Information, Controls and Automation (ICA) team were needed to attend and fix – this has since been completed.
- In addition to this, two teams are required for the rehabilitation works: 1 x team for the installation and 1 x team for the commissioning (both works underway w/c 12th February), therefore inclusive of lead times for getting contractors out to site. Once commissioned the OCU needs to then run for about 2 weeks before samples can be taken, which then have a 20-day turn around for results, before subsequent modelling and interpretation of results and generation of the response to EA.

In a subsequent CAR received from yourself on 29/02/2024 for Reading following submission of our emissions monitoring and annual report for 2023, **we note the following:**

“The odour control unit has not yet been monitored. The permit requires 6 monthly monitoring of hydrogen sulphide, ammonia, odour concentration and TVOC (NH3 and H2S can be an alternative to odour concentration). TWUL provide an update on the 16 January 2024 explaining that there was a delay in sampling the OCU due to shortages in MCerts qualified personnel and ongoing remedial works. OCU sampling was due on the 18 January and the report should be submitted by the end of February.

ACTION – No CCS score will be given for this delay. Once we have received the OCU emission monitoring a separate CAR form will be generated and a breach given if the results are above the permitted limits. Please ensure that in future this work is scheduled in and completed as per permit requirements.”

We responded to you on the 29th February 2024 again committing to provide a response on the abatement plant for IC13 as per our original timetable.

As such we still require this extension to IC13 until the 30th April 2024 to redo the odour monitoring of the OCU which will delay the impact assessment and finalising full report against IC13.

3. Agreement to extend deadline for IC11a and 14a

Whilst we welcome agreement to extend the deadlines for IC11a and 14a, we would query the delivery date of the following:

- **IC11 - Improvement conditions for establishing an inventory of liquid waste water discharged from anaerobic digestion and associated activities (AR1 – AR10) – (a) Sampling programme**
- **IC14 - Improvement condition for establishing an inventory of liquid waste water discharged from the Head of works waste operation/installation activity - (AR11) – (a) Sampling programme**

We requested that these two ICs were put ‘on hold’ pending the outcome of industry discussions or that the delivery date was extended by a period of time of e.g. 4 months. However, the CAR form only agrees to extend this deadline to 31st March 2024 to submit the sampling programme and then allow the required minimum of 12 months sampling to be completed by the 31 March 2025.

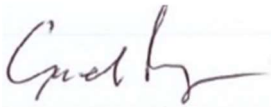
Given that industry discussions are still pending this seems short-sighted. We refer to the email dated 16th February 2024 from Clive Humphreys to Lucinda Gilfoyle (Anglian Water) in response to the Water UK IED Task & Finish Group queries whereby it is noted that *“the return liquors which will take a little longer to resolve”* and *“We are arranging a second visit to discuss technical limitations with ALS and will feed back as soon as we have clarity and can issue advice. I can’t say exactly when this will be.”*. We further reference the WaSC Task & Finish Group on the 21st February 2024 attended by Clive Humphreys. The follow-up ALS meeting will be towards the end of March 2024 and we note that Clive Humphreys is yet to comment

on the draft 'Analysis of Liquors' paper submitted by Rebecca Lamb from Wessex Water on behalf of the WaSCs on the 17th January 2024.

This is applicable to both return liquors and, the analysis of incoming tankered wastes. Thames Water and other WaSCs cannot allocate correct budgets for monthly sampling until we know what we are sampling and analysing for. We therefore kindly request that the EA re-consider the IC extension deadline accordingly.

Finally, we would still like to agree with you our updated BAT 19 risk assessment, the approval to extend IC 9 and 13 (which are the subject of our appeal submission dated 30th January 2024) and an extension to the IC 11a and IC14a deadline as per our original 17th January letter. In light of the above, we would again like you to reconsider your current non-compliance score. To reiterate, we are committed to working with the EA to achieve BAT for waste treatment at Reading STC and we welcome the opportunity to meet with you to discuss further.

Yours sincerely,



Gareth Parry

Director of Scientific and Environmental Assurance

4. Appendices

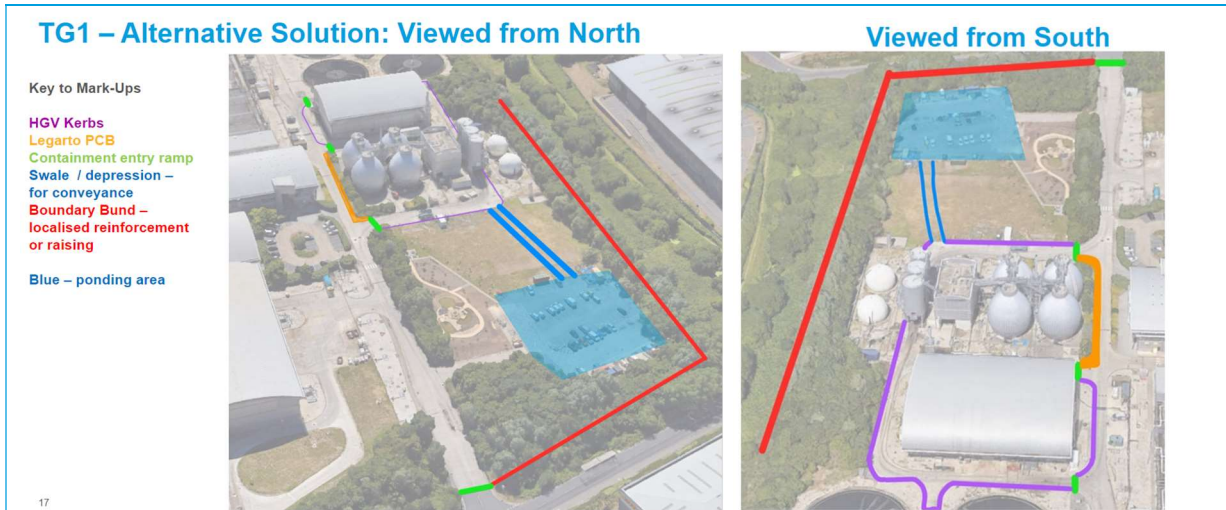
Appendix A – Reading spill modelling and revised containment concept design in accordance with recommended CIRIA C736

The following spill modelling was presented to the EA on the 3rd January and has been accepted at TWUL Technical Governance Board (TG1). It shows spill modelling over a 4 hour period.



13

The following is the concept design proposal for Reading, which will contain any possible spills within the site compound using a number of measures all in accordance with CIRIA C736.



Solution components:

TG1 – Solution Components

TRIEF Kerb/Road Ramp-Containment Entry/Legarto Blocks

MAIN UNIT

EXTERNAL RADIUS UNITS

Profile	Height	Depth
HE2	1000	1000
HE3	1000	1000
HE4	1000	1000
HE5	1000	1000
HE6	1000	1000
HE7	1000	1000
HE8	1000	1000
HE9	1000	1000
HE10	1000	1000

HGV kerbs external radius plan view

INTERNAL RADIUS UNITS

Profile	Height	Depth
HE11	1000	1000
HE12	1000	1000
HE13	1000	1000
HE14	1000	1000
HE15	1000	1000
HE16	1000	1000
HE17	1000	1000
HE18	1000	1000
HE19	1000	1000
HE20	1000	1000

HGV kerbs internal radius plan view

Transition units to HE2 kerbs (left hand version shown)

Ramp

CONCRETE CONSTRUCTION - SUB-BASE ONLY						
C.B.R. & FORMATION	250	300	400	500	600	700
SUB-BASE THICKNESS (D) (mm)	250	300	250	250	250	250
15.00	175	175	175	175	175	175
10.00	150	150	150	150	150	150
5.00	125	125	125	125	125	125

SECTION A-A
SCALE 1:20

To provide access for vehicles, 2 ramps of 0.3m are required on either side of the East to West road.

LG9

LG10

LG Spreader

LG Bendi

Appendix B – History of EA guidance on CIRIA C736 and TWUL Spill modelling and containment risk assessments for Camberley IED permit application

February 2020

EA presented slides to the Water Industry in February 2020, which stated: “above ground structures” “that have a capacity greater than 110 percent of the largest tank or 25 percent of the total tankage, whichever is the larger” but also stated that **containment “Requires a risk assessment approach”....and to “Calculate the realistic likelihood of loss of containment occurring – CIRIA Paragraph 2.5”**

July 2021

In the EA’s Appropriate Measures consultation response document, the EA stated:

“...the requirement to ensure secondary containment to CIRIA 736 standards applies to new sites. Existing facilities... are unlikely to be designed and built to a CIRIA 736 specification. In such cases we expect operators to evaluate primary and secondary containment to ensure it is fit for purpose and use alternative means to achieve an equivalent standard. All sites must be assessed by a chartered engineer.”

1st Dec 2021

Camberley IED Permit application (EPR/MP3903MU/A001) submitted to EA – included Camberley STE IED Containment Assessment Report (dated 27/09/21) submitted to EA:

*The objectives of the containment measures proposed in this report are to safely contain spillages **from credible failure scenarios...***

3.0 Design Containment Volume / 3.1 Loss of stock from most credible failure scenario

*CIRIA C736 states that in determining containment requirements, **the volume of substance should be based on the loss from Credible Failure Scenario, and this need not necessarily involve the entire site inventory. As the sludge holding tanks and the digesters are not hydraulically connected, the Credible Failure Scenario of this site would be failure of the largest tank.***

This conclusion did not include for rainfall contribution in spill modelling, which should be added to the containment volume -i.e. 110% of the largest tank.

15th March 2022

We resent our Camberley STE IED Containment Assessment Report (following meetings between Tommy Wager (EA) and Charlotte Morris (TW). This was still following the recommended CIRIA C736 site-specific risk approach. This document stated:

*Chapter 2 determines the **design containment volume based on a credible failure scenario** and describes the uncontained spill map and flow paths.*

2.2 Loss of stock from most credible failure scenario

CIRIA C736 states that when considering a loss of containment of sludge, the volume of substance should be based on the loss from a credible scenario, this need not necessarily involve the entire site inventory.

*None of the tanks are hydraulically linked, so rupture would affect only one digester or tank. **Therefore, the volume from a credible failure scenario is the maximum capacity of the largest tank, which at Camberley is the largest secondary digester...***

This conclusion did not include for rainfall contribution in spill modelling, which should be added to the containment volume -i.e. 110% of the largest tank.

19th May 2022

A Reading STW Risk Identification and Containment Assessment Report was prepared but was not issued to the EA. In that report, following the recommended CIRIA C736 site-specific risk approach. This document stated:

*Chapter 2 determines the **design containment volume based on a credible failure scenario** and describes the uncontained spill map and flow paths.*

2.2 Loss of stock from most credible failure scenario

CIRIA C736 states that when considering a loss of containment of sludge, the volume of substance should be based on the loss from a credible scenario, this need not necessarily involve the entire site inventory.

*None of the tanks are hydraulically linked, so rupture would affect only one digester or tank. **Therefore, the volume from a credible failure scenario is the maximum capacity of the largest tank, which at Reading is the largest Primary Digester...***

This conclusion did not include for rainfall contribution in spill modelling, which should be added to the containment volume -i.e. 110% of the largest tank.

24th June 2022

We received a Schedule 5 from Tommy Wager on Camberley IED Permit application – In Section 13/question 17:

Secondary Containment Assessment Reports should be completed in line with CIRIA 736 guidance: Containment Systems for the Prevention of Pollution, ADBA Secondary Containment at AD Plants: An Industry Guide and Best Available Techniques (BAT) Reference Document for Waste Treatment. Revise the secondary containment report and any relevant supporting documents addressing the questions below:

*17. Submit a revised spill model in the Camberley IED assessment report to assess the impact from a catastrophic tank failure. Your revised model **must assess the impact of spill volumes using 110% of the largest tank or 25% of all tanks** within a bunded area (whichever is greater) **as opposed to a ‘credible’ spill volume.***

Reason for Question

***BAT conclusion 19d** states “tanks for liquids that are located in a suitable secondary containment; the **volume is normally sized to accommodate the loss of containment of the largest tank within the secondary containment**”. Upon assessment of your application, we can see you have detailed in the report ‘credible spill volume’ of the largest secondary digester 2000m³ that falls short of the 110% and 25% rule outlined in the CIRIA 736 guidance, section 4.2.1. The additional 10% spill is considered to account for potential rainfall during a catastrophic tank failure incident and should be included in a revised spill model.*

The subsequent secondary containment assessments were guided by the EA to move to a “worst case scenario” and away from the recommended CIRIA C736 guidance to be able to achieve duly making on our permit applications. However, we do not agree with this non-site-specific approach or the subsequent oversized containment volume which arises. Hence our questioning of this interpretation and application of the CIRIA C736 guidance.

July 2022

Our initial Reading IED Permit application was submitted to the EA. It did have a containment assessment at that time.

The July 2022 Reading containment report altered the conclusion from the May 2022 Reading STW Risk Identification and Containment Assessment Report as directed by the EA following discussions on Camberley. In the executive summary “The containment volume of 2883m³ is driven by the 25% rule (25% of total tank volumes which includes allowance for rainfall) rather than 110% (of the largest single tank) of the total tanks volume.”

The second containment assessment for Reading was issued to the EA in December 2023. This also followed the worst-case scenario of a containment volume based on the greater of the 25% of all tanks or 110% of the largest tank.

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

► **B** **DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**
of 24 November 2010
on industrial emissions (integrated pollution prevention and control)
(Recast)
(Text with EEA relevance)
(OJ L 334, 17.12.2010, p. 17)

Corrected by:

► **C1** Corrigendum, OJ L 158, 19.6.2012, p. 25 (2010/75/EU)



**DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

of 24 November 2010

on industrial emissions (integrated pollution prevention and control)

(Recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) A number of substantial changes are to be made to Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry ⁽⁴⁾, Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry ⁽⁵⁾, Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry ⁽⁶⁾, Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations ⁽⁷⁾, Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste ⁽⁸⁾, Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants ⁽⁹⁾ and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control ⁽¹⁰⁾. In the interests of clarity, those Directives should be recast.
- (2) In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with

⁽¹⁾ OJ C 182, 4.8.2009, p. 46.

⁽²⁾ OJ C 325, 19.12.2008, p. 60.

⁽³⁾ Position of the European Parliament of 10 March 2009 (OJ C 87 E, 1.4.2010, p. 191) and position of the Council at first reading of 15 February 2010 (OJ C 107 E, 27.4.2010, p. 1). Position of the European Parliament of 7 July 2010 (not yet published in the Official Journal) and decision of the Council of 8 November 2010.

⁽⁴⁾ OJ L 54, 25.2.1978, p. 19.

⁽⁵⁾ OJ L 378, 31.12.1982, p. 1.

⁽⁶⁾ OJ L 409, 31.12.1992, p. 11.

⁽⁷⁾ OJ L 85, 29.3.1999, p. 1.

⁽⁸⁾ OJ L 332, 28.12.2000, p. 91.

⁽⁹⁾ OJ L 309, 27.11.2001, p. 1.

⁽¹⁰⁾ OJ L 24, 29.1.2008, p. 8.

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the 'polluter pays' principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source, ensuring prudent management of natural resources and taking into account, when necessary, the economic situation and specific local characteristics of the place in which the industrial activity is taking place.

- (3) Different approaches to controlling emissions into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. It is, therefore, appropriate to provide for an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention. Such an approach will also contribute to the achievement of a level playing field in the Union by aligning environmental performance requirements for industrial installations.
- (4) It is appropriate to revise the legislation relating to industrial installations in order to simplify and clarify the existing provisions, reduce unnecessary administrative burden and implement the conclusions of the Commission Communications of 21 September 2005 on the Thematic Strategy on Air Pollution (hereinafter the Thematic Strategy on Air Pollution), of 22 September 2006 on the Thematic Strategy for Soil Protection and of 21 December 2005 on the Thematic Strategy on the Prevention and Recycling of Waste adopted as a follow-up to Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme⁽¹⁾. Those Communications set objectives to protect human health and the environment which cannot be met without further reductions in emissions arising from industrial activities.
- (5) In order to ensure the prevention and control of pollution, each installation should operate only if it holds a permit or, in the case of certain installations and activities using organic solvents, only if it holds a permit or is registered.
- (6) It is for Member States to determine the approach for assigning responsibilities to operators of installations provided that compliance with this Directive is ensured. Member States may choose to grant a permit to one responsible operator for each installation or to specify the responsibility amongst several operators of different parts of an installation. Where its current legal system provides for only one responsible operator for each installation, a Member State may decide to retain this system.
- (7) In order to facilitate the granting of permits, Member States should be able to set requirements for certain categories of installations in general binding rules.
- (8) It is important to prevent accidents and incidents and limit their consequences. Liability regarding the environmental consequences of accidents and incidents is a matter for relevant national law and, where applicable, other relevant Union law.

⁽¹⁾ OJ L 242, 10.9.2002, p. 1.

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- (9) In order to avoid duplication of regulation, the permit for an installation covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community ⁽¹⁾ should not include an emission limit value for direct emissions of the greenhouse gases specified in Annex I to that Directive except where it is necessary to ensure that no significant local pollution is caused or where an installation is excluded from that scheme.
- (10) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, for example greenhouse gas emission requirements, provided that such measures are compatible with the Treaties and the Commission has been notified.
- (11) Operators should submit permit applications containing the information necessary for the competent authority to set permit conditions. Operators should be able to use information resulting from the application of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ⁽²⁾ and of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ⁽³⁾ when submitting permit applications.
- (12) The permit should include all the measures necessary to achieve a high level of protection of the environment as a whole and to ensure that the installation is operated in accordance with the general principles governing the basic obligations of the operator. The permit should also include emission limit values for polluting substances, or equivalent parameters or technical measures, appropriate requirements to protect the soil and groundwater and monitoring requirements. Permit conditions should be set on the basis of best available techniques.
- (13) In order to determine best available techniques and to limit imbalances in the Union as regards the level of emissions from industrial activities, reference documents for best available techniques (hereinafter BAT reference documents³) should be drawn up, reviewed and, where necessary, updated through an exchange of information with stakeholders and the key elements of BAT reference documents (hereinafter BAT conclusions³) adopted through committee procedure. In this respect, the Commission should, through committee procedure, establish guidance on the collection of data, on the elaboration of BAT reference documents and on their quality assurance. BAT conclusions should be the reference for setting permit conditions. They can be supplemented by other sources. The Commission should aim to update BAT reference documents not later than 8 years after the publication of the previous version.

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ OJ L 175, 5.7.1985, p. 40.

⁽³⁾ OJ L 10, 14.1.1997, p. 13.

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- (14) In order to ensure an effective and active exchange of information resulting in high-quality BAT reference documents, the Commission should establish a forum that functions in a transparent manner. Practical arrangements for the exchange of information and the accessibility of BAT reference documents should be laid down, in particular to ensure that Member States and stakeholders provide data of sufficient quality and quantity based on established guidance to enable the determination of best available techniques and emerging techniques.
- (15) It is important to provide sufficient flexibility to competent authorities to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques. To this end, the competent authority may set emission limits that differ from the emission levels associated with the best available techniques in terms of the values, periods of time and reference conditions applied, so long as it can be demonstrated, through the results of emission monitoring, that emissions have not exceeded the emission levels associated with the best available techniques. Compliance with the emission limit values that are set in permits results in emissions below those emission limit values.
- (16) In order to take into account certain specific circumstances where the application of emission levels associated with the best available techniques would lead to disproportionately high costs compared to the environmental benefits, competent authorities should be able to set emission limit values deviating from those levels. Such deviations should be based on an assessment taking into account well-defined criteria. The emission limit values set out in this Directive should not be exceeded. In any event, no significant pollution should be caused and a high level of protection of the environment taken as a whole should be achieved.
- (17) In order to enable operators to test emerging techniques which could provide for a higher general level of environmental protection, or at least the same level of environmental protection and higher cost savings than existing best available techniques, the competent authority should be able to grant temporary derogations from emission levels associated with the best available techniques.
- (18) Changes to an installation may give rise to higher levels of pollution. Operators should notify the competent authority of any planned change which might affect the environment. Substantial changes to installations which may have significant negative effects on human health or the environment should not be made without a permit granted in accordance with this Directive.
- (19) The spreading of manure contributes significantly to emissions of pollutants into air and water. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and Union law on water protection, it is necessary for the Commission to review the need to establish the most suitable controls of these emissions through the application of best available techniques.

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- (20) The intensive rearing of poultry and cattle contributes significantly to emissions of pollutants into air and water. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and in Union law on water protection, it is necessary for the Commission to review the need to establish differentiated capacity thresholds for different poultry species in order to define the scope of this Directive and to review the need to establish the most suitable controls on emissions from cattle rearing installations.
- (21) In order to take account of developments in best available techniques or other changes to an installation, permit conditions should be reconsidered regularly and, where necessary, updated, in particular where new or updated BAT conclusions are adopted.
- (22) In specific cases where permit reconsideration and updating identifies that a longer period than 4 years after the publication of a decision on BAT conclusions might be needed to introduce new best available techniques, competent authorities may set a longer time period in permit conditions where this is justified on the basis of the criteria laid down in this Directive.
- (23) It is necessary to ensure that the operation of an installation does not lead to a deterioration of the quality of soil and groundwater. Permit conditions should, therefore, include appropriate measures to prevent emissions to soil and groundwater and regular surveillance of those measures to avoid leaks, spills, incidents or accidents occurring during the use of equipment and during storage. In order to detect possible soil and groundwater pollution at an early stage and, therefore, to take appropriate corrective measures before the pollution spreads, the monitoring of soil and groundwater for relevant hazardous substances is also necessary. When determining the frequency of monitoring, the type of prevention measures and the extent and occurrence of their surveillance may be considered.
- (24) In order to ensure that the operation of an installation does not deteriorate the quality of soil and groundwater, it is necessary to establish, through a baseline report, the state of soil and groundwater contamination. The baseline report should be a practical tool that permits, as far as possible, a quantified comparison between the state of the site described in that report and the state of the site upon definitive cessation of activities, in order to ascertain whether a significant increase in pollution of soil or groundwater has taken place. The baseline report should, therefore, contain information making use of existing data on soil and groundwater measurements and historical data related to past uses of the site.
- (25) In accordance with the polluter pays principle, when assessing the level of significance of the pollution of soil and groundwater caused by the operator which would trigger the obligation to return the site to the state described in the baseline report,

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Member States should take into account the permit conditions that have applied over the lifetime of the activity concerned, the pollution prevention measures adopted for the installation, and the relative increase in pollution compared to the contamination load identified in the baseline report. Liability regarding pollution not caused by the operator is a matter for relevant national law and, where applicable, other relevant Union law.

- (26) In order to ensure the effective implementation and enforcement of this Directive, operators should regularly report to the competent authority on compliance with permit conditions. Member States should ensure that the operator and the competent authority each take necessary measures in the event of non-compliance with this Directive and provide for a system of environmental inspections. Member States should ensure that sufficient staff are available with the skills and qualifications needed to carry out those inspections effectively.
- (27) In accordance with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters⁽¹⁾, effective public participation in decision-making is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.
- (28) The combustion of fuel in installations with a total rated thermal input below 50 MW contributes significantly to emissions of pollutants into the air. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution, it is necessary for the Commission to review the need to establish the most suitable controls on emissions from such installations. That review should take into account the specificities of combustion plants used in healthcare facilities, in particular with regard to their exceptional use in the case of emergencies.
- (29) Large combustion plants contribute greatly to emissions of polluting substances into the air resulting in a significant impact on human health and the environment. In order to reduce that impact and to work towards meeting the requirements of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants⁽²⁾ and the objectives set out in the Thematic Strategy on Air Pollution, it is necessary to set more stringent emission limit values at Union level for certain categories of combustion plants and pollutants.

⁽¹⁾ OJ L 124, 17.5.2005, p. 4.

⁽²⁾ OJ L 309, 27.11.2001, p. 22.

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- (30) The Commission should review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V for certain large combustion plants, taking into account the review and update of the relevant BAT reference documents. In this context, the Commission should consider the specificity of the energy systems of refineries.
- (31) Due to the characteristics of certain indigenous solid fuels, it is appropriate to apply minimum desulphurisation rates rather than emission limit values for sulphur dioxide for combustion plants firing such fuels. Moreover, as the specific characteristics of oil shale may not allow the application of the same sulphur abatement techniques or the achievement of the same desulphurisation efficiency as for other fuels, a slightly lower minimum desulphurisation rate for plants using this fuel is appropriate.
- (32) In the case of a sudden interruption in the supply of low-sulphur fuel or gas resulting from a serious shortage, the competent authority should be able to grant temporary derogations to allow emissions of the combustion plants concerned to exceed the emission limit values set out in this Directive.
- (33) The operator concerned should not operate a combustion plant for more than 24 hours after malfunctioning or breakdown of abatement equipment and unabated operation should not exceed 120 hours in a 12-month period in order to limit the negative effects of pollution on the environment. However, where there is an overriding need for energy supplies or it is necessary to avoid an overall increase of emissions resulting from the operation of another combustion plant, competent authorities should be able to grant a derogation from those time limits.
- (34) In order to ensure a high level of environmental and human health protection and to avoid transboundary movements of waste to plants operating at lower environmental standards, it is necessary to set and maintain stringent operating conditions, technical requirements and emission limit values for plants incinerating or co-incinerating waste within the Union.
- (35) The use of organic solvents in certain activities and installations gives rise to emissions of organic compounds into the air which contribute to the local and transboundary formation of photochemical oxidants which causes damage to natural resources and has harmful effects on human health. It is, therefore, necessary to take preventive action against the use of organic solvents and to establish a requirement to comply with emission limit values for organic compounds and appropriate operating conditions. Operators should be allowed to comply with the requirements of a reduction scheme instead of complying with the emission limit values set out in this Directive where other measures, such as the use of low-solvent or solvent-free products or techniques, provide alternative means of achieving equivalent emission reduction.

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- (36) Installations producing titanium dioxide can give rise to significant pollution into air and water. In order to reduce these impacts, it is necessary to set at Union level more stringent emission limit values for certain polluting substances.
- (37) With regard to the inclusion in the scope of national laws, regulations and administrative provisions brought into force in order to comply with this Directive of installations for the manufacturing of ceramic products by firings, on the basis of the characteristics of the national industrial sector, and in order to grant clear interpretation of the scope, Member States should decide whether to apply both the criteria, production capacity and kiln capacity, or just one of the two criteria.
- (38) In order to simplify reporting and reduce unnecessary administrative burden, the Commission should identify methods to streamline the way in which data are made available pursuant to this Directive with the other requirements of Union law, and in particular Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register ⁽¹⁾.
- (39) In order to ensure uniform conditions for implementation, implementing powers should be conferred on the Commission to adopt guidance on the collection of data, on the drawing up of BAT reference documents and on their quality assurance, including the suitability of their content and format, to adopt decisions on BAT conclusions, to establish detailed rules on the determination of start-up and shut-down periods and for transitional national plans for large combustion plants, and to establish the type, format and frequency of information that Member States are to make available to the Commission. In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾ continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.
- (40) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the setting of the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be carried out, and the adaptation of certain parts of Annexes V, VI and VII to scientific and technical progress. In the case of waste incineration plants and waste co-incineration plants, this may include, inter alia, the establishment of criteria to allow derogations from continuous monitoring of total dust emissions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

⁽¹⁾ OJ L 33, 4.2.2006, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

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- (41) In order to address significant environmental pollution, for example from heavy metals and dioxins and furans, the Commission should, based on an assessment of the implementation of the best available techniques by certain activities or of the impact of those activities on the environment as a whole, present proposals for Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance.
- (42) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (43) In order to provide existing installations with sufficient time to adapt technically to the new requirements of this Directive, some of the new requirements should apply to those installations after a fixed period from the date of application of this Directive. Combustion plants need sufficient time to install the necessary abatement measures to meet the emission limit values set out in Annex V.
- (44) Since the objectives of this Directive, namely to ensure a high level of environmental protection and the improvement of environmental quality, cannot be sufficiently achieved by Member States and can, therefore, by reason of the transboundary nature of pollution from industrial activities, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the application of Article 37 of that Charter.
- (46) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (47) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make those tables public.
- (48) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex IX, Part B,

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

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HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
COMMON PROVISIONS

Article 1

Subject matter

This Directive lays down rules on integrated prevention and control of pollution arising from industrial activities.

It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole.

Article 2

Scope

1. This Directive shall apply to the industrial activities giving rise to pollution referred to in Chapters II to VI.
2. This Directive shall not apply to research activities, development activities or the testing of new products and processes.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

- (1) ‘substance’ means any chemical element and its compounds, with the exception of the following substances:
 - (a) radioactive substances as defined in Article 1 of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation ⁽¹⁾;
 - (b) genetically modified micro-organisms as defined in Article 2(b) of Directive 2009/41/EC of the European Parliament and the Council of 6 May 2009 on the contained use of genetically modified micro-organisms ⁽²⁾;
 - (c) genetically modified organisms as defined in point 2 of Article 2 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms ⁽³⁾;

⁽¹⁾ OJ L 159, 29.6.1996, p. 1.

⁽²⁾ OJ L 125, 21.5.2009, p. 75.

⁽³⁾ OJ L 106, 17.4.2001, p. 1.

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- (2) ‘pollution’ means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment;
- (3) ‘installation’ means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution;
- (4) ‘emission’ means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into air, water or land;
- (5) ‘emission limit value’ means the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during one or more periods of time;
- (6) ‘environmental quality standard’ means the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in Union law;
- (7) ‘permit’ means a written authorisation to operate all or part of an installation or combustion plant, waste incineration plant or waste co-incineration plant;
- (8) ‘general binding rules’ means emission limit values or other conditions, at least at sector level, that are adopted with the intention of being used directly to set permit conditions;
- (9) ‘substantial change’ means a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant negative effects on human health or the environment;
- (10) ‘best available techniques’ means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:
 - (a) ‘techniques’ includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;
 - (b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator;

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- (c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;
- (11) ‘BAT reference document’ means a document, resulting from the exchange of information organised pursuant to Article 13, drawn up for defined activities and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques as well as BAT conclusions and any emerging techniques, giving special consideration to the criteria listed in Annex III;
- (12) ‘BAT conclusions’ means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures;
- (13) ‘emission levels associated with the best available techniques’ means the range of emission levels obtained under normal operating conditions using a best available technique or a combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions;
- (14) ‘emerging technique’ means a novel technique for an industrial activity that, if commercially developed, could provide either a higher general level of protection of the environment or at least the same level of protection of the environment and higher cost savings than existing best available techniques;
- (15) ‘operator’ means any natural or legal person who operates or controls in whole or in part the installation or combustion plant, waste incineration plant or waste co-incineration plant or, where this is provided for in national law, to whom decisive economic power over the technical functioning of the installation or plant has been delegated;
- (16) ‘the public’ means one or more natural or legal persons and, in accordance with national law or practice, their associations, organisations or groups;
- (17) ‘the public concerned’ means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;
- (18) ‘hazardous substances’ means substances or mixtures as defined in Article 3 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures ⁽¹⁾;

⁽¹⁾ OJ L 353, 31.12.2008, p. 1.

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- (19) ‘baseline report’ means information on the state of soil and groundwater contamination by relevant hazardous substances;
- (20) ‘groundwater’ means groundwater as defined in point 2 of Article 2 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽¹⁾;
- (21) ‘soil’ means the top layer of the Earth’s crust situated between the bedrock and the surface. The soil is composed of mineral particles, organic matter, water, air and living organisms;
- (22) ‘environmental inspection’ means all actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environment management of the installation, undertaken by or on behalf of the competent authority to check and promote compliance of installations with their permit conditions and, where necessary, to monitor their environmental impact;
- (23) ‘poultry’ means poultry as defined in point 1 of Article 2 of Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽²⁾;
- (24) ‘fuel’ means any solid, liquid or gaseous combustible material;
- (25) ‘combustion plant’ means any technical apparatus in which fuels are oxidised in order to use the heat thus generated;
- (26) ‘stack’ means a structure containing one or more flues providing a passage for waste gases in order to discharge them into the air;
- (27) ‘operating hours’ means the time, expressed in hours, during which a combustion plant, in whole or in part, is operating and discharging emissions into the air, excluding start-up and shut-down periods;
- (28) ‘rate of desulphurisation’ means the ratio over a given period of time of the quantity of sulphur which is not emitted into air by a combustion plant to the quantity of sulphur contained in the solid fuel which is introduced into the combustion plant facilities and which is used in the plant over the same period of time;
- (29) ‘indigenous solid fuel’ means a naturally occurring solid fuel fired in a combustion plant specifically designed for that fuel and extracted locally;
- (30) ‘determinative fuel’ means the fuel which, amongst all fuels used in a multi-fuel firing combustion plant using the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, has the highest emission

⁽¹⁾ OJ L 327, 22.12.2000, p. 1.

⁽²⁾ OJ L 303, 31.10.1990, p. 6.

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limit value as set out in Part 1 of Annex V, or, in the case of several fuels having the same emission limit value, the fuel having the highest thermal input amongst those fuels;

- (31) ‘biomass’ means any of the following:
- (a) products consisting of any vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content;
 - (b) the following waste:
 - (i) vegetable waste from agriculture and forestry;
 - (ii) vegetable waste from the food processing industry, if the heat generated is recovered;
 - (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
 - (iv) cork waste;
 - (v) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating and which includes, in particular, such wood waste originating from construction and demolition waste;
- (32) ‘multi-fuel firing combustion plant’ means any combustion plant which may be fired simultaneously or alternately by two or more types of fuel;
- (33) ‘gas turbine’ means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine;
- (34) ‘gas engine’ means an internal combustion engine which operates according to the Otto cycle and uses spark ignition or, in case of dual fuel engines, compression ignition to burn fuel;
- (35) ‘diesel engine’ means an internal combustion engine which operates according to the diesel cycle and uses compression ignition to burn fuel;
- (36) ‘small isolated system’ means a small isolated system as defined in point 26 of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity ⁽¹⁾;
- (37) ‘waste’ means waste as defined in point 1 of Article 3 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste ⁽²⁾;

⁽¹⁾ OJ L 176, 15.7.2003, p. 37.

⁽²⁾ OJ L 312, 22.11.2008, p. 3.

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- (38) ‘hazardous waste’ means hazardous waste as defined in point 2 of Article 3 of Directive 2008/98/EC;
- (39) ‘mixed municipal waste’ means waste from households as well as commercial, industrial and institutional waste which, because of its nature and composition, is similar to waste from households, but excluding fractions indicated under heading 20 01 of the Annex to Decision 2000/532/EC ⁽¹⁾ that are collected separately at source and excluding the other waste indicated under heading 20 02 of that Annex;
- (40) ‘waste incineration plant’ means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;
- (41) ‘waste co-incineration plant’ means any stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;
- (42) ‘nominal capacity’ means the sum of the incineration capacities of the furnaces of which a waste incineration plant or a waste co-incineration plant is composed, as specified by the constructor and confirmed by the operator, with due account being taken of the calorific value of the waste, expressed as the quantity of waste incinerated per hour;
- (43) ‘dioxins and furans’ means all polychlorinated dibenzo-p-dioxins and dibenzofurans listed in Part 2 of Annex VI;
- (44) ‘organic compound’ means any compound containing at least the element carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates;
- (45) ‘volatile organic compound’ means any organic compound as well as the fraction of creosote, having at 293,15 K a vapour pressure of 0,01 kPa or more, or having a corresponding volatility under the particular conditions of use;
- (46) ‘organic solvent’ means any volatile organic compound which is used for any of the following:
- (a) alone or in combination with other agents, and without undergoing a chemical change, to dissolve raw materials, products or waste materials;

⁽¹⁾ Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).

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- (b) as a cleaning agent to dissolve contaminants;
 - (c) as a dissolver;
 - (d) as a dispersion medium;
 - (e) as a viscosity adjuster;
 - (f) as a surface tension adjuster;
 - (g) as a plasticiser;
 - (h) as a preservative;
- (47) ‘coating’ means coating as defined in point 8 of Article 2 of Directive 2004/42/EC of the European Parliament and of the Council of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products ⁽¹⁾.

*Article 4***Obligation to hold a permit**

1. Member States shall take the necessary measures to ensure that no installation or combustion plant, waste incineration plant or waste co-incineration plant is operated without a permit.

By way of derogation from the first subparagraph, Member States may set a procedure for the registration of installations covered only by Chapter V.

The procedure for registration shall be specified in a binding act and include at least a notification to the competent authority by the operator of the intention to operate an installation.

2. Member States may opt to provide that a permit cover two or more installations or parts of installations operated by the same operator on the same site.

Where a permit covers two or more installations, it shall contain conditions to ensure that each installation complies with the requirements of this Directive.

3. Member States may opt to provide that a permit cover several parts of an installation operated by different operators. In such cases, the permit shall specify the responsibilities of each operator.

*Article 5***Granting of a permit**

1. Without prejudice to other requirements laid down in national or Union law, the competent authority shall grant a permit if the installation complies with the requirements of this Directive.

⁽¹⁾ OJ L 143, 30.4.2004, p. 87.

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2. Member States shall take the measures necessary to ensure that the conditions of, and the procedures for the granting of, the permit are fully coordinated where more than one competent authority or more than one operator is involved or more than one permit is granted, in order to guarantee an effective integrated approach by all authorities competent for this procedure.

3. In the case of a new installation or a substantial change where Article 4 of Directive 85/337/EEC applies, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6, 7 and 9 of that Directive shall be examined and used for the purposes of granting the permit.

*Article 6***General binding rules**

Without prejudice to the obligation to hold a permit, Member States may include requirements for certain categories of installations, combustion plants, waste incineration plants or waste co-incineration plants in general binding rules.

Where general binding rules are adopted, the permit may simply include a reference to such rules.

*Article 7***Incidents and accidents**

Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage ⁽¹⁾, in the event of any incident or accident significantly affecting the environment, Member States shall take the necessary measures to ensure that:

- (a) the operator informs the competent authority immediately;
- (b) the operator immediately takes the measures to limit the environmental consequences and to prevent further possible incidents or accidents;
- (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents.

*Article 8***Non-compliance**

1. Member States shall take the necessary measures to ensure that the permit conditions are complied with.

2. In the event of a breach of the permit conditions, Member States shall ensure that:

- (a) the operator immediately informs the competent authority;

⁽¹⁾ OJ L 143, 30.4.2004, p. 56.

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- (b) the operator immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time;
- (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance.

Where the breach of the permit conditions poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment, and until compliance is restored in accordance with points (b) and (c) of the first subparagraph, the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended.

*Article 9***Emission of greenhouse gases**

1. Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused.
2. For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.
3. Where necessary, the competent authorities shall amend the permit as appropriate.
4. Paragraphs 1 to 3 shall not apply to installations which are temporarily excluded from the scheme for greenhouse gas emission allowance trading within the Union in accordance with Article 27 of Directive 2003/87/EC.

CHAPTER II

PROVISIONS FOR ACTIVITIES LISTED IN ANNEX I*Article 10***Scope**

This Chapter shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that Annex.

*Article 11***General principles governing the basic obligations of the operator**

Member States shall take the necessary measures to provide that installations are operated in accordance with the following principles:

- (a) all the appropriate preventive measures are taken against pollution;

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- (b) the best available techniques are applied;
- (c) no significant pollution is caused;
- (d) the generation of waste is prevented in accordance with Directive 2008/98/EC;
- (e) where waste is generated, it is, in order of priority and in accordance with Directive 2008/98/EC, prepared for re-use, recycled, recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
- (f) energy is used efficiently;
- (g) the necessary measures are taken to prevent accidents and limit their consequences;
- (h) the necessary measures are taken upon definitive cessation of activities to avoid any risk of pollution and return the site of operation to the satisfactory state defined in accordance with Article 22.

*Article 12***Applications for permits**

1. Member States shall take the necessary measures to ensure that an application for a permit includes a description of the following:
 - (a) the installation and its activities;
 - (b) the raw and auxiliary materials, other substances and the energy used in or generated by the installation;
 - (c) the sources of emissions from the installation;
 - (d) the conditions of the site of the installation;
 - (e) where applicable, a baseline report in accordance with Article 22(2);
 - (f) the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;
 - (g) the proposed technology and other techniques for preventing or, where this is not possible, reducing emissions from the installation;
 - (h) measures for the prevention, preparation for re-use, recycling and recovery of waste generated by the installation;
 - (i) further measures planned to comply with the general principles of the basic obligations of the operator as provided for in Article 11;

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- (j) measures planned to monitor emissions into the environment;
- (k) the main alternatives to the proposed technology, techniques and measures studied by the applicant in outline.

An application for a permit shall also include a non-technical summary of the details referred to in the first subparagraph.

2. Where information supplied in accordance with the requirements provided for in Directive 85/337/EEC or a safety report prepared in accordance with Directive 96/82/EC or other information produced in response to other legislation fulfils any of the requirements of paragraph 1, that information may be included in, or attached to, the application.

*Article 13***BAT reference documents and exchange of information**

1. In order to draw up, review and, where necessary, update BAT reference documents, the Commission shall organise an exchange of information between Member States, the industries concerned, non-governmental organisations promoting environmental protection and the Commission.

2. The exchange of information shall, in particular, address the following:

- (a) the performance of installations and techniques in terms of emissions, expressed as short- and long-term averages, where appropriate, and the associated reference conditions, consumption and nature of raw materials, water consumption, use of energy and generation of waste;
- (b) the techniques used, associated monitoring, cross-media effects, economic and technical viability and developments therein;
- (c) best available techniques and emerging techniques identified after considering the issues mentioned in points (a) and (b).

3. The Commission shall establish and regularly convene a forum composed of representatives of Member States, the industries concerned and non-governmental organisations promoting environmental protection.

The Commission shall obtain the opinion of the forum on the practical arrangements for the exchange of information and, in particular, on the following:

- (a) the rules of procedure of the forum;
- (b) the work programme for the exchange of information;
- (c) guidance on the collection of data;
- (d) guidance on the drawing up of BAT reference documents and on their quality assurance including the suitability of their content and format.

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The guidance referred to in points (c) and (d) of the second subparagraph shall take account of the opinion of the forum and shall be adopted in accordance with the regulatory procedure referred to in Article 75(2).

4. The Commission shall obtain and make publicly available the opinion of the forum on the proposed content of the BAT reference documents and shall take into account this opinion for the procedures laid down in paragraph 5.

5. Decisions on the BAT conclusions shall be adopted in accordance with the regulatory procedure referred to in Article 75(2).

6. After the adoption of a decision in accordance with paragraph 5, the Commission shall without delay make the BAT reference document publicly available and ensure that BAT conclusions are made available in all the official languages of the Union.

7. Pending the adoption of a relevant decision in accordance with paragraph 5, the conclusions on best available techniques from BAT reference documents adopted by the Commission prior to the date referred to in Article 83 shall apply as BAT conclusions for the purposes of this Chapter except for Article 15(3) and (4).

*Article 14***Permit conditions**

1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.

Those measures shall include at least the following:

- (a) emission limit values for polluting substances listed in Annex II, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;
- (b) appropriate requirements ensuring protection of the soil and groundwater and measures concerning the monitoring and management of waste generated by the installation;
- (c) suitable emission monitoring requirements specifying:
 - (i) measurement methodology, frequency and evaluation procedure; and
 - (ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques;
- (d) an obligation to supply the competent authority regularly, and at least annually, with:
 - (i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions; and

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- (ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;
- (e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;
- (f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;
- (g) provisions on the minimisation of long-distance or transboundary pollution;
- (h) conditions for assessing compliance with the emission limit values or a reference to the applicable requirements specified elsewhere.

2. For the purpose of paragraph 1(a), emission limit values may be supplemented or replaced by equivalent parameters or technical measures ensuring an equivalent level of environmental protection.

3. BAT conclusions shall be the reference for setting the permit conditions.

4. Without prejudice to Article 18, the competent authority may set stricter permit conditions than those achievable by the use of the best available techniques as described in the BAT conclusions. Member States may establish rules under which the competent authority may set such stricter conditions.

5. Where the competent authority sets permit conditions on the basis of a best available technique not described in any of the relevant BAT conclusions, it shall ensure that:

- (a) that technique is determined by giving special consideration to the criteria listed in Annex III; and
- (b) the requirements of Article 15 are complied with.

Where the BAT conclusions referred to in the first subparagraph do not contain emission levels associated with the best available techniques, the competent authority shall ensure that the technique referred to in the first subparagraph ensures a level of environmental protection equivalent to the best available techniques described in the BAT conclusions.

6. Where an activity or a type of production process carried out within an installation is not covered by any of the BAT conclusions or where those conclusions do not address all the potential environmental effects of the activity or process, the competent authority shall, after prior consultations with the operator, set the permit

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conditions on the basis of the best available techniques that it has determined for the activities or processes concerned, by giving special consideration to the criteria listed in Annex III.

7. For installations referred to in point 6.6 of Annex I, paragraphs 1 to 6 of this Article shall apply without prejudice to the legislation relating to animal welfare.

*Article 15***Emission limit values, equivalent parameters and technical measures**

1. The emission limit values for polluting substances shall apply at the point where the emissions leave the installation, and any dilution prior to that point shall be disregarded when determining those values.

With regard to indirect releases of polluting substances into water, the effect of a water treatment plant may be taken into account when determining the emission limit values of the installation concerned, provided that an equivalent level of protection of the environment as a whole is guaranteed and provided this does not lead to higher levels of pollution in the environment.

2. Without prejudice to Article 18, the emission limit values and the equivalent parameters and technical measures referred to in Article 14(1) and (2) shall be based on the best available techniques, without prescribing the use of any technique or specific technology.

3. The competent authority shall set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5) through either of the following:

- (a) setting emission limit values that do not exceed the emission levels associated with the best available techniques. Those emission limit values shall be expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques; or
- (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.

Where point (b) is applied, the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.

4. By way of derogation from paragraph 3, and without prejudice to Article 18, the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:

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- (a) the geographical location or the local environmental conditions of the installation concerned; or
- (b) the technical characteristics of the installation concerned.

The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.

The emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.

The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.

On the basis of information provided by Member States in accordance with Article 72(1), in particular concerning the application of this paragraph, the Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.

The competent authority shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 21.

5. The competent authority may grant temporary derogations from the requirements of paragraphs 2 and 3 of this Article and from Article 11(a) and (b) for the testing and use of emerging techniques for a total period of time not exceeding 9 months, provided that after the period specified, either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.

*Article 16***Monitoring requirements**

1. The monitoring requirements referred to in Article 14(1)(c) shall, where applicable, be based on the conclusions on monitoring as described in the BAT conclusions.
2. The frequency of the periodic monitoring referred to in Article 14(1)(e) shall be determined by the competent authority in a permit for each individual installation or in general binding rules.

Without prejudice to the first subparagraph, periodic monitoring shall be carried out at least once every 5 years for groundwater and 10 years for soil, unless such monitoring is based on a systematic appraisal of the risk of contamination.

*Article 17***General binding rules for activities listed in Annex I**

1. When adopting general binding rules, Member States shall ensure an integrated approach and a high level of environmental protection equivalent to that achievable with individual permit conditions.

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2. General binding rules shall be based on the best available techniques, without prescribing the use of any technique or specific technology in order to ensure compliance with Articles 14 and 15.
3. Member States shall ensure that general binding rules are updated to take into account developments in best available techniques and in order to ensure compliance with Article 21.
4. General binding rules adopted in accordance with paragraphs 1 to 3 shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

*Article 18***Environmental quality standards**

Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.

*Article 19***Developments in best available techniques**

Member States shall ensure that the competent authority follows or is informed of developments in best available techniques and of the publication of any new or updated BAT conclusions and shall make that information available to the public concerned.

*Article 20***Changes by operators to installations**

1. Member States shall take the necessary measures to ensure that the operator informs the competent authority of any planned change in the nature or functioning, or an extension of the installation which may have consequences for the environment. Where appropriate, the competent authority shall update the permit.
2. Member States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit granted in accordance with this Directive.

The application for a permit and the decision by the competent authority shall cover those parts of the installation and those details listed in Article 12 which may be affected by the substantial change.

3. Any change in the nature or functioning or an extension of an installation shall be deemed to be substantial if the change or extension in itself reaches the capacity thresholds set out in Annex I.

*Article 21***Reconsideration and updating of permit conditions by the competent authority**

1. Member States shall take the necessary measures to ensure that the competent authority periodically reconsiders in accordance with paragraphs 2 to 5 all permit conditions and, where necessary to ensure compliance with this Directive, updates those conditions.

2. At the request of the competent authority, the operator shall submit all the information necessary for the purpose of reconsidering the permit conditions, including, in particular, results of emission monitoring and other data, that enables a comparison of the operation of the installation with the best available techniques described in the applicable BAT conclusions and with the emission levels associated with the best available techniques.

When reconsidering permit conditions, the competent authority shall use any information resulting from monitoring or inspections.

3. Within 4 years of publication of decisions on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, the competent authority shall ensure that:

- (a) all the permit conditions for the installation concerned are reconsidered and, if necessary, updated to ensure compliance with this Directive, in particular, with Article 15(3) and (4), where applicable;
- (b) the installation complies with those permit conditions.

The reconsideration shall take into account all the new or updated BAT conclusions applicable to the installation and adopted in accordance with Article 13(5) since the permit was granted or last reconsidered.

4. Where an installation is not covered by any of the BAT conclusions, the permit conditions shall be reconsidered and, if necessary, updated where developments in the best available techniques allow for the significant reduction of emissions.

5. The permit conditions shall be reconsidered and, where necessary, updated at least in the following cases:

- (a) the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit;
- (b) the operational safety requires other techniques to be used;
- (c) where it is necessary to comply with a new or revised environmental quality standard in accordance with Article 18.

*Article 22***Site closure**

1. Without prejudice to Directive 2000/60/EC, Directive 2004/35/EC, Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration⁽¹⁾ and to relevant Union law on soil protection, the competent authority shall set permit conditions to ensure compliance with paragraphs 3 and 4 of this Article upon definitive cessation of activities.

2. Where the activity involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after 7 January 2013.

The baseline report shall contain the information necessary to determine the state of soil and groundwater contamination so as to make a quantified comparison with the state upon definitive cessation of activities provided for under paragraph 3.

The baseline report shall contain at least the following information:

- (a) information on the present use and, where available, on past uses of the site;
- (b) where available, existing information on soil and groundwater measurements that reflect the state at the time the report is drawn up or, alternatively, new soil and groundwater measurements having regard to the possibility of soil and groundwater contamination by those hazardous substances to be used, produced or released by the installation concerned.

Where information produced pursuant to other national or Union law fulfils the requirements of this paragraph that information may be included in, or attached to, the submitted baseline report.

The Commission shall establish guidance on the content of the baseline report.

3. Upon definitive cessation of the activities, the operator shall assess the state of soil and groundwater contamination by relevant hazardous substances used, produced or released by the installation. Where the installation has caused significant pollution of soil or groundwater by relevant hazardous substances compared to the state established in the baseline report referred to in paragraph 2, the operator shall take the necessary measures to address that pollution so as to return the site to that state. For that purpose, the technical feasibility of such measures may be taken into account.

Without prejudice to the first subparagraph, upon definitive cessation of the activities, and where the contamination of soil and groundwater at the site poses a significant risk to human health or the environment as a result of the permitted activities carried out by the operator before the

⁽¹⁾ OJ L 372, 27.12.2006, p. 19.

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permit for the installation is updated for the first time after 7 January 2013 and taking into account the conditions of the site of the installation established in accordance with Article 12(1)(d), the operator shall take the necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose such a risk.

4. Where the operator is not required to prepare a baseline report referred to in paragraph 2, the operator shall, upon definitive cessation of the activities, take the necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose any significant risk to human health or the environment due to the contamination of soil and groundwater as a result of the permitted activities and taking into account the conditions of the site of the installation established in accordance with Article 12(1)(d).

*Article 23***Environmental inspections**

1. Member States shall set up a system of environmental inspections of installations addressing the examination of the full range of relevant environmental effects from the installations concerned.

Member States shall ensure that operators afford the competent authorities all necessary assistance to enable those authorities to carry out any site visits, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.

2. Member States shall ensure that all installations are covered by an environmental inspection plan at national, regional or local level and shall ensure that this plan is regularly reviewed and, where appropriate, updated.

3. Each environmental inspection plan shall include the following:

- (a) a general assessment of relevant significant environmental issues;
- (b) the geographical area covered by the inspection plan;
- (c) a register of the installations covered by the plan;
- (d) procedures for drawing up programmes for routine environmental inspections pursuant to paragraph 4;
- (e) procedures for non-routine environmental inspections pursuant to paragraph 5;
- (f) where necessary, provisions on the cooperation between different inspection authorities.

4. Based on the inspection plans, the competent authority shall regularly draw up programmes for routine environmental inspections, including the frequency of site visits for different types of installations.

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The period between two site visits shall be based on a systematic appraisal of the environmental risks of the installations concerned and shall not exceed 1 year for installations posing the highest risks and 3 years for installations posing the lowest risks.

If an inspection has identified an important case of non-compliance with the permit conditions, an additional site visit shall be carried out within 6 months of that inspection.

The systematic appraisal of the environmental risks shall be based on at least the following criteria:

- (a) the potential and actual impacts of the installations concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents;
- (b) the record of compliance with permit conditions;
- (c) the participation of the operator in the Union eco-management and audit scheme (EMAS), pursuant to Regulation (EC) No 1221/2009 ⁽¹⁾.

The Commission may adopt guidance on the criteria for the appraisal of environmental risks.

5. Non-routine environmental inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible and, where appropriate, before the granting, reconsideration or update of a permit.

6. Following each site visit, the competent authority shall prepare a report describing the relevant findings regarding compliance of the installation with the permit conditions and conclusions on whether any further action is necessary.

The report shall be notified to the operator concerned within 2 months of the site visit taking place. The report shall be made publicly available by the competent authority in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ⁽²⁾ within 4 months of the site visit taking place.

Without prejudice to Article 8(2), the competent authority shall ensure that the operator takes all the necessary actions identified in the report within a reasonable period.

Article 24

Access to information and public participation in the permit procedure

1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:

- (a) the granting of a permit for new installations;

⁽¹⁾ Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342, 22.12.2009, p. 1).

⁽²⁾ OJ L 41, 14.2.2003, p. 26.

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- (b) the granting of a permit for any substantial change;
- (c) the granting or updating of a permit for an installation where the application of Article 15(4) is proposed;
- (d) the updating of a permit or permit conditions for an installation in accordance with Article 21(5)(a).

The procedure set out in Annex IV shall apply to such participation.

2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the Internet in relation to points (a), (b) and (f), the following information:

- (a) the content of the decision, including a copy of the permit and any subsequent updates;
- (b) the reasons on which the decision is based;
- (c) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision;
- (d) the title of the BAT reference documents relevant to the installation or activity concerned;
- (e) how the permit conditions referred to in Article 14, including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques;
- (f) where a derogation is granted in accordance with Article 15(4), the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.

3. The competent authority shall also make available to the public, including via the Internet at least in relation to point (a):

- (a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;
- (b) the results of emission monitoring as required under the permit conditions and held by the competent authority.

4. Paragraphs 1, 2 and 3 of this Article shall apply subject to the restrictions laid down in Article 4(1) and (2) of Directive 2003/4/EC.

Article 25

Access to justice

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and

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impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24 when one of the following conditions is met:

- (a) they have a sufficient interest;
- (b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a).

Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).

4. Paragraphs 1, 2 and 3 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Article 26

Transboundary effects

1. Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State which is likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 20(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex IV at the same time as it makes it available to the public.

Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.

2. Within the framework of their bilateral relations, Member States shall ensure that in the cases referred to in paragraph 1, the applications are also made available for an appropriate period of time to the public of the Member State likely to be affected so that it will have the right to comment on them before the competent authority reaches its decision.

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3. The results of any consultations pursuant to paragraphs 1 and 2 shall be taken into consideration when the competent authority reaches a decision on the application.

4. The competent authority shall inform any Member State which has been consulted pursuant to paragraph 1 of the decision reached on the application and shall forward to it the information referred to in Article 24(2). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.

*Article 27***Emerging techniques**

1. Member States shall, where appropriate, encourage the development and application of emerging techniques, in particular for those emerging techniques identified in BAT reference documents.

2. The Commission shall establish guidance to assist Member States in encouraging the development and application of emerging techniques as referred to in paragraph 1.

CHAPTER III

SPECIAL PROVISIONS FOR COMBUSTION PLANTS*Article 28***Scope**

This Chapter shall apply to combustion plants, the total rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used.

This Chapter shall not apply to the following combustion plants:

- (a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials;
- (b) post-combustion plants designed to purify the waste gases by combustion which are not operated as independent combustion plants;
- (c) facilities for the regeneration of catalytic cracking catalysts;
- (d) facilities for the conversion of hydrogen sulphide into sulphur;
- (e) reactors used in the chemical industry;
- (f) coke battery furnaces;
- (g) cowpers;
- (h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;

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- (i) gas turbines and gas engines used on offshore platforms;
- (j) plants which use any solid or liquid waste as a fuel other than waste referred to in point (b) of point 31 of Article 3.

*Article 29***Aggregation rules**

1. Where the waste gases of two or more separate combustion plants are discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.
2. Where two or more separate combustion plants which have been granted a permit for the first time on or after 1 July 1987, or the operators of which have submitted a complete application for a permit on or after that date, are installed in such a way that, taking technical and economic factors into account, their waste gases could in the judgement of the competent authority, be discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.
3. For the purpose of calculating the total rated thermal input of a combination of combustion plants referred to in paragraphs 1 and 2, individual combustion plants with a rated thermal input below 15 MW shall not be considered.

*Article 30***Emission limit values**

1. Waste gases from combustion plants shall be discharged in a controlled way by means of a stack, containing one or more flues, the height of which is calculated in such a way as to safeguard human health and the environment.
2. All permits for installations containing combustion plants which have been granted a permit before 7 January 2013, or the operators of which have submitted a complete application for a permit before that date, provided that such plants are put into operation no later than 7 January 2014, shall include conditions ensuring that emissions into air from these plants do not exceed the emission limit values set out in Part 1 of Annex V.

All permits for installations containing combustion plants which had been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC and which are in operation after 1 January 2016, shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.
3. All permits for installations containing combustion plants not covered by paragraph 2 shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.

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4. The emission limit values set out in Parts 1 and 2 of Annex V as well as the minimum rates of desulphurisation set out in Part 5 of that Annex shall apply to the emissions of each common stack in relation to the total rated thermal input of the entire combustion plant. Where Annex V provides that emission limit values may be applied for a part of a combustion plant with a limited number of operating hours, those limit values shall apply to the emissions of that part of the plant, but shall be set in relation to the total rated thermal input of the entire combustion plant.

5. The competent authority may grant a derogation for a maximum of 6 months from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 for sulphur dioxide in respect of a combustion plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with those limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage.

Member States shall immediately inform the Commission of any derogation granted under the first subparagraph.

6. The competent authority may grant a derogation from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 in cases where a combustion plant using only gaseous fuel has to resort exceptionally to the use of other fuels because of a sudden interruption in the supply of gas and for this reason would need to be equipped with a waste gas purification facility. The period for which such a derogation is granted shall not exceed 10 days except where there is an overriding need to maintain energy supplies.

The operator shall immediately inform the competent authority of each specific case referred to in the first subparagraph.

Member States shall inform the Commission immediately of any derogation granted under the first subparagraph.

7. Where a combustion plant is extended, the emission limit values set out in Part 2 of Annex V shall apply to the extended part of the plant affected by the change and shall be set in relation to the total rated thermal input of the entire combustion plant. In the case of a change to a combustion plant, which may have consequences for the environment and which affects a part of the plant with a rated thermal input of 50 MW or more, the emission limit values as set out in Part 2 of Annex V shall apply to the part of the plant which has changed in relation to the total rated thermal input of the entire combustion plant.

8. The emission limit values set out in Parts 1 and 2 of Annex V shall not apply to the following combustion plants:

- (a) diesel engines;
- (b) recovery boilers within installations for the production of pulp.

9. For the following combustion plants, on the basis of the best available techniques, the Commission shall review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V:

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- (a) the combustion plants referred to in paragraph 8;
- (b) combustion plants within refineries firing the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, taking into account the specificity of the energy systems of refineries;
- (c) combustion plants firing gases other than natural gas;
- (d) combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption.

The Commission shall, by 31 December 2013, report the results of this review to the European Parliament and to the Council accompanied, if appropriate, by a legislative proposal.

*Article 31***Desulphurisation rate**

1. For combustion plants firing indigenous solid fuel, which cannot comply with the emission limit values for sulphur dioxide referred to in Article 30(2) and (3) due to the characteristics of this fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex and with prior validation by the competent authority of the technical report referred to in Article 72(4)(a).
2. For combustion plants firing indigenous solid fuel, which co-incinerate waste, and which cannot comply with the C_{proc} values for sulphur dioxide set out in points 3.1 or 3.2 of Part 4 of Annex VI due to the characteristics of the indigenous solid fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex. If Member States choose to apply this paragraph, C_{waste} as referred to in point 1 of Part 4 of Annex VI shall be equal to 0 mg/Nm³.
3. The Commission shall, by 31 December 2019, review the possibility of applying minimum rates of desulphurisation set out in Part 5 of Annex V, taking into account, in particular, the best available techniques and benefits obtained from reduced sulphur dioxide emissions.

*Article 32***Transitional National Plan**

1. During the period from 1 January 2016 to 30 June 2020, Member States may draw up and implement a transitional national plan covering combustion plants which were granted the first permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003. For each of the combustion plants covered by the plan, the plan shall cover emissions of one or more of the following pollutants: nitrogen oxides, sulphur dioxide and dust. For gas turbines, only nitrogen oxides emissions shall be covered by the plan.

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The transitional national plan shall not include any of the following combustion plants:

- (a) those to which Article 33(1) applies;
- (b) those within refineries firing low calorific gases from the gasification of refinery residues or the distillation and conversion residues from the refining of crude oil for own consumption, alone or with other fuels;
- (c) those to which Article 35 applies;
- (d) those which are granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC.

2. Combustion plants covered by the plan may be exempted from compliance with the emission limit values referred to in Article 30(2) for the pollutants which are subject to the plan or, where applicable, with the rates of desulphurisation referred to in Article 31.

The emission limit values for sulphur dioxide, nitrogen oxides and dust set out in the permit for the combustion plant applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained.

Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

3. For each of the pollutants it covers, the transitional national plan shall set a ceiling defining the maximum total annual emissions for all of the plants covered by the plan on the basis of each plant's total rated thermal input on 31 December 2010, its actual annual operating hours and its fuel use, averaged over the last 10 years of operation up to and including 2010.

The ceiling for the year 2016 shall be calculated on the basis of the relevant emission limit values set out in Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The ceilings for the years 2019 and 2020 shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to this Directive or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to this Directive. The ceilings for the years 2017 and 2018 shall be set providing a linear decrease of the ceilings between 2016 and 2019.

Where a plant included in the transitional national plan is closed or no longer falls within the scope of Chapter III, this shall not result in an increase in total annual emissions from the remaining plants covered by the plan.

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4. The transitional national plan shall also contain provisions on monitoring and reporting that comply with the implementing rules established in accordance with Article 41(b), as well as the measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from 1 July 2020.

5. Not later than 1 January 2013, Member States shall communicate their transitional national plans to the Commission.

The Commission shall evaluate the plans and, where the Commission has raised no objections within 12 months of receipt of a plan, the Member State concerned shall consider its plan to be accepted.

When the Commission considers a plan not to be in accordance with the implementing rules established in accordance with Article 41(b), it shall inform the Member State concerned that its plan cannot be accepted. In relation to the evaluation of a new version of a plan which a Member State communicates to the Commission, the time period referred to in the second subparagraph shall be 6 months.

6. Member States shall inform the Commission of any subsequent changes to the plan.

*Article 33***Limited life time derogation**

1. During the period from 1 January 2016 to 31 December 2023, combustion plants may be exempted from compliance with the emission limit values referred to in Article 30(2) and with the rates of desulphurisation referred to in Article 31, where applicable, and from their inclusion in the transitional national plan referred to in Article 32 provided that the following conditions are fulfilled:

- (a) the operator of the combustion plant undertakes, in a written declaration submitted by 1 January 2014 at the latest to the competent authority, not to operate the plant for more than 17 500 operating hours, starting from 1 January 2016 and ending no later than 31 December 2023;
- (b) the operator is required to submit each year to the competent authority a record of the number of operating hours since 1 January 2016;
- (c) the emission limit values for sulphur dioxides, nitrogen oxides and dust set out in the permit for the combustion plant applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained during the remaining operational life of the combustion plant. Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V; and
- (d) the combustion plant has not been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC.

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2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input, the fuel types used and the applicable emission limit values for sulphur dioxide, nitrogen oxides and dust. For plants subject to paragraph 1, Member States shall communicate annually to the Commission a record of the number of operating hours since 1 January 2016.

3. In case of a combustion plant being, on 6 January 2011, part of a small isolated system and accounting at that date for at least 35 % of the electricity supply within that system, which is unable, due to its technical characteristics, to comply with the emission limit values referred to in Article 30(2), the number of operating hours referred to in paragraph 1(a) of this Article shall be 18 000, starting from 1 January 2020 and ending no later than 31 December 2023, and the date referred to in paragraph 1(b) and paragraph 2 of this Article shall be 1 January 2020.

4. In case of a combustion plant with a total rated thermal input of more than 1 500 MW which started operating before 31 December 1986 and fires indigenous solid fuel with a net calorific value of less than 5 800 kJ/kg, a moisture content greater than 45 % by weight, a combined moisture and ash content greater than 60 % by weight and a calcium oxide content in ash greater than 10 %, the number of operating hours referred to in paragraph 1(a) shall be 32 000.

*Article 34***Small isolated systems**

1. Until 31 December 2019, combustion plants being, on 6 January 2011, part of a small isolated system may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31, where applicable. Until 31 December 2019, the emission limit values set out in the permits of these combustion plants, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained.

2. Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

3. Where there are, on the territory of a Member State combustion plants covered by this Chapter that are part of a small isolated system, that Member State shall report to the Commission before 7 January 2013 a list of those combustion plants, the total annual energy consumption of the small isolated system and the amount of energy obtained through interconnection with other systems.

*Article 35***District heating plants**

1. Until 31 December 2022, a combustion plant may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31 provided that the following conditions are fulfilled:

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- (a) the total rated thermal input of the combustion plant does not exceed 200 MW;
- (b) the plant was granted a first permit before 27 November 2002 or the operator of that plant had submitted a complete application for a permit before that date, provided that it was put into operation no later than 27 November 2003;
- (c) at least 50 % of the useful heat production of the plant, as a rolling average over a period of 5 years, is delivered in the form of steam or hot water to a public network for district heating; and
- (d) the emission limit values for sulphur dioxide, nitrogen oxides and dust set out in its permit applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, are at least maintained until 31 December 2022.

2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input, the fuel types used and the applicable emission limit values for sulphur dioxide, nitrogen oxides and dust. In addition, Member States shall, for any combustion plants to which paragraph 1 applies and during the period mentioned in that paragraph, inform the Commission annually of the proportion of useful heat production of each plant which was delivered in the form of steam or hot water to a public network for district heating, expressed as a rolling average over the preceding 5 years.

*Article 36***Geological storage of carbon dioxide**

1. Member States shall ensure that operators of all combustion plants with a rated electrical output of 300 megawatts or more for which the original construction licence or, in the absence of such a procedure, the original operating licence is granted after the entry into force of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ⁽¹⁾, have assessed whether the following conditions are met:

- (a) suitable storage sites are available,
- (b) transport facilities are technically and economically feasible,
- (c) it is technically and economically feasible to retrofit for carbon dioxide capture.

2. If the conditions laid down in paragraph 1 are met, the competent authority shall ensure that suitable space on the installation site for the equipment necessary to capture and compress carbon dioxide is set aside. The competent authority shall determine whether the conditions are met on the basis of the assessment referred to in paragraph 1 and other available information, particularly concerning the protection of the environment and human health.

⁽¹⁾ OJ L 140, 5.6.2009, p. 114.

▼B*Article 37***Malfunction or breakdown of the abatement equipment**

1. Member States shall ensure that provision is made in the permits for procedures relating to malfunction or breakdown of the abatement equipment.
2. In the case of a breakdown, the competent authority shall require the operator to reduce or close down operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels.

The operator shall notify the competent authority within 48 hours after the malfunction or breakdown of the abatement equipment.

The cumulative duration of unabated operation shall not exceed 120 hours in any 12-month period.

The competent authority may grant a derogation from the time limits set out in the first and third subparagraphs in one of the following cases:

- (a) there is an overriding need to maintain energy supplies;
- (b) the combustion plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

*Article 38***Monitoring of emissions into air**

1. Member States shall ensure that the monitoring of air polluting substances is carried out in accordance with Part 3 of Annex V.
2. The installation and functioning of the automated monitoring equipment shall be subject to control and to annual surveillance tests as set out in Part 3 of Annex V.
3. The competent authority shall determine the location of the sampling or measurement points to be used for the monitoring of emissions.
4. All monitoring results shall be recorded, processed and presented in such a way as to enable the competent authority to verify compliance with the operating conditions and emission limit values which are included in the permit.

*Article 39***Compliance with emission limit values**

The emission limit values for air shall be regarded as being complied with if the conditions set out in Part 4 of Annex V are fulfilled.

*Article 40***Multi-fuel firing combustion plants**

1. In the case of a multi-fuel firing combustion plant involving the simultaneous use of two or more fuels, the competent authority shall set the emission limit values in accordance with the following steps:

- (a) taking the emission limit value relevant for each individual fuel and pollutant corresponding to the total rated thermal input of the entire combustion plant as set out in Parts 1 and 2 of Annex V;
- (b) determining fuel-weighted emission limit values, which are obtained by multiplying the individual emission limit value referred to in point (a) by the thermal input delivered by each fuel, and dividing the product of multiplication by the sum of the thermal inputs delivered by all fuels,
- (c) aggregating the fuel-weighted emission limit values.

2. In the case of multi-fuel firing combustion plants covered by Article 30(2), which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the following emission limit values may be applied instead of the emission limit values set according to paragraph 1:

- (a) where, during the operation of the combustion plant, the proportion contributed by the determinative fuel to the sum of the thermal inputs delivered by all fuels is 50 % or more, the emission limit value set in Part 1 of Annex V for the determinative fuel;
- (b) where the proportion contributed by the determinative fuel to the sum of the thermal inputs delivered by all fuels is less than 50 %, the emission limit value determined in accordance with the following steps:
 - (i) taking the emission limit values set out in Part 1 of Annex V for each of the fuels used, corresponding to the total rated thermal input of the combustion plant;
 - (ii) calculating the emission limit value of the determinative fuel by multiplying the emission limit value, determined for that fuel according to point (i), by a factor of two, and subtracting from this product the emission limit value of the fuel used with the lowest emission limit value as set out in Part 1 of Annex V, corresponding to the total rated thermal input of the combustion plant;
 - (iii) determining the fuel-weighted emission limit value for each fuel used by multiplying the emission limit value determined under points (i) and (ii) by the thermal input of the fuel concerned and by dividing the product of this multiplication by the sum of the thermal inputs delivered by all fuels;

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- (iv) aggregating the fuel-weighted emission limit values determined under point (iii).

3. In the case of multi-fuel firing combustion plants covered by Article 30(2), which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the average emission limit values for sulphur dioxide set out in Part 7 of Annex V may be applied instead of the emission limit values set according to paragraphs 1 or 2 of this Article.

*Article 41***Implementing rules**

Implementing rules shall be established concerning:

- (a) the determination of the start-up and shut-down periods referred to in point 27 of Article 3 and in point 1 of Part 4 of Annex V; and
- (b) the transitional national plans referred to in Article 32 and, in particular, the setting of emission ceilings and related monitoring and reporting.

Those implementing rules shall be adopted in accordance with the regulatory procedure referred to in Article 75(2). The Commission shall make appropriate proposals not later than 7 July 2011.

CHAPTER IV

SPECIAL PROVISIONS FOR WASTE INCINERATION PLANTS AND WASTE CO-INCINERATION PLANTS*Article 42***Scope**

1. This Chapter shall apply to waste incineration plants and waste co-incineration plants which incinerate or co-incinerate solid or liquid waste.

This Chapter shall not apply to gasification or pyrolysis plants, if the gases resulting from this thermal treatment of waste are purified to such an extent that they are no longer a waste prior to their incineration and they can cause emissions no higher than those resulting from the burning of natural gas.

For the purposes of this Chapter, waste incineration plants and waste co-incineration plants shall include all incineration lines or co-incineration lines, waste reception, storage, on site pretreatment facilities, waste-, fuel- and air-supply systems, boilers, facilities for the treatment of waste gases, on-site facilities for treatment or storage of residues and waste water, stacks, devices and systems for controlling incineration or co-incineration operations, recording and monitoring incineration or co-incineration conditions.

If processes other than oxidation, such as pyrolysis, gasification or plasma process, are applied for the thermal treatment of waste, the waste incineration plant or waste co-incineration plant shall include both the thermal treatment process and the subsequent incineration process.

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If waste co-incineration takes place in such a way that the main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the plant shall be regarded as a waste incineration plant.

2. This Chapter shall not apply to the following plants:

- (a) plants treating only the following wastes:
 - (i) waste listed in point (b) of point 31 of Article 3;
 - (ii) radioactive waste;
 - (iii) animal carcasses as regulated by Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ⁽¹⁾;
 - (iv) waste resulting from the exploration for, and the exploitation of, oil and gas resources from off-shore installations and incinerated on board the installations;
- (b) experimental plants used for research, development and testing in order to improve the incineration process and which treat less than 50 tonnes of waste per year.

*Article 43***Definition of residue**

For the purposes of this Chapter, 'residue' shall mean any liquid or solid waste which is generated by a waste incineration plant or waste co-incineration plant.

*Article 44***Applications for permits**

An application for a permit for a waste incineration plant or waste co-incineration plant shall include a description of the measures which are envisaged to guarantee that the following requirements are met:

- (a) the plant is designed, equipped and will be maintained and operated in such a manner that the requirements of this Chapter are met taking into account the categories of waste to be incinerated or co-incinerated;
- (b) the heat generated during the incineration and co-incineration process is recovered as far as practicable through the generation of heat, steam or power;
- (c) the residues will be minimised in their amount and harmfulness and recycled where appropriate;
- (d) the disposal of the residues which cannot be prevented, reduced or recycled will be carried out in conformity with national and Union law.

⁽¹⁾ OJ L 273, 10.10.2002, p. 1.

▼B*Article 45***Permit conditions**

1. The permit shall include the following:
 - (a) a list of all types of waste which may be treated using at least the types of waste set out in the European Waste List established by Decision 2000/532/EC, if possible, and containing information on the quantity of each type of waste, where appropriate;
 - (b) the total waste incinerating or co-incinerating capacity of the plant;
 - (c) the limit values for emissions into air and water;
 - (d) the requirements for the pH, temperature and flow of waste water discharges;
 - (e) the sampling and measurement procedures and frequencies to be used to comply with the conditions set for emission monitoring;
 - (f) the maximum permissible period of any technically unavoidable stoppages, disturbances, or failures of the purification devices or the measurement devices, during which the emissions into the air and the discharges of waste water may exceed the prescribed emission limit values.
2. In addition to the requirements set out in paragraph 1, the permit granted to a waste incineration plant or waste co-incineration plant using hazardous waste shall include the following:
 - (a) a list of the quantities of the different categories of hazardous waste which may be treated;
 - (b) the minimum and maximum mass flows of those hazardous wastes, their lowest and maximum calorific values and their maximum contents of polychlorinated biphenyls, pentachlorophenol, chlorine, fluorine, sulphur, heavy metals and other polluting substances.
3. Member States may list the categories of waste to be included in the permit which can be co-incinerated in certain categories of waste co-incineration plants.
4. The competent authority shall periodically reconsider and, where necessary, update permit conditions.

*Article 46***Control of emissions**

1. Waste gases from waste incineration plants and waste co-incineration plants shall be discharged in a controlled way by means of a stack the height of which is calculated in such a way as to safeguard human health and the environment.
2. Emissions into air from waste incineration plants and waste co-incineration plants shall not exceed the emission limit values set out in parts 3 and 4 of Annex VI or determined in accordance with Part 4 of that Annex.

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If in a waste co-incineration plant more than 40 % of the resulting heat release comes from hazardous waste, or the plant co-incinerates untreated mixed municipal waste, the emission limit values set out in Part 3 of Annex VI shall apply.

3. Discharges to the aquatic environment of waste water resulting from the cleaning of waste gases shall be limited as far as practicable and the concentrations of polluting substances shall not exceed the emission limit values set out in Part 5 of Annex VI.

4. The emission limit values shall apply at the point where waste waters from the cleaning of waste gases are discharged from the waste incineration plant or waste co-incineration plant.

When waste waters from the cleaning of waste gases are treated outside the waste incineration plant or waste co-incineration plant at a treatment plant intended only for the treatment of this sort of waste water, the emission limit values set out in Part 5 of Annex VI shall be applied at the point where the waste waters leave the treatment plant. Where the waste water from the cleaning of waste gases is treated collectively with other sources of waste water, either on site or off site, the operator shall make the appropriate mass balance calculations, ►C1 using the results of the measurements set out in point 3 of Part 6 of Annex VI in order to determine the emission levels in the final waste water discharge ◀ that can be attributed to the waste water arising from the cleaning of waste gases.

Under no circumstances shall dilution of waste water take place for the purpose of complying with the emission limit values set out in Part 5 of Annex VI.

5. Waste incineration plant sites and waste co-incineration plant sites, including associated storage areas for waste, shall be designed and operated in such a way as to prevent the unauthorised and accidental release of any polluting substances into soil, surface water and groundwater.

Storage capacity shall be provided for contaminated rainwater run-off from the waste incineration plant site or waste co-incineration plant site or for contaminated water arising from spillage or fire-fighting operations. The storage capacity shall be adequate to ensure that such waters can be tested and treated before discharge where necessary.

6. Without prejudice to Article 50(4)(c), the waste incineration plant or waste co-incineration plant or individual furnaces being part of a waste incineration plant or waste co-incineration plant shall under no circumstances continue to incinerate waste for a period of more than 4 hours uninterrupted where emission limit values are exceeded.

The cumulative duration of operation in such conditions over 1 year shall not exceed 60 hours.

The time limit set out in the second subparagraph shall apply to those furnaces which are linked to one single waste gas cleaning device.

▼B*Article 47***Breakdown**

In the case of a breakdown, the operator shall reduce or close down operations as soon as practicable until normal operations can be restored.

*Article 48***Monitoring of emissions**

1. Member States shall ensure that the monitoring of emissions is carried out in accordance with Parts 6 and 7 of Annex VI.
2. The installation and functioning of the automated measuring systems shall be subject to control and to annual surveillance tests as set out in point 1 of Part 6 of Annex VI.
3. The competent authority shall determine the location of the sampling or measurement points to be used for monitoring of emissions.
4. All monitoring results shall be recorded, processed and presented in such a way as to enable the competent authority to verify compliance with the operating conditions and emission limit values which are included in the permit.
5. As soon as appropriate measurement techniques are available within the Union, the Commission shall, by means of delegated acts in accordance with Article 76 and subject to the conditions laid down in Articles 77 and 78, set the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be carried out.

*Article 49***Compliance with emission limit values**

The emission limit values for air and water shall be regarded as being complied with if the conditions described in Part 8 of Annex VI are fulfilled.

*Article 50***Operating conditions**

1. Waste incineration plants shall be operated in such a way as to achieve a level of incineration such that the total organic carbon content of slag and bottom ashes is less than 3 % or their loss on ignition is less than 5 % of the dry weight of the material. If necessary, waste pre-treatment techniques shall be used.
2. Waste incineration plants shall be designed, equipped, built and operated in such a way that the gas resulting from the incineration of waste is raised, after the last injection of combustion air, in a controlled and homogeneous fashion and even under the most unfavourable conditions, to a temperature of at least 850 °C for at least two seconds.

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Waste co-incineration plants shall be designed, equipped, built and operated in such a way that the gas resulting from the co-incineration of waste is raised in a controlled and homogeneous fashion and even under the most unfavourable conditions, to a temperature of at least 850 °C for at least two seconds.

If hazardous waste with a content of more than 1 % of halogenated organic substances, expressed as chlorine, is incinerated or co-incinerated, the temperature required to comply with the first and second subparagraphs shall be at least 1 100 °C.

In waste incineration plants, the temperatures set out in the first and third subparagraphs shall be measured near the inner wall of the combustion chamber. The competent authority may authorise the measurements at another representative point of the combustion chamber.

3. Each combustion chamber of a waste incineration plant shall be equipped with at least one auxiliary burner. This burner shall be switched on automatically when the temperature of the combustion gases after the last injection of combustion air falls below the temperatures set out in paragraph 2. It shall also be used during plant start-up and shut-down operations in order to ensure that those temperatures are maintained at all times during these operations and as long as unburned waste is in the combustion chamber.

The auxiliary burner shall not be fed with fuels which can cause higher emissions than those resulting from the burning of gas oil as defined in Article 2(2) of Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels ⁽¹⁾, liquefied gas or natural gas.

4. Waste incineration plants and waste co-incineration plants shall operate an automatic system to prevent waste feed in the following situations:

- (a) at start-up, until the temperature set out in paragraph 2 of this Article or the temperature specified in accordance with Article 51(1) has been reached;
- (b) whenever the temperature set out in paragraph 2 of this Article or the temperature specified in accordance with Article 51(1) is not maintained;
- (c) whenever the continuous measurements show that any emission limit value is exceeded due to disturbances or failures of the waste gas cleaning devices.

5. Any heat generated by waste incineration plants or waste co-incineration plants shall be recovered as far as practicable.

6. Infectious clinical waste shall be placed straight in the furnace, without first being mixed with other categories of waste and without direct handling.

7. Member States shall ensure that the waste incineration plant or waste co-incineration plant is operated and controlled by a natural person who is competent to manage the plant.

⁽¹⁾ OJ L 121, 11.5.1999, p. 13.

▼B*Article 51***Authorisation to change operating conditions**

1. Conditions different from those laid down in Article 50(1), (2) and (3) and, as regards the temperature, paragraph 4 of that Article and specified in the permit for certain categories of waste or for certain thermal processes, may be authorised by the competent authority provided the other requirements of this Chapter are met. Member States may lay down rules governing these authorisations.
2. For waste incineration plants, the change of the operating conditions shall not cause more residues or residues with a higher content of organic polluting substances compared to those residues which could be expected under the conditions laid down in Article 50(1), (2) and (3).
3. Emissions of total organic carbon and carbon monoxide from waste co-incineration plants, authorised to change operating conditions according to paragraph 1 shall also comply with the emission limit values set out in Part 3 of Annex VI.

Emissions of total organic carbon from bark boilers within the pulp and paper industry co-incinerating waste at the place of its production which were in operation and had a permit before 28 December 2002 and which are authorised to change operating conditions according to paragraph 1 shall also comply with the emission limit values set out in Part 3 of Annex VI.

4. Member States shall communicate to the Commission all operating conditions authorised under paragraphs 1, 2 and 3 and the results of verifications made as part of the information provided in accordance with the reporting requirements under Article 72.

*Article 52***Delivery and reception of waste**

1. The operator of the waste incineration plant or waste co-incineration plant shall take all necessary precautions concerning the delivery and reception of waste in order to prevent or to limit as far as practicable the pollution of air, soil, surface water and groundwater as well as other negative effects on the environment, odours and noise, and direct risks to human health.
2. The operator shall determine the mass of each type of waste, if possible according to the European Waste List established by Decision 2000/532/EC, prior to accepting the waste at the waste incineration plant or waste co-incineration plant.
3. Prior to accepting hazardous waste at the waste incineration plant or waste co-incineration plant, the operator shall collect available information about the waste for the purpose of verifying compliance with the permit requirements specified in Article 45(2).

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That information shall cover the following:

- (a) all the administrative information on the generating process contained in the documents mentioned in paragraph 4(a);
- (b) the physical, and as far as practicable, chemical composition of the waste and all other information necessary to evaluate its suitability for the intended incineration process;
- (c) the hazardous characteristics of the waste, the substances with which it cannot be mixed, and the precautions to be taken in handling the waste.

4. Prior to accepting hazardous waste at the waste incineration plant or waste co-incineration plant, at least the following procedures shall be carried out by the operator:

- (a) the checking of the documents required by Directive 2008/98/EC and, where applicable, those required by Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽¹⁾ and by legislation on transport of dangerous goods;
- (b) the taking of representative samples, unless inappropriate as far as possible before unloading, to verify conformity with the information provided for in paragraph 3 by carrying out controls and to enable the competent authorities to identify the nature of the wastes treated.

The samples referred to in point (b) shall be kept for at least 1 month after the incineration or co-incineration of the waste concerned.

5. The competent authority may grant exemptions from paragraphs 2, 3 and 4 to waste incineration plants or waste co-incineration plants which are a part of an installation covered by Chapter II and only incinerate or co-incinerate waste generated within that installation.

Article 53

Residues

1. Residues shall be minimised in their amount and harmfulness. Residues shall be recycled, where appropriate, directly in the plant or outside.
2. Transport and intermediate storage of dry residues in the form of dust shall take place in such a way as to prevent dispersal of those residues in the environment.
3. Prior to determining the routes for the disposal or recycling of the residues, appropriate tests shall be carried out to establish the physical and chemical characteristics and the polluting potential of the residues. Those tests shall concern the total soluble fraction and heavy metals soluble fraction.

⁽¹⁾ OJ L 190, 12.7.2006, p. 1.

▼B*Article 54***Substantial change**

A change of operation of a waste incineration plant or a waste co-incineration plant treating only non-hazardous waste in an installation covered by Chapter II which involves the incineration or co-incineration of hazardous waste shall be regarded as a substantial change.

*Article 55***Reporting and public information on waste incineration plants and waste co-incineration plants**

1. Applications for new permits for waste incineration plants and waste co-incineration plants shall be made available to the public at one or more locations for an appropriate period to enable the public to comment on the applications before the competent authority reaches a decision. That decision, including at least a copy of the permit, and any subsequent updates, shall also be made available to the public.

2. For waste incineration plants or waste co-incineration plants with a nominal capacity of 2 tonnes or more per hour, the report referred to in Article 72 shall include information on the functioning and monitoring of the plant and give account of the running of the incineration or co-incineration process and the level of emissions into air and water in comparison with the emission limit values. That information shall be made available to the public.

3. A list of waste incineration plants or waste co-incineration plants with a nominal capacity of less than 2 tonnes per hour shall be drawn up by the competent authority and shall be made available to the public.

CHAPTER V

SPECIAL PROVISIONS FOR INSTALLATIONS AND ACTIVITIES USING ORGANIC SOLVENTS*Article 56***Scope**

This chapter shall apply to activities listed in Part 1 of Annex VII and, where applicable, reaching the consumption thresholds set out in Part 2 of that Annex.

*Article 57***Definitions**

For the purposes of this Chapter, the following definitions shall apply:

- (1) 'existing installation' means an installation in operation on 29 March 1999 or which was granted a permit or registered before 1 April 2001 or the operator of which submitted a complete application for a permit before 1 April 2001, provided that that installation was put in operation no later than 1 April 2002;

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- (2) 'waste gases' means the final gaseous discharge containing volatile organic compounds or other pollutants from a stack or abatement equipment into air;
- (3) 'fugitive emissions' means any emissions not in waste gases of volatile organic compounds into air, soil and water as well as solvents contained in any products, unless otherwise stated in Part 2 of Annex VII;
- (4) 'total emissions' means the sum of fugitive emissions and emissions in waste gases;
- (5) 'mixture' means mixture as defined in Article 3(2) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency ⁽¹⁾,
- (6) 'adhesive' means any mixture, including all the organic solvents or mixtures containing organic solvents necessary for its proper application, which is used to adhere separate parts of a product;
- (7) 'ink' means a mixture, including all the organic solvents or mixtures containing organic solvents necessary for its proper application, which is used in a printing activity to impress text or images on to a surface;
- (8) 'varnish' means a transparent coating;
- (9) 'consumption' means the total input of organic solvents into an installation per calendar year, or any other 12-month period, less any volatile organic compounds that are recovered for re-use;
- (10) 'input' means the quantity of organic solvents and their quantity in mixtures used when carrying out an activity, including the solvents recycled inside and outside the installation, and which are counted every time they are used to carry out the activity;
- (11) 're-use' means the use of organic solvents recovered from an installation for any technical or commercial purpose and including use as a fuel but excluding the final disposal of such recovered organic solvent as waste;
- (12) 'contained conditions' means conditions under which an installation is operated so that the volatile organic compounds released from the activity are collected and discharged in a controlled way either via a stack or abatement equipment and are, therefore, not entirely fugitive;
- (13) 'start-up and shut-down operations' means operations excluding regularly oscillating activity phases whilst bringing an activity, an equipment item or a tank into or out of service or into or out of an idling state.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

*Article 58***Substitution of hazardous substances**

Substances or mixtures which, because of their content of volatile organic compounds classified as carcinogens, mutagens, or toxic to reproduction under Regulation (EC) No 1272/2008, are assigned or need to carry the hazard statements H340, H350, H350i, H360D or H360F, shall be replaced, as far as possible by less harmful substances or mixtures within the shortest possible time.

*Article 59***Control of emissions**

1. Member States shall take the necessary measures to ensure that each installation complies with either of the following:

- (a) the emission of volatile organic compounds from installations shall not exceed the emission limit values in waste gases and the fugitive emission limit values, or the total emission limit values, and other requirements laid down in Parts 2 and 3 of Annex VII are complied with;
- (b) the requirements of the reduction scheme set out in Part 5 of Annex VII provided that an equivalent emission reduction is achieved compared to that achieved through the application of the emission limit values referred to in point (a).

Member States shall report to the Commission in accordance with Article 72(1) on the progress in achieving the equivalent emission reduction referred to in point (b).

2. By way of derogation from paragraph 1(a), where the operator demonstrates to the competent authority that for an individual installation the emission limit value for fugitive emissions is not technically and economically feasible, the competent authority may allow emissions to exceed that emission limit value provided that significant risks to human health or the environment are not to be expected and that the operator demonstrates to the competent authority that the best available techniques are being used.

3. By way of derogation from paragraph 1, for coating activities covered by item 8 of the table in Part 2 of Annex VII which cannot be carried out under contained conditions, the competent authority may allow the emissions of the installation not to comply with the requirements set out in that paragraph if the operator demonstrates to the competent authority that such compliance is not technically and economically feasible and that the best available techniques are being used.

4. Member States shall report to the Commission on the derogations referred to in paragraphs 2 and 3 of this Article in accordance with Article 72(2).

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5. The emissions of either volatile organic compounds which are assigned or need to carry the hazard statements H340, H350, H350i, H360D or H360F or halogenated volatile organic compounds which are assigned or need to carry the hazard statements H341 or H351, shall be controlled under contained conditions as far as technically and economically feasible to safeguard public health and the environment and shall not exceed the relevant emission limit values set out in Part 4 of Annex VII.

6. Installations where two or more activities are carried out, each of which exceeds the thresholds in Part 2 of Annex VII shall:

- (a) as regards the substances specified in paragraph 5, meet the requirements of that paragraph for each activity individually;
- (b) as regards all other substances, either:
 - (i) meet the requirements of paragraph 1 for each activity individually; or
 - (ii) have total emissions of volatile organic compounds not exceeding those which would have resulted had point (i) been applied.

7. All appropriate precautions shall be taken to minimise emissions of volatile organic compounds during start-up and shut-down operations.

*Article 60***Monitoring of emissions**

Member States shall, either by specification in the permit conditions or by general binding rules, ensure that measurements of emissions are carried out in accordance with Part 6 of Annex VII.

*Article 61***Compliance with emission limit values**

The emission limit values in waste gases shall be regarded as being complied with if the conditions set out in Part 8 of Annex VII are fulfilled.

*Article 62***Reporting on compliance**

The operator shall supply the competent authority, on request, with data enabling the competent authority to verify compliance with either of the following:

- (a) emission limit values in waste gases, fugitive emission limit values and total emission limit values;
- (b) the requirements of the reduction scheme under Part 5 of Annex VII;

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- (c) the derogations granted in accordance with Article 59(2) and (3).

This may include a solvent management plan prepared in accordance with Part 7 of Annex VII.

*Article 63***Substantial change to existing installations**

1. A change of the maximum mass input of organic solvents by an existing installation averaged over 1 day, where the installation is operated at its design output under conditions other than start-up and shut-down operations and maintenance of equipment, shall be considered as substantial if it leads to an increase of emissions of volatile organic compounds of more than:

- (a) 25 % for an installation carrying out either activities which fall within the lower threshold band of items 1, 3, 4, 5, 8, 10, 13, 16 or 17 of the table in Part 2 of Annex VII or, activities which fall under one of the other items of Part 2 of Annex VII, and with a solvent consumption of less than 10 tonnes per year;
- (b) 10 % for all other installations.

2. Where an existing installation undergoes a substantial change, or falls within the scope of this Directive for the first time following a substantial change, that part of the installation which undergoes the substantial change shall be treated either as a new installation or as an existing installation, provided that the total emissions of the whole installation do not exceed those that would have resulted had the substantially changed part been treated as a new installation.

3. In case of a substantial change, the competent authority shall check compliance of the installation with the requirements of this Directive.

*Article 64***Exchange of information on substitution of organic solvents**

The Commission shall organise an exchange of information with the Member States, the industry concerned and non-governmental organisations promoting environmental protection on the use of organic solvents and their potential substitutes and techniques which have the least potential effects on air, water, soil, ecosystems and human health.

The exchange of information shall be organised on all of the following:

- (a) fitness for use;
- (b) potential effects on human health and occupational exposure in particular;
- (c) potential effects on the environment;
- (d) the economic consequences, in particular the costs and benefits of the options available.

▼B*Article 65***Access to information**

1. The decision of the competent authority, including at least a copy of the permit, and any subsequent updates, shall be made available to the public.

The general binding rules applicable for installations and the list of installations subject to permitting and registration shall be made available to the public.

2. The results of the monitoring of emissions as required under Article 60 and held by the competent authority shall be made available to the public.

3. Paragraphs 1 and 2 of this Article shall apply, subject to the restrictions laid down in Article 4(1) and (2) of Directive 2003/4/EC.

CHAPTER VI

SPECIAL PROVISIONS FOR INSTALLATIONS PRODUCING TITANIUM DIOXIDE*Article 66***Scope**

This Chapter shall apply to installations producing titanium dioxide.

*Article 67***Prohibition of the disposal of waste**

Member States shall prohibit the disposal of the following waste into any water body, sea or ocean:

- (a) solid waste;
- (b) the mother liquors arising from the filtration phase following hydrolysis of the titanyl sulphate solution from installations applying the sulphate process; including the acid waste associated with such liquors, containing overall more than 0,5 % free sulphuric acid and various heavy metals and including such mother liquors which have been diluted until they contain 0,5 % or less free sulphuric acid;
- (c) waste from installations applying the chloride process containing more than 0,5 % free hydrochloric acid and various heavy metals, including such waste which has been diluted until it contains 0,5 % or less free hydrochloric acid;
- (d) filtration salts, sludges and liquid waste arising from the treatment (concentration or neutralisation) of the waste mentioned under points (b) and (c) and containing various heavy metals, but not including neutralised and filtered or decanted waste containing only traces of heavy metals and which, before any dilution, has a pH value above 5,5.

▼B*Article 68***Control of emissions into water**

Emissions from installations into water shall not exceed the emission limit values set out in Part 1 of Annex VIII.

*Article 69***Prevention and control of emissions into air**

1. The emission of acid droplets from installations shall be prevented.
2. Emissions into air from installations shall not exceed the emission limit values set out in Part 2 of Annex VIII.

*Article 70***Monitoring of emissions**

1. Member States shall ensure the monitoring of emissions into water in order to enable the competent authority to verify compliance with the permit conditions and Article 68.
2. Member States shall ensure the monitoring of emissions into air in order to enable the competent authority to verify compliance with the permit conditions and Article 69. Such monitoring shall include at least monitoring of emissions as set out in Part 3 of Annex VIII.
3. Monitoring shall be carried out in accordance with CEN standards or, if CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality.

CHAPTER VII

COMMITTEE, TRANSITIONAL AND FINAL PROVISIONS*Article 71***Competent authorities**

Member States shall designate the competent authorities responsible for carrying out the obligations arising from this Directive.

*Article 72***Reporting by Member States**

1. Member States shall ensure that information is made available to the Commission on the implementation of this Directive, on representative data on emissions and other forms of pollution, on emission limit values, on the application of best available techniques in accordance with Articles 14 and 15, in particular on the granting of exemptions in accordance with Article 15(4), and on progress made concerning the development and application of emerging techniques in accordance with Article 27. Member States shall make the information available in an electronic format.

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2. The type, format and frequency of information to be made available pursuant to paragraph 1 shall be established in accordance with the regulatory procedure referred to in Article 75(2). This shall include the determination of the specific activities and pollutants for which data referred to in paragraph 1 shall be made available.

3. For all combustion plants covered by Chapter III of this Directive, Member States shall, from 1 January 2016, establish an annual inventory of the sulphur dioxide, nitrogen oxides and dust emissions and energy input.

Taking into account the aggregation rules set out in Article 29, the competent authority shall obtain the following data for each combustion plant:

- (a) the total rated thermal input (MW) of the combustion plant;
- (b) the type of combustion plant: boiler, gas turbine, gas engine, diesel engine, other (specifying the type);
- (c) the date of the start of operation of the combustion plant;
- (d) the total annual emissions (tonnes per year) of sulphur dioxide, nitrogen oxides and dust (as total suspended particles);
- (e) the number of operating hours of the combustion plant;
- (f) the total annual amount of energy input, related to the net calorific value (TJ per year), broken down in terms of the following categories of fuel: coal, lignite, biomass, peat, other solid fuels (specifying the type), liquid fuels, natural gas, other gases (specifying the type).

The annual plant-by-plant data contained in these inventories shall be made available to the Commission upon request.

A summary of the inventories shall be made available to the Commission every 3 years within 12 months from the end of the three-year period considered. This summary shall show separately the data for combustion plants within refineries.

The Commission shall make available to the Member States and to the public a summary of the comparison and evaluation of those inventories in accordance with Directive 2003/4/EC within 24 months from the end of the three-year period considered.

4. Member States shall, from 1 January 2016, report the following data annually to the Commission:

- (a) for combustion plants to which Article 31 applies, the sulphur content of the indigenous solid fuel used and the rate of desulphurisation achieved, averaged over each month. For the first year where Article 31 is applied, the technical justification of the non-feasibility of complying with the emission limit values referred to in Article 30(2) and (3) shall also be reported; and
- (b) for combustion plants which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, the number of operating hours per year.



Article 73

Review

1. By 7 January 2016, and every 3 years thereafter, the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of this Directive on the basis of the information referred to in Article 72.

That report shall include an assessment of the need for Union action through the establishment or updating of Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance for activities within the scope of the BAT conclusions adopted during the previous three-year period, on the basis of the following criteria:

- (a) the impact of the activities concerned on the environment as a whole; and
- (b) the state of implementation of best available techniques for the activities concerned.

That assessment shall consider the opinion of the forum referred to in Article 13(4).

Chapter III and Annex V of this Directive shall be considered to represent the Union-wide minimum requirements in the case of large combustion plants.

The report shall be accompanied by a legislative proposal where appropriate. Where the assessment referred to in the second subparagraph identifies such a need, the legislative proposal shall include provisions establishing or updating Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance assessment for the activities concerned.

2. The Commission shall, by 31 December 2012, review the need to control emissions from:

- (a) the combustion of fuels in installations with a total rated thermal input below 50 MW;
- (b) the intensive rearing of cattle; and
- (c) the spreading of manure.

The Commission shall report the results of that review to the European Parliament and to the Council accompanied by a legislative proposal where appropriate.

3. The Commission shall report to the European Parliament and the Council, by 31 December 2011, on the establishment in Annex I of:

- (a) differentiated capacity thresholds for the rearing of different poultry species, including the specific case of quail;
- (b) capacity thresholds for the simultaneous rearing of different types of animals within the same installation.

The Commission shall report the results of that review to the European Parliament and to the Council accompanied by a legislative proposal where appropriate.

▼B*Article 74***Amendments of Annexes**

In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques, the Commission shall adopt delegated acts in accordance with Article 76 and subject to the conditions laid down in Articles 77 and 78 as regards the adaptation of Parts 3 and 4 of Annex V, Parts 2, 6, 7 and 8 of Annex VI and Parts 5, 6, 7 and 8 of Annex VII to such scientific and technical progress.

*Article 75***Committee procedure**

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at 3 months.

*Article 76***Exercise of the delegation**

1. The power to adopt the delegated acts referred to in Article 48(5) and Article 74 shall be conferred on the Commission for a period of 5 years from 6 January 2011. The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the five-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 77.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 77 and 78.

*Article 77***Revocation of the delegation**

1. The delegation of power referred to in Article 48(5) and Article 74 may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or on a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.



Article 78

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 2 months from the date of notification.

At the initiative of the European Parliament or the Council that period shall be extended by 2 months.

2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 79

Penalties

Member States shall determine penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 7 January 2013 and shall notify it without delay of any subsequent amendment affecting them.

Article 80

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2, points (8), (11) to (15), (18) to (23), (26) to (30), (34) to (38) and (41) of Article 3, Article 4(2) and (3), Article 7, Articles 8 and 10, Article 11(e) and (h), Article 12(1)(e) and (h), Article 13(7), point (ii) of Article 14(1)(c), points (d), (e), (f) and (h) of Article 14(1), Article 14(2) to (7), Article 15(2) to (5), Articles 16, 17 and 19, Article 21(2) to (5), Articles 22, 23, 24, 27, 28 and 29, Article 30(1), (2), (3), (4), (7) and (8), Articles 31, 32, 33, 34, 35, 36, 38 and 39, Article 40(2) and (3), Articles 42 and 43, Article 45(1), Article 58, Article 59(5), Article 63, Article 65(3), Articles 69, 70, 71, 72 and 79, and with the first subparagraph and points 1.1, 1.4, 2.5(b), 3.1, 4, 5, 6.1(c), 6.4(b), 6.10 and 6.11 of Annex I, Annex II, point 12 of Annex III, Annex V, point (b) of Part 1, points 2.2, 2.4, 3.1 and 3.2 of Part 4, points 2.5 and 2.6 of Part 6 and point 1.1(d) of Part 8 of Annex VI, point 2 of Part 4, point 1 of Part 5, point 3 of Part 7 of Annex VII, points 1 and 2(c) of Part 1, points 2 and 3 of Part 2 and Part 3 of Annex VIII by 7 January 2013.

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They shall apply those measures from that same date.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 81***Repeal**

1. Directives 78/176/EEC, 82/883/EEC, 92/112/EEC, 1999/13/EC, 2000/76/EC and 2008/1/EC, as amended by the acts listed in Annex IX, Part A are repealed with effect from 7 January 2014, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex IX, Part B.

2. Directive 2001/80/EC as amended by the acts listed in Annex IX, Part A is repealed with effect from 1 January 2016, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex IX, Part B.

3. References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex X.

*Article 82***Transitional provisions**

1. In relation to installations carrying out activities referred to in Annex I, point 1.1 for activities with a total rated thermal input exceeding 50 MW, points 1.2 and 1.3, point 1.4(a), points 2.1 to 2.6, points 3.1 to 3.5, points 4.1 to 4.6 for activities concerning production by chemical processing, points 5.1 and 5.2 for activities covered by Directive 2008/1/EC, point 5.3 (a)(i) and (ii), point 5.4, point 6.1(a) and (b), points 6.2 and 6.3, point 6.4(a), point 6.4(b) for activities covered by Directive 2008/1/EC, point 6.4(c) and points 6.5 to 6.9 which are in operation and hold a permit before 7 January 2013 or the operators of which have submitted a complete application for a permit before that date, provided that those installations are put into operation no later than 7 January 2014, Member States shall apply the laws, regulations and administrative provisions adopted in accordance with Article 80(1) from 7 January 2014 with the exception of Chapter III and Annex V.

2. In relation to installations carrying out activities referred to in Annex I, point 1.1 for activities with a total rated thermal input of 50 MW, point 1.4(b), points 4.1 to 4.6 for activities concerning production by biological processing, points 5.1 and 5.2 for activities not covered by Directive 2008/1/EC, point 5.3(a)(iii) to (v), point 5.3(b), points 5.5 and 5.6, point 6.1(c), point 6.4(b) for activities not covered by Directive 2008/1/EC and points 6.10 and 6.11 which are in operation before 7 January 2013, Member States shall apply the laws, regulations and administrative provisions adopted in accordance with this Directive from 7 July 2015 with the exception of Chapters III and IV and Annexes V and VI.

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3. In relation to combustion plants referred to in Article 30(2), Member States shall, from 1 January 2016, apply the laws, regulations and administrative provisions adopted in accordance with Article 80(1) to comply with Chapter III and Annex V.

4. In relation to combustion plants referred to in Article 30(3), Member States shall no longer apply Directive 2001/80/EC from 7 January 2013.

5. In relation to combustion plants which co-incinerate waste, point 3.1 of Part 4 of Annex VI shall apply until:

(a) 31 December 2015, for combustion plants referred to in Article 30(2);

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(b) 6 January 2013, for combustion plants referred to in Article 30(3).

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6. Point 3.2 of Part 4 of Annex VI shall apply in relation to combustion plants which co-incinerate waste, as from:

(a) 1 January 2016, for combustion plants referred to in Article 30(2)

(b) 7 January 2013, for combustion plants referred to in Article 30(3).

7. Article 58 shall apply from 1 June 2015. Until that date, substances or mixtures which, because of their content of volatile organic compounds classified as carcinogens, mutagens, or toxic to reproduction under Regulation (EC) No 1272/2008, are assigned or need to carry the hazard statements H340, H350, H350i, H360D or H360F or the risk phrases R45, R46, R49, R60 or R61, shall be replaced, as far as possible, by less harmful substances or mixtures within the shortest possible time.

8. Article 59(5) shall apply from 1 June 2015. Until that date, the emissions of either volatile organic compounds which are assigned or need to carry the hazard statements H340, H350, H350i, H360D or H360F or the risk phrases R45, R46, R49, R60 or R61 or halogenated volatile organic compounds which are assigned or need to carry the hazard statements H341 or H351 or the risk phrases R40 or R68, shall be controlled under contained conditions, as far as technically and economically feasible, to safeguard public health and the environment and shall not exceed the relevant emission limit values set out in Part 4 of Annex VII.

9. Point 2 of Part 4 of Annex VII shall apply from 1 June 2015. Until that date, for emissions of halogenated volatile organic compounds which are assigned or need to carry the hazard statements H341 or H351 or the risk phrases R40 or R68, where the mass flow of the sum of the compounds causing the hazard statements H341 or H351 or the labelling R40 or R68 is greater than, or equal to, 100 g/h, an emission limit value of 20 mg/Nm³ shall be complied with. The emission limit value refers to the mass sum of the individual compounds.

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Article 83

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 84

Addressees

This Directive is addressed to the Member States.

▼B*ANNEX I***Categories of activities referred to in Article 10**

The threshold values given below generally refer to production capacities or outputs. Where several activities falling under the same activity description containing a threshold are operated in the same installation, the capacities of such activities are added together. For waste management activities, this calculation shall apply at the level of activities 5.1, 5.3(a) and 5.3(b).

The Commission shall establish guidance on:

- (a) the relationship between waste management activities described in this Annex and those described in Annexes I and II to Directive 2008/98/EC; and
- (b) the interpretation of the term ‘industrial scale’ regarding the description of chemical industry activities described in this Annex.
 - 1. Energy industries
 - 1.1. Combustion of fuels in installations with a total rated thermal input of 50 MW or more
 - 1.2. Refining of mineral oil and gas
 - 1.3. Production of coke
 - 1.4. Gasification or liquefaction of:
 - (a) coal;
 - (b) other fuels in installations with a total rated thermal input of 20 MW or more.
 - 2. Production and processing of metals
 - 2.1. Metal ore (including sulphide ore) roasting or sintering
 - 2.2. Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour
 - 2.3. Processing of ferrous metals:
 - (a) operation of hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour;
 - (b) operation of smitheries with hammers the energy of which exceeds 50 kilojoule per hammer, where the calorific power used exceeds 20 MW;
 - (c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.
 - 2.4. Operation of ferrous metal foundries with a production capacity exceeding 20 tonnes per day
 - 2.5. Processing of non-ferrous metals:
 - (a) production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
 - (b) melting, including the alloyage, of non-ferrous metals, including recovered products and operation of non-ferrous metal foundries, with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.

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- 2.6. Surface treatment of metals or plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³
3. Mineral industry
 - 3.1. Production of cement, lime and magnesium oxide:
 - (a) production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other kilns with a production capacity exceeding 50 tonnes per day;
 - (b) production of lime in kilns with a production capacity exceeding 50 tonnes per day;
 - (c) production of magnesium oxide in kilns with a production capacity exceeding 50 tonnes per day.
 - 3.2. Production of asbestos or the manufacture of asbestos-based products
 - 3.3. Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day
 - 3.4. Melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day
 - 3.5. Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain with a production capacity exceeding 75 tonnes per day and/or with a kiln capacity exceeding 4 m³ and with a setting density per kiln exceeding 300 kg/m³
4. Chemical industry

For the purpose of this section, production within the meaning of the categories of activities contained in this section means the production on an industrial scale by chemical or biological processing of substances or groups of substances listed in points 4.1 to 4.6

 - 4.1. Production of organic chemicals, such as:
 - (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
 - (b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters and mixtures of esters, acetates, ethers, peroxides and epoxy resins;
 - (c) sulphurous hydrocarbons;
 - (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
 - (e) phosphorus-containing hydrocarbons;
 - (f) halogenic hydrocarbons;
 - (g) organometallic compounds;
 - (h) plastic materials (polymers, synthetic fibres and cellulose-based fibres);
 - (i) synthetic rubbers;

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- (j) dyes and pigments;
 - (k) surface-active agents and surfactants.
- 4.2. Production of inorganic chemicals, such as:
- (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
 - (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
 - (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
 - (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
 - (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.
- 4.3. Production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers)
- 4.4. Production of plant protection products or of biocides
- 4.5. Production of pharmaceutical products including intermediates
- 4.6. Production of explosives
5. Waste management
- 5.1. Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving one or more of the following activities:
- (a) biological treatment;
 - (b) physico-chemical treatment;
 - (c) blending or mixing prior to submission to any of the other activities listed in points 5.1 and 5.2;
 - (d) repackaging prior to submission to any of the other activities listed in points 5.1 and 5.2;
 - (e) solvent reclamation/regeneration;
 - (f) recycling/reclamation of inorganic materials other than metals or metal compounds;
 - (g) regeneration of acids or bases;
 - (h) recovery of components used for pollution abatement;
 - (i) recovery of components from catalysts;
 - (j) oil re-refining or other reuses of oil;

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- (k) surface impoundment.
- 5.2. Disposal or recovery of waste in waste incineration plants or in waste co-incineration plants:
- (a) for non-hazardous waste with a capacity exceeding 3 tonnes per hour;
 - (b) for hazardous waste with a capacity exceeding 10 tonnes per day.
- 5.3. (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day involving one or more of the following activities, and excluding activities covered by Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ⁽¹⁾:
- (i) biological treatment;
 - (ii) physico-chemical treatment;
 - (iii) pre-treatment of waste for incineration or co-incineration;
 - (iv) treatment of slags and ashes;
 - (v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.
- (b) Recovery, or a mix of recovery and disposal, of non-hazardous waste with a capacity exceeding 75 tonnes per day involving one or more of the following activities, and excluding activities covered by Directive 91/271/EEC:
- (i) biological treatment;
 - (ii) pre-treatment of waste for incineration or co-incineration;
 - (iii) treatment of slags and ashes;
 - (iv) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.
- When the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for this activity shall be 100 tonnes per day.
- 5.4. Landfills, as defined in Article 2(g) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽²⁾, receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste
- 5.5. Temporary storage of hazardous waste not covered under point 5.4 pending any of the activities listed in points 5.1, 5.2, 5.4 and 5.6 with a total capacity exceeding 50 tonnes, excluding temporary storage, pending collection, on the site where the waste is generated

⁽¹⁾ OJ L 135, 30.5.1991, p. 40.

⁽²⁾ OJ L 182, 16.7.1999, p. 1.

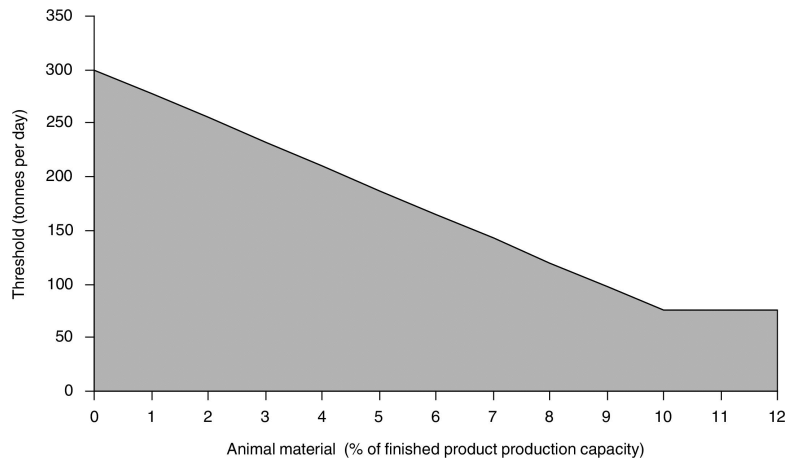
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- 5.6. Underground storage of hazardous waste with a total capacity exceeding 50 tonnes
6. Other activities
- 6.1. Production in industrial installations of:
- (a) pulp from timber or other fibrous materials;
- (b) paper or card board with a production capacity exceeding 20 tonnes per day;
- (c) one or more of the following wood-based panels: oriented strand board, particleboard or fibreboard with a production capacity exceeding 600 m³ per day.
- 6.2. Pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of textile fibres or textiles where the treatment capacity exceeds 10 tonnes per day
- 6.3. Tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day
- 6.4. (a) Operating slaughterhouses with a carcass production capacity greater than 50 tonnes per day
- (b) Treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed from:
- (i) only animal raw materials (other than exclusively milk) with a finished product production capacity greater than 75 tonnes per day;
- (ii) only vegetable raw materials with a finished product production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year;
- (iii) animal and vegetable raw materials, both in combined and separate products, with a finished product production capacity in tonnes per day greater than:
- 75 if A is equal to 10 or more; or,
- $[300 - (22,5 \times A)]$ in any other case,
- where 'A' is the portion of animal material (in percent of weight) of the finished product production capacity.

Packaging shall not be included in the final weight of the product.

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This subsection shall not apply where the raw material is milk only.



- (c) Treatment and processing of milk only, the quantity of milk received being greater than 200 tonnes per day (average value on an annual basis).
- 6.5. Disposal or recycling of animal carcasses or animal waste with a treatment capacity exceeding 10 tonnes per day
- 6.6. Intensive rearing of poultry or pigs:
 - (a) with more than 40 000 places for poultry;
 - (b) with more than 2 000 places for production pigs (over 30 kg), or
 - (c) with more than 750 places for sows.
- 6.7. Surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with an organic solvent consumption capacity of more than 150 kg per hour or more than 200 tonnes per year
- 6.8. Production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitisation
- 6.9. Capture of CO₂ streams from installations covered by this Directive for the purposes of geological storage pursuant to Directive 2009/31/EC
- 6.10. Preservation of wood and wood products with chemicals with a production capacity exceeding 75 m³ per day other than exclusively treating against sapstain
- 6.11. Independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation covered by Chapter II

▼B*ANNEX II***List of polluting substances**

AIR

1. Sulphur dioxide and other sulphur compounds
2. Oxides of nitrogen and other nitrogen compounds
3. Carbon monoxide
4. Volatile organic compounds
5. Metals and their compounds
6. Dust including fine particulate matter
7. Asbestos (suspended particulates, fibres)
8. Chlorine and its compounds
9. Fluorine and its compounds
10. Arsenic and its compounds
11. Cyanides
12. Substances and mixtures which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air
13. Polychlorinated dibenzodioxins and polychlorinated dibenzofurans

WATER

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment
2. Organophosphorus compounds
3. Organotin compounds
4. Substances and mixtures which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment
5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances
6. Cyanides
7. Metals and their compounds
8. Arsenic and its compounds
9. Biocides and plant protection products
10. Materials in suspension
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates)

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12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.)
13. Substances listed in Annex X to Directive 2000/60/EC

▼B*ANNEX III***Criteria for determining best available techniques**

1. the use of low-waste technology;
2. the use of less hazardous substances;
3. the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
4. comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
5. technological advances and changes in scientific knowledge and understanding;
6. the nature, effects and volume of the emissions concerned;
7. the commissioning dates for new or existing installations;
8. the length of time needed to introduce the best available technique;
9. the consumption and nature of raw materials (including water) used in the process and energy efficiency;
10. the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
11. the need to prevent accidents and to minimise the consequences for the environment;
12. information published by public international organisations.



ANNEX IV

Public participation in decision-making

1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:
 - (a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions in accordance with Article 21, including the description of the elements listed in Article 12(1);
 - (b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 26;
 - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
 - (d) the nature of possible decisions or, where there is one, the draft decision;
 - (e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;
 - (f) an indication of the times and places where, or means by which, the relevant information will be made available;
 - (g) details of the arrangements for public participation and consultation made pursuant to point 5.
2. Member States shall ensure that, within appropriate time-frames, the following is made available to the public concerned:
 - (a) in accordance with national law, the main reports and advice issued to the competent authority or authorities at the time when the public concerned were informed in accordance with point 1;
 - (b) in accordance with Directive 2003/4/EC, information other than that referred to in point 1 which is relevant for the decision in accordance with Article 5 of this Directive and which only becomes available after the time the public concerned was informed in accordance with point 1.
3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.
4. The results of the consultations held pursuant to this Annex must be taken into due account in the taking of a decision.
5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States. Reasonable time-frames for the different phases shall be provided, allowing sufficient time to inform the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to this Annex.

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ANNEX V

Technical provisions relating to combustion plants

PART 1

Emission limit values for combustion plants referred to in Article 30(2)

- All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6 % for solid fuels, 3 % for combustion plants, other than gas turbines and gas engines using liquid and gaseous fuels and 15 % for gas turbines and gas engines.
- Emission limit values (mg/Nm³) for SO₂ for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	250	200	300	250
> 300	200	200	200	200

Combustion plants, using solid fuels which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for SO₂ of 800 mg/Nm³.

Combustion plants using liquid fuels, which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for SO₂ of 850 mg/Nm³ in case of plants with a total rated thermal input not exceeding 300 MW and of 400 mg/Nm³ in case of plants with a total rated thermal input greater than 300 MW.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding two paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

- Emission limit values (mg/Nm³) for SO₂ for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

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Combustion plants, firing low calorific gases from gasification of refinery residues, which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for SO₂ of 800 mg/Nm³.

4. Emission limit values (mg/Nm³) for NO_x for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels
50-100	300 450 in case of pulverised lignite combustion	300	450
100-300	200	250	200 ⁽¹⁾
> 300	200	200	150 ⁽¹⁾

Note:

- ⁽¹⁾ The emission limit value is 450 mg/Nm³ for the firing of distillation and conversion residues from the refining of crude-oil for own consumption in combustion plants with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

Combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for NO_x of 450 mg/Nm³.

Combustion plants using solid or liquid fuels with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 450 mg/Nm³.

Combustion plants using solid fuels with a total rated thermal input greater than 500 MW, which were granted a permit before 1 July 1987 and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 450 mg/Nm³.

Combustion plants using liquid fuels, with a total rated thermal input greater than 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 400 mg/Nm³.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding three paragraphs in relation to the total rated thermal

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input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

5. Gas turbines (including combined cycle gas turbines (CCGT)) using light and middle distillates as liquid fuels shall be subject to an emission limit value for NO_x of 90 mg/Nm^3 and for CO of 100 mg/Nm^3 .

Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm^3) for NO_x and CO for gas fired combustion plants

	NO_x	CO
Combustion plants firing natural gas with the exception of gas turbines and gas engines	100	100
Combustion plants firing blast furnace gas, coke oven gas or low calorific gases from gasification of refinery residues, with the exception of gas turbines and gas engines	200 ⁽⁴⁾	—
Combustion plants firing other gases, with the exception of gas turbines and gas engines	200 ⁽⁴⁾	—
Gas turbines (including CCGT), using natural gas ⁽¹⁾ as fuel	50 ⁽²⁾ ⁽³⁾	100
Gas turbines (including CCGT), using other gases as fuel	120	—
Gas engines	100	100

Notes:

- ⁽¹⁾ Natural gas is naturally occurring methane with not more than 20 % (by volume) of inerts and other constituents.
- ⁽²⁾ 75 mg/Nm^3 in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:
- (i) gas turbines, used in combined heat and power systems having an overall efficiency greater than 75 %;
 - (ii) gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55 %;
 - (iii) gas turbines for mechanical drives.
- ⁽³⁾ For single cycle gas turbines not falling into any of the categories mentioned under note (2), but having an efficiency greater than 35 % – determined at ISO base load conditions – the emission limit value for NO_x shall be $50\eta/35$ where η is the gas turbine efficiency at ISO base load conditions expressed as a percentage.
- ⁽⁴⁾ 300 mg/Nm^3 for such combustion plants with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

For gas turbines (including CCGT), the NO_x and CO emission limit values set out in the table contained in this point apply only above 70 % load.

For gas turbines (including CCGT) which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, the emission limit value for NO_x is 150 mg/Nm^3 when firing natural gas and 200 mg/Nm^3 when firing other gases or liquid fuels.

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A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding paragraph in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

7. Emission limit values (mg/Nm³) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels ⁽¹⁾
50-100	30	30	30
100-300	25	20	25
> 300	20	20	20

Note:

⁽¹⁾ The emission limit value is 50 mg/Nm³ for the firing of distillation and conversion residues from the refining of crude oil for own consumption in combustion plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

8. Emission limit values (mg/Nm³) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

PART 2

Emission limit values for combustion plants referred to in Article 30(3)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6 % for solid fuels, 3 % for combustion plants other than gas turbines and gas engines using liquid and gaseous fuels and 15 % for gas turbines and gas engines.

In case of combined cycle gas turbines with supplementary firing, the standardised O₂ content may be defined by the competent authority, taking into account the specific characteristics of the installation concerned.

2. Emission limit values (mg/Nm³) for SO₂ for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

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Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	200	200	300 250 in case of fluidised bed combustion	200
> 300	150 200 in case of circulating or pressurised fluidised bed combustion	150	150 200 in case of fluidised bed combustion	150

3. Emission limit values (mg/Nm³) for SO₂ for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

4. Emission limit values (mg/Nm³) for NO_x for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels
50-100	300 400 in case of pulverised lignite combustion	250	300
100-300	200	200	150
> 300	150 200 in case of pulverised lignite combustion	150	100

5. Gas turbines (including CCGT) using light and middle distillates as liquid fuels shall be subject to an emission limit value for NO_x of 50 mg/Nm³ and for CO of 100 mg/Nm³

Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm³) for NO_x and CO for gas fired combustion plants

	NO _x	CO
Combustion plants other than gas turbines and gas engines	100	100
Gas turbines (including CCGT)	50 ⁽¹⁾	100
Gas engines	75	100

Note:

- ⁽¹⁾ For single cycle gas turbines having an efficiency greater than 35 % – determined at ISO base load conditions – the emission limit value for NO_x shall be 50xη/35 where η is the gas turbine efficiency at ISO base load conditions expressed as a percentage.

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For gas turbines (including CCGT), the NO_x and CO emission limit values set out in this point apply only above 70 % load.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

7. Emission limit values (mg/Nm³) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	
50-300	20
> 300	10 20 for biomass and peat

8. Emission limit values (mg/Nm³) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

PART 3

Emission monitoring

1. The concentrations of SO₂, NO_x and dust in waste gases from each combustion plant with a total rated thermal input of 100 MW or more shall be measured continuously.

The concentration of CO in waste gases from each combustion plant firing gaseous fuels with a total rated thermal input of 100 MW or more shall be measured continuously.

2. The competent authority may decide not to require the continuous measurements referred to in point 1 in the following cases:
- for combustion plants with a life span of less than 10 000 operational hours;
 - for SO₂ and dust from combustion plants firing natural gas;
 - for SO₂ from combustion plants firing oil with known sulphur content in cases where there is no waste gas desulphurisation equipment;
 - for SO₂ from combustion plants firing biomass if the operator can prove that the SO₂ emissions can under no circumstances be higher than the prescribed emission limit values.
3. Where continuous measurements are not required, measurements of SO₂, NO_x, dust and, for gas fired plants, also of CO shall be required at least once every 6 months.

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4. For combustion plants firing coal or lignite, the emissions of total mercury shall be measured at least once per year.
5. As an alternative to the measurements of SO₂ and NO_x referred to in point 3, other procedures, verified and approved by the competent authority, may be used to determine the SO₂ and NO_x emissions. Such procedures shall use relevant CEN standards or, if CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality.
6. The competent authority shall be informed of significant changes in the type of fuel used or in the mode of operation of the plant. The competent authority shall decide whether the monitoring requirements laid down in points 1 to 4 are still adequate or require adaptation.
7. The continuous measurements carried out in accordance with point 1 shall include the measurement of the oxygen content, temperature, pressure and water vapour content of the waste gases. The continuous measurement of the water vapour content of the waste gases shall not be necessary, provided that the sampled waste gas is dried before the emissions are analysed.
8. Sampling and analysis of relevant polluting substances and measurements of process parameters as well as the quality assurance of automated measuring systems and the reference measurement methods to calibrate those systems shall be carried out in accordance with CEN standards. If CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality shall apply.

The automated measuring systems shall be subject to control by means of parallel measurements with the reference methods at least once per year.

The operator shall inform the competent authority about the results of the checking of the automated measuring systems.

9. At the emission limit value level, the values of the 95 % confidence intervals of a single measured result shall not exceed the following percentages of the emission limit values:

Carbon monoxide	10 %
Sulphur dioxide	20 %
Nitrogen oxides	20 %
Dust	30 %

10. The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified in point 9.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the automated measuring system shall be invalidated. If more than 10 days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the automated measuring system.

11. In the case of plants which must comply with the rates of desulphurisation referred to in Article 31, the sulphur content of the fuel which is fired in the combustion plant shall also be regularly monitored. The competent authorities shall be informed of substantial changes in the type of fuel used.

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PART 4

Assessment of compliance with emission limit values

1. In the case of continuous measurements, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the evaluation of the measurement results indicates, for operating hours within a calendar year, that all of the following conditions have been met:
 - (a) no validated monthly average value exceeds the relevant emission limit values set out in Parts 1 and 2;
 - (b) no validated daily average value exceeds 110 % of the relevant emission limit values set out in Parts 1 and 2;
 - (c) in cases of combustion plants composed only of boilers using coal with a total rated thermal input below 50 MW, no validated daily average value exceeds 150 % of the relevant emission limit values set out in Parts 1 and 2,
 - (d) 95 % of all the validated hourly average values over the year do not exceed 200 % of the relevant emission limit values set out in Parts 1 and 2.

The validated average values are determined as set out in point 10 of Part 3.

For the purpose of the calculation of the average emission values, the values measured during the periods referred to in Article 30(5) and (6) and Article 37 as well as during the start-up and shut-down periods shall be disregarded.

2. Where continuous measurements are not required, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the results of each of the series of measurements or of the other procedures defined and determined according to the rules laid down by the competent authorities do not exceed the emission limit values.

PART 5

Minimum rate of desulphurisation

1. Minimum rate of desulphurisation for combustion plants referred to in Article 30(2)

Total rated thermal input (MW)	Minimum rate of desulphurisation	
	Plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003	Other plants
50-100	80 %	92 %
100-300	90 %	92 %
> 300	96 % ⁽¹⁾	96 %

Note:

⁽¹⁾ For combustion plants firing oil shale, the minimum rate of desulphurisation is 95 %.

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2. Minimum rate of desulphurisation for combustion plants referred to in Article 30(3)

Total rated thermal input (MW)	Minimum rate of desulphurisation
50-100	93 %
100-300	93 %
> 300	97 %

PART 6

Compliance with rate of desulphurisation

The minimum rates of desulphurisation set out in Part 5 of this Annex shall apply as a monthly average limit value.

PART 7

Average emission limit values for multi-fuel firing combustion plants within a refinery

Average emission limit values (mg/Nm³) for SO₂ for multi-fuel firing combustion plants within a refinery, with the exception of gas turbines and gas engines, which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels:

- (a) for combustion plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003: 1 000 mg/Nm³;
- (b) for other combustion plants: 600 mg/Nm³.

These emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6 % for solid fuels and 3 % for liquid and gaseous fuels.

▼B*ANNEX VI***Technical provisions relating to waste incineration plants and waste co-incineration plants**

PART 1

Definitions

For the purpose of this Annex the following definitions shall apply:

- (a) ‘existing waste incineration plant’ means one of the following waste incineration plants:
- (i) which was in operation and had a permit in accordance with applicable Union law before 28 December 2002,
 - (ii) which was authorised or registered for waste incineration and had a permit granted before 28 December 2002 in accordance with applicable Union law, provided that the plant was put into operation no later than 28 December 2003,
 - (iii) which, in the view of the competent authority, was the subject of a full request for authorisation before 28 December 2002, provided that the plant was put into operation not later than 28 December 2004;
- (b) ‘new waste incineration plant’ means any waste incineration plant not covered by point (a).

PART 2

Equivalence factors for dibenzo-p-dioxins and dibenzofurans

For the determination of the total concentration of dioxins and furans, the mass concentrations of the following dibenzo-p-dioxins and dibenzofurans shall be multiplied by the following equivalence factors before summing:

	Toxic equivalence factor
2,3,7,8 — Tetrachlorodibenzodioxin (TCDD)	1
1,2,3,7,8 — Pentachlorodibenzodioxin (PeCDD)	0,5
1,2,3,4,7,8 — Hexachlorodibenzodioxin (HxCDD)	0,1
1,2,3,6,7,8 — Hexachlorodibenzodioxin (HxCDD)	0,1
1,2,3,7,8,9 — Hexachlorodibenzodioxin (HxCDD)	0,1
1,2,3,4,6,7,8 — Heptachlorodibenzodioxin (HpCDD)	0,01
Octachlorodibenzodioxin (OCDD)	0,001
2,3,7,8 — Tetrachlorodibenzofuran (TCDF)	0,1
2,3,4,7,8 — Pentachlorodibenzofuran (PeCDF)	0,5
1,2,3,7,8 — Pentachlorodibenzofuran (PeCDF)	0,05
1,2,3,4,7,8 — Hexachlorodibenzofuran (HxCDF)	0,1
1,2,3,6,7,8 — Hexachlorodibenzofuran (HxCDF)	0,1
1,2,3,7,8,9 — Hexachlorodibenzofuran (HxCDF)	0,1
2,3,4,6,7,8 — Hexachlorodibenzofuran (HxCDF)	0,1
1,2,3,4,6,7,8 — Heptachlorodibenzofuran (HpCDF)	0,01
1,2,3,4,7,8,9 — Heptachlorodibenzofuran (HpCDF)	0,01
Octachlorodibenzofuran (OCDF)	0,001

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PART 3

Air emission limit values for waste incineration plants

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correcting for the water vapour content of the waste gases.

They are standardised at 11 % oxygen in waste gas except in case of incineration of mineral waste oil as defined in point 3 of Article 3 of Directive 2008/98/EC, when they are standardised at 3 % oxygen, and in the cases referred to in Point 2.7 of Part 6.

- 1.1. Daily average emission limit values for the following polluting substances (mg/Nm³)

Total dust	10
Gaseous and vaporous organic substances, expressed as total organic carbon (TOC)	10
Hydrogen chloride (HCl)	10
Hydrogen fluoride (HF)	1
Sulphur dioxide (SO ₂)	50
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as NO ₂ for existing waste incineration plants with a nominal capacity exceeding 6 tonnes per hour or new waste incineration plants	200
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as NO ₂ for existing waste incineration plants with a nominal capacity of 6 tonnes per hour or less	400

- 1.2. Half-hourly average emission limit values for the following polluting substances (mg/Nm³)

	(100 %) A	(97 %) B
Total dust	30	10
Gaseous and vaporous organic substances, expressed as total organic carbon (TOC)	20	10
Hydrogen chloride (HCl)	60	10
Hydrogen fluoride (HF)	4	2
Sulphur dioxide (SO ₂)	200	50
Nitrogen monoxide (NO) and nitrogen dioxide (NO ₂), expressed as NO ₂ for existing waste incineration plants with a nominal capacity exceeding 6 tonnes per hour or new waste incineration plants	400	200

- 1.3. Average emission limit values (mg/Nm³) for the following heavy metals over a sampling period of a minimum of 30 minutes and a maximum of 8 hours

Cadmium and its compounds, expressed as cadmium (Cd)	Total: 0,05
Thallium and its compounds, expressed as thallium (Tl)	
Mercury and its compounds, expressed as mercury (Hg)	0,05

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Antimony and its compounds, expressed as antimony (Sb)	Total: 0,5
Arsenic and its compounds, expressed as arsenic (As)	
Lead and its compounds, expressed as lead (Pb)	
Chromium and its compounds, expressed as chromium (Cr)	
Cobalt and its compounds, expressed as cobalt (Co)	
Copper and its compounds, expressed as copper (Cu)	
Manganese and its compounds, expressed as manganese (Mn)	
Nickel and its compounds, expressed as nickel (Ni)	
Vanadium and its compounds, expressed as vanadium (V)	

These average values cover also the gaseous and the vapour forms of the relevant heavy metal emissions as well as their compounds.

- 1.4. Average emission limit value (ng/Nm³) for dioxins and furans over a sampling period of a minimum of 6 hours and a maximum of 8 hours. The emission limit value refers to the total concentration of dioxins and furans calculated in accordance with Part 2.

Dioxins and furans	0,1
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- 1.5. Emission limit values (mg/Nm³) for carbon monoxide (CO) in the waste gases:

- (a) 50 as daily average value;
- (b) 100 as half-hourly average value;
- (c) 150 as 10-minute average value.

The competent authority may authorise exemptions from the emission limit values set out in this point for waste incineration plants using fluidised bed technology, provided that the permit sets an emission limit value for carbon monoxide (CO) of not more than 100 mg/Nm³ as an hourly average value.

2. Emission limit values applicable in the circumstances described in Article 46(6) and Article 47.

The total dust concentration in the emissions into the air of a waste incineration plant shall under no circumstances exceed 150 mg/Nm³ expressed as a half-hourly average. The air emission limit values for TOC and CO set out in points 1.2 and 1.5(b) shall not be exceeded.

3. Member States may lay down rules governing the exemptions provided for in this Part.

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PART 4

Determination of air emission limit values for the co-incineration of waste

1. The following formula (mixing rule) shall be applied whenever a specific total emission limit value 'C' has not been set out in a table in this Part.

The emission limit value for each relevant polluting substance and CO in the waste gas resulting from the co-incineration of waste shall be calculated as follows:

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$$\frac{V_{\text{waste}} \times C_{\text{waste}} + V_{\text{proc}} \times C_{\text{proc}}}{V_{\text{waste}} + V_{\text{proc}}} = C$$

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V_{waste} : waste gas volume resulting from the incineration of waste only determined from the waste with the lowest calorific value specified in the permit and standardised at the conditions given by this Directive.

If the resulting heat release from the incineration of hazardous waste amounts to less than 10 % of the total heat released in the plant, V_{waste} must be calculated from a (notional) quantity of waste that, being incinerated, would equal 10 % heat release, the total heat release being fixed.

C_{waste} : emission limit values for waste incineration plants set out in Part 3

V_{proc} : waste gas volume resulting from the plant process including the combustion of the authorised fuels normally used in the plant (wastes excluded) determined on the basis of oxygen contents at which the emissions must be standardised as set out in Union or national law. In the absence of legislation for this kind of plant, the real oxygen content in the waste gas without being thinned by addition of air unnecessary for the process must be used.

C_{proc} : emission limit values as set out in this Part for certain industrial activities or in case of the absence of such values, emission limit values of plants which comply with the national laws, regulations and administrative provisions for such plants while burning the normally authorised fuels (wastes excluded). In the absence of these measures the emission limit values set out in the permit are used. In the absence of such permit values the real mass concentrations are used.

C: total emission limit values at an oxygen content as set out in this Part for certain industrial activities and certain polluting substances or, in case of the absence of such values, total emission limit values replacing the emission limit values as set out in specific Annexes of this Directive. The total oxygen content to replace the oxygen content for the standardisation is calculated on the basis of the content above respecting the partial volumes.

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All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correcting for the water vapour content of the waste gases.

Member States may lay down rules governing the exemptions provided for in this Part.

2. Special provisions for cement kilns co-incinerating waste
- 2.1. The emission limit values set out in points 2.2 and 2.3 apply as daily average values for total dust, HCl, HF, NO_x, SO₂ and TOC (for continuous measurements), as average values over the sampling period of a minimum of 30 minutes and a maximum of 8 hours for heavy metals and as average values over the sampling period of a minimum of 6 hours and a maximum of 8 hours for dioxins and furans.

All values are standardised at 10 % oxygen.

Half-hourly average values shall only be needed in view of calculating the daily average values.

- 2.2. C – total emission limit values (mg/Nm³ except for dioxins and furans) for the following –polluting substances

Polluting substance	C
Total dust	30
HCl	10
HF	1
NO _x	500 ⁽¹⁾
Cd + Tl	0,05
Hg	0,05
Sb + As + Pb + Cr + Co + Cu + Mn + Ni + V	0,5
Dioxins and furans (ng/Nm ³)	0,1

⁽¹⁾ Until 1 January 2016, the competent authority may authorise exemptions from the limit value for NO_x for Lepol kilns and long rotary kilns provided that the permit sets a total emission limit value for NO_x of not more than 800 mg/Nm³.

- 2.3. C – total emission limit values (mg/Nm³) for SO₂ and TOC

Pollutant	C
SO ₂	50
TOC	10

The competent authority may grant derogations for emission limit values set out in this point in cases where TOC and SO₂ do not result from the co-incineration of waste.

- 2.4. C- total emission limit values for CO

The competent authority may set emission limit values for CO.

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3. Special provisions for combustion plants co-incinerating waste
- 3.1. C_{proc} expressed as daily average values (mg/Nm^3) valid until the date set out in Article 82(5)

For determining the total rated thermal input of the combustion plants, the aggregation rules as defined in Article 29 shall apply. Half-hourly average values shall only be needed in view of calculating the daily average values.

C_{proc} for solid fuels with the exception of biomass (O_2 content 6 %):

Polluting substances	< 50 MWth	50-100 MWth	100 to 300 MWth	> 300 MWth
SO_2	—	850	200	200
NO_x	—	400	200	200
Dust	50	50	30	30

C_{proc} for biomass (O_2 content 6 %):

Polluting substances	< 50 MWth	50 to 100 MWth	100 to 300 MWth	> 300 MWth
SO_2	—	200	200	200
NO_x	—	350	300	200
Dust	50	50	30	30

C_{proc} for liquid fuels (O_2 content 3 %):

Polluting substances	< 50 MWth	50 to 100 MWth	100 to 300 MWth	> 300 MWth
SO_2	—	850	400 to 200 (linear decrease from 100 to 300 MWth)	200
NO_x	—	400	200	200
Dust	50	50	30	30

- 3.2. C_{proc} expressed as daily average values (mg/Nm^3) valid from the date set out in Article 82(6)

For determining the total rated thermal input of the combustion plants, the aggregation rules as defined in Article 29 shall apply. Half-hourly average values shall only be needed in view of calculating the daily average values.

- 3.2.1. C_{proc} for combustion plants referred to in Article 30(2), with the exception of gas turbines and gas engines

C_{proc} for solid fuels with the exception of biomass (O_2 content 6 %):

Polluting substance	< 50 MWth	50-100 MWth	100 to 300 MWth	> 300 MWth
SO_2	—	400 for peat: 300	200	200

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Polluting substance	< 50 MWth	50-100 MWth	100 to 300 MWth	> 300 MWth
NO _x	—	300 for pulverised lignite: 400	200	200
Dust	50	30	25 for peat: 20	20

C_{proc} for biomass (O₂ content 6 %):

Polluting substance	< 50 MWth	50 to 100 MWth	100 to 300 MWth	> 300 MWth
SO ₂	—	200	200	200
NO _x	—	300	250	200
Dust	50	30	20	20

C_{proc} for liquid fuels (O₂ content 3 %):

Polluting substance	< 50 MWth	50 to 100 MWth	100 to 300 MWth	> 300 MWth
SO ₂	—	350	250	200
NO _x	—	400	200	150
Dust	50	30	25	20

3.2.2. C_{proc} for combustion plants referred to in Article 30(3), with the exception of gas turbines and gas engines

C_{proc} for solid fuels with the exception of biomass (O₂ content 6 %):

Polluting substance	< 50 MWth	50-100 MWth	100 to 300 MWth	> 300 MWth
SO ₂	—	400 for peat: 300	200 for peat: 300, except in the case of fluidised bed combustion: 250	150 for circulating or pressurised fluidised bed combustion or, in case of peat firing, for all fluidised bed combustion: 200
NO _x	—	300 for peat: 250	200	150 for pulverised lignite combustion: 200
Dust	50	20	20	10 for peat: 20

C_{proc} for biomass (O₂ content 6 %):

Polluting substance	< 50 MWth	50 to 100 MWth	100 to 300 MWth	> 300 MWth
SO ₂	—	200	200	150
NO _x	—	250	200	150
Dust	50	20	20	20

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C_{proc} for liquid fuels (O_2 content 3 %):

Polluting substance	< 50 MWth	50 to 100 MWth	100 to 300 MWth	> 300 MWth
SO ₂	—	350	200	150
NO _x	—	300	150	100
Dust	50	20	20	10

- 3.3. C — total emission limit values for heavy metals (mg/Nm³) expressed as average values over the sampling period of a minimum of 30 minutes and a maximum of 8 hours (O_2 content 6 % for solid fuels and 3 % for liquid fuels)

Polluting substances	C
Cd + Tl	0,05
Hg	0,05
Sb + As + Pb + Cr + Co + Cu + Mn + Ni + V	0,5

- 3.4. C — total emission limit value (ng/Nm³) for dioxins and furans expressed as average value measured over the sampling period of a minimum of 6 hours and a maximum of 8 hours (O_2 content 6 % for solid fuels and 3 % for liquid fuels)

Polluting substance	C
Dioxins and furans	0,1

4. Special provisions for waste co-incineration plants in industrial sectors not covered under Points 2 and 3 of this Part

- 4.1. C — total emission limit value (ng/Nm³) for dioxins and furans expressed as average value measured over the sampling period of a minimum of 6 hours and a maximum of 8 hours:

Polluting substance	C
Dioxins and furans	0,1

- 4.2. C — total emission limit values (mg/Nm³) for heavy metals expressed as average values over the sampling period of a minimum of 30 minutes and a maximum of 8 hours:

Polluting substances	C
Cd + Tl	0,05
Hg	0,05



PART 5

Emission limit values for discharges of waste water from the cleaning of waste gases

Polluting substances	Emission limit values for unfiltered samples (mg/l except for dioxins and furans)	
	(95 %)	(100 %)
1. Total suspended solids as defined in Annex I of Directive 91/271/EEC	30	45
2. Mercury and its compounds, expressed as mercury (Hg)	0,03	
3. Cadmium and its compounds, expressed as cadmium (Cd)	0,05	
4. Thallium and its compounds, expressed as thallium (Tl)	0,05	
5. Arsenic and its compounds, expressed as arsenic (As)	0,15	
6. Lead and its compounds, expressed as lead (Pb)	0,2	
7. Chromium and its compounds, expressed as chromium (Cr)	0,5	
8. Copper and its compounds, expressed as copper (Cu)	0,5	
9. Nickel and its compounds, expressed as nickel (Ni)	0,5	
10. Zinc and its compounds, expressed as zinc (Zn)	1,5	
11. Dioxins and furans	0,3 ng/l	

PART 6

Monitoring of emissions

1. Measurement techniques
 - 1.1. Measurements for the determination of concentrations of air and water polluting substances shall be carried out representatively.
 - 1.2. Sampling and analysis of all polluting substances including dioxins and furans as well as the quality assurance of automated measuring systems and the reference measurement methods to calibrate them shall be carried out according to CEN-standards. If CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality shall apply. Automated measuring systems shall be subject to control by means of parallel measurements with the reference methods at least once per year.
 - 1.3. At the daily emission limit value level, the values of the 95 % confidence intervals of a single measured result shall not exceed the following percentages of the emission limit values:

Carbon monoxide:	10 %
Sulphur dioxide:	20 %
Nitrogen dioxide:	20 %
Total dust:	30 %
Total organic carbon:	30 %

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Hydrogen chloride:	40 %
Hydrogen fluoride:	40 %.

Periodic measurements of the emissions into air and water shall be carried out in accordance with points 1.1 and 1.2.

2. Measurements relating to air polluting substances
 - 2.1. The following measurements relating to air polluting substances shall be carried out:
 - (a) continuous measurements of the following substances: NO_x, provided that emission limit values are set, CO, total dust, TOC, HCl, HF, SO₂;
 - (b) continuous measurements of the following process operation parameters: temperature near the inner wall or at another representative point of the combustion chamber as authorised by the competent authority, concentration of oxygen, pressure, temperature and water vapour content of the waste gas;
 - (c) at least two measurements per year of heavy metals and dioxins and furans; one measurement at least every 3 months shall, however, be carried out for the first 12 months of operation.
 - 2.2. The residence time as well as the minimum temperature and the oxygen content of the waste gases shall be subject to appropriate verification, at least once when the waste incineration plant or waste co-incineration plant is brought into service and under the most unfavourable operating conditions anticipated.
 - 2.3. The continuous measurement of HF may be omitted if treatment stages for HCl are used which ensure that the emission limit value for HCl is not being exceeded. In that case the emissions of HF shall be subject to periodic measurements as laid down in point 2.1(c).
 - 2.4. The continuous measurement of the water vapour content shall not be required if the sampled waste gas is dried before the emissions are analysed.
 - 2.5. The competent authority may decide not to require continuous measurements for HCl, HF and SO₂ in waste incineration plants or waste co-incineration plants and require periodic measurements as set out in point 2.1(c) or no measurements if the operator can prove that the emissions of those pollutants can under no circumstances be higher than the prescribed emission limit values.

The competent authority may decide not to require continuous measurements for NO_x and require periodic measurements as set out in point 2.1(c) in existing waste incineration plants with a nominal capacity of less than 6 tonnes per hour or in existing waste co-incineration plants with a nominal capacity of less than 6 tonnes per hour if the operator can prove on the basis of information on the quality of the waste concerned, the technologies used and the results of the monitoring of emissions, that the emissions of NO_x can under no circumstances be higher than the prescribed emission limit value.

- 2.6. The competent authority may decide to require one measurement every 2 years for heavy metals and one measurement per year for dioxins and furans in the following cases:
 - (a) the emissions resulting from co-incineration or incineration of waste are under all circumstances below 50 % of the emission limit values;

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- (b) the waste to be co-incinerated or incinerated consists only of certain sorted combustible fractions of non-hazardous waste not suitable for recycling and presenting certain characteristics, and which is further specified on the basis of the assessment referred to in point (c);
 - (c) the operator can prove on the basis of information on the quality of the waste concerned and the monitoring of the emissions that the emissions are under all circumstances significantly below the emission limit values for heavy metals and dioxins and furans.
- 2.7. The results of the measurements shall be standardised using the standard oxygen concentrations mentioned in Part 3 or calculated according to Part 4 and by applying the formula given in Part 7.

When waste is incinerated or co-incinerated in an oxygen-enriched atmosphere, the results of the measurements can be standardised at an oxygen content laid down by the competent authority reflecting the special circumstances of the individual case.

When the emissions of polluting substances are reduced by waste gas treatment in a waste incineration plant or waste co-incineration plant treating hazardous waste, the standardisation with respect to the oxygen contents provided for in the first subparagraph shall be done only if the oxygen content measured over the same period as for the polluting substance concerned exceeds the relevant standard oxygen content.

3. Measurements relating to water polluting substances
- 3.1. The following measurements shall be carried out at the point of waste water discharge:
- (a) continuous measurements of pH, temperature and flow;
 - (b) spot sample daily measurements of total suspended solids or measurements of a flow proportional representative sample over a period of 24 hours;
 - (c) at least monthly measurements of a flow proportional representative sample of the discharge over a period of 24 hours of Hg, Cd, Tl, As, Pb, Cr, Cu, Ni and Zn;
 - (d) at least every 6 months measurements of dioxins and furans; however, one measurement at least every 3 months shall be carried out for the first 12 months of operation.
- 3.2. Where the waste water from the cleaning of waste gases is treated on site collectively with other on-site sources of waste water, the operator shall take the measurements:
- (a) on the waste water stream from the waste gas cleaning processes prior to its input into the collective waste water treatment plant;
 - (b) on the other waste water stream or streams prior to its or their input into the collective waste water treatment plant;
 - (c) at the point of final waste water discharge, after the treatment, from the waste incineration plant or waste co-incineration plant.

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PART 7

Formula to calculate the emission concentration at the standard percentage oxygen concentration

$$E_S = \frac{21 - O_S}{21 - O_M} \times E_M$$

E_S = calculated emission concentration at the standard percentage oxygen concentration

E_M = measured emission concentration

O_S = standard oxygen concentration

O_M = measured oxygen concentration

PART 8

Assessment of compliance with emission limit values

1. Air emission limit values

1.1. The emission limit values for air shall be regarded as being complied with if:

- (a) none of the daily average values exceeds any of the emission limit values set out in point 1.1 of Part 3 or in Part 4 or calculated in accordance with Part 4;
- (b) either none of the half-hourly average values exceeds any of the emission limit values set out in column A of the table under point 1.2 of Part 3 or, where relevant, 97 % of the half-hourly average values over the year do not exceed any of the emission limit values set out in column B of the table under point 1.2 of Part 3;
- (c) none of the average values over the sampling period set out for heavy metals and dioxins and furans exceeds the emission limit values set out in points 1.3 and 1.4 of Part 3 or in Part 4 or calculated in accordance with Part 4;
- (d) for carbon monoxide (CO):
 - (i) in case of waste incineration plants:
 - at least 97 % of the daily average values over the year do not exceed the emission limit value set out in point 1.5(a) of Part 3; and,
 - at least 95 % of all 10-minute average values taken in any 24-hour period or all of the half-hourly average values taken in the same period do not exceed the emission limit values set out in points 1.5(b) and (c) of Part 3; in case of waste incineration plants in which the gas resulting from the incineration process is raised to a temperature of at least 1 100 °C for at least two seconds, Member States may apply an evaluation period of 7 days for the 10-minute average values;
 - (ii) in case of waste co-incineration plants: the provisions of Part 4 are met.

1.2. The half-hourly average values and the 10-minute averages shall be determined within the effective operating time (excluding the start-up and shut-down periods if no waste is being incinerated) from the measured values after having subtracted the value of the confidence interval specified in point 1.3 of Part 6. The daily average values shall be determined from those validated average values.

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To obtain a valid daily average value no more than five half-hourly average values in any day shall be discarded due to malfunction or maintenance of the continuous measurement system. No more than ten daily average values per year shall be discarded due to malfunction or maintenance of the continuous measurement system.

- 1.3. The average values over the sampling period and the average values in the case of periodical measurements of HF, HCl and SO₂ shall be determined in accordance with the requirements of Articles 45(1)(e), 48(3) and point 1 of Part 6.
2. Water emission limit values

The emission limit values for water shall be regarded as being complied with if:

- (a) for total suspended solids 95 % and 100 % of the measured values do not exceed the respective emission limit values as set out in Part 5;
- (b) for heavy metals (Hg, Cd, Tl, As, Pb, Cr, Cu, Ni and Zn) no more than one measurement per year exceeds the emission limit values set out in Part 5; or, if the Member State provides for more than 20 samples per year, no more than 5 % of these samples exceed the emission limit values set out in Part 5;
- (c) for dioxins and furans, the measurement results do not exceed the emission limit value set out in Part 5.



ANNEX VII

Technical provisions relating to installations and activities using organic solvents

PART 1

Activities

1. In each of the following points, the activity includes the cleaning of the equipment but not the cleaning of products unless specified otherwise.
2. Adhesive coating
3. Coating activity

Any activity in which a single or multiple application of a continuous film of a coating is applied to:

- (a) either of the following vehicles:
 - (i) new cars, defined as vehicles of category M1 in Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles⁽¹⁾ and of category N1 in so far as they are coated at the same installation as M1 vehicles;
 - (ii) truck cabins, defined as the housing for the driver, and all integrated housing for the technical equipment, of vehicles of categories N2 and N3 in Directive 2007/46/EC;
 - (iii) vans and trucks, defined as vehicles of categories N1, N2 and N3 in Directive 2007/46/EC, but not including truck cabins;
 - (iv) buses, defined as vehicles of categories M2 and M3 in Directive 2007/46/EC;
 - (v) trailers, defined in categories O1, O2, O3 and O4 in Directive 2007/46/EC;
- (b) metallic and plastic surfaces including surfaces of airplanes, ships, trains, etc.;
- (c) wooden surfaces;
- (d) textile, fabric, film and paper surfaces;
- (e) leather.

Coating activities do not include the coating of substrate with metals by electrophoretic and chemical spraying techniques. If the coating activity includes a step in which the same article is printed by whatever technique used, that printing step is considered part of the coating activity. However, printing activities operated as a separate activity are not included, but may be covered by Chapter V of this Directive if the printing activity falls within the scope thereof.

⁽¹⁾ OJ L 263, 9.10.2007, p. 1.

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4. Coil coating

Any activity where coiled steel, stainless steel, coated steel, copper alloys or aluminium strip is coated with either a film forming or laminate coating in a continuous process.
5. Dry cleaning

Any industrial or commercial activity using volatile organic compounds in an installation to clean garments, furnishing and similar consumer goods with the exception of the manual removal of stains and spots in the textile and clothing industry.
6. Footwear manufacture

Any activity of producing complete footwear or parts thereof.
7. Manufacturing of coating mixtures, varnishes, inks and adhesives

The manufacture of the above final products, and of intermediates where carried out at the same site, by mixing of pigments, resins and adhesive materials with organic solvent or other carrier, including dispersion and predispersion activities, viscosity and tint adjustments and operations for filling the final product into its container.
8. Manufacturing of pharmaceutical products

The chemical synthesis, fermentation, extraction, formulation and finishing of pharmaceutical products and, where carried out at the same site, the manufacture of intermediate products.
9. Printing

Any reproduction activity of text and/or images in which, with the use of an image carrier, ink is transferred onto whatever type of surface. It includes associated varnishing, coating and laminating techniques. However, only the following sub-processes are subject to Chapter V:

 - (a) flexography – a printing activity using an image carrier of rubber or elastic photopolymers on which the printing areas are above the non-printing areas, using liquid inks which dry through evaporation;
 - (b) heatset web offset – a web-fed printing activity using an image carrier in which the printing and non-printing area are in the same plane, where web-fed means that the material to be printed is fed to the machine from a reel as distinct from separate sheets. The non-printing area is treated to attract water and thus reject ink. The printing area is treated to receive and transmit ink to the surface to be printed. Evaporation takes place in an oven where hot air is used to heat the printed material;
 - (c) laminating associated to a printing activity – the adhering together of two or more flexible materials to produce laminates;
 - (d) publication rotogravure – a rotogravure printing activity used for printing paper for magazines, brochures, catalogues or similar products, using toluene-based inks;
 - (e) rotogravure – a printing activity using a cylindrical image carrier in which the printing area is below the non-printing area, using liquid inks which dry through evaporation. The recesses are filled with ink and the surplus is cleaned off the non-printing area before the surface to be printed contacts the cylinder and lifts the ink from the recesses;

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- (f) rotary screen printing – a web-fed printing activity in which the ink is passed onto the surface to be printed by forcing it through a porous image carrier, in which the printing area is open and the non-printing area is sealed off, using liquid inks which dry only through evaporation. Web-fed means that the material to be printed is fed into the machine from a reel as distinct from separate sheets;
 - (g) varnishing – an activity by which a varnish or an adhesive coating for the purpose of later sealing the packaging material is applied to a flexible material.
10. Rubber conversion

Any activity of mixing, milling, blending, calendaring, extrusion and vulcanisation of natural or synthetic rubber and any ancillary operations for converting natural or synthetic rubber into a finished product.
 11. Surface cleaning

Any activity except dry cleaning using organic solvents to remove contamination from the surface of material including degreasing. A cleaning activity consisting of more than one step before or after any other activity shall be considered as one surface cleaning activity. This activity does not refer to the cleaning of the equipment but to the cleaning of the surface of products.
 12. Vegetable oil and animal fat extraction and vegetable oil refining activities

Any activity to extract vegetable oil from seeds and other vegetable matter, the processing of dry residues to produce animal feed, the purification of fats and vegetable oils derived from seeds, vegetable matter and/or animal matter.
 13. Vehicle refinishing

Any industrial or commercial coating activity and associated degreasing activities performing either of the following:

 - (a) the original coating of road vehicles as defined in Directive 2007/46/EC or part of them with refinishing-type materials, where this is carried out away from the original manufacturing line;
 - (b) the coating of trailers (including semi-trailers) (category O in Directive 2007/46/EC).
 14. Winding wire coating

Any coating activity of metallic conductors used for winding the coils in transformers and motors, etc.
 15. Wood impregnation

Any activity giving a loading of preservative in timber.
 16. Wood and plastic lamination

Any activity to adhere together wood and/or plastic to produce laminated products.

PART 2

Thresholds and emission limit values

The emission limit values in waste gases shall be calculated at a temperature of 273,15 K, and a pressure of 101,3 kPa.

	Activity (solvent consumption threshold in tonnes/ year)	Threshold (solvent consumption threshold in tonnes/ year)	Emission limit values in waste gases (mg C/Nm ³)	Fugitive emission limit values (per- centage of solvent input)		Total emission limit values		Special provisions
				New installations	Existing installa- tions	New installations	Existing installa- tions	
1	Heatset web offset printing (> 15)	15—25 > 25	100 20	30 ⁽¹⁾ 30 ⁽¹⁾				⁽¹⁾ Solvent residue in finished product is not to be considered as part of fugitive emissions.
2	Publication rotogravure (> 25)		75	10	15			
3	Other rotogravure, flexography, rotary screen printing, laminating or varnishing units (> 15) rotary screen printing on textile/cardboard (> 30)	15—25 > 25 > 30 ⁽¹⁾	100 100 100	25 20 20				⁽¹⁾ Threshold for rotary screen printing on textile and on cardboard.
4	Surface cleaning using compounds specified in Article 59(5). (> 1)	1—5 > 5	20 ⁽¹⁾ 20 ⁽¹⁾	15 10				⁽¹⁾ Limit value refers to mass of compounds in mg/Nm ³ , and not to total carbon.
5	Other surface cleaning (> 2)	2—10 > 10	75 ⁽¹⁾ 75 ⁽¹⁾	20 ⁽¹⁾ 15 ⁽¹⁾				⁽¹⁾ Installations which demonstrate to the competent authority that the average organic solvent content of all cleaning material used does not exceed 30 % by weight are exempt from application of these values.

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	Activity (solvent consumption threshold in tonnes/ year)	Threshold (solvent consumption threshold in tonnes/ year)	Emission limit values in waste gases (mg C/Nm ³)	Fugitive emission limit values (per- centage of solvent input)		Total emission limit values		Special provisions
				New installations	Existing installa- tions	New installations	Existing installa- tions	
6	Vehicle coating (< 15) and vehicle refinishing	> 0,5	50 ⁽¹⁾	25				⁽¹⁾ Compliance in accordance with point 2 of Part 8 shall be demon- strated based on 15 minute average measurements.
7	Coil coating (> 25)		50 ⁽¹⁾	5	10			⁽¹⁾ For installations which use tech- niques which allow reuse of recovered solvents, the emission limit value shall be 150.
8	Other coating, including metal, plastic, textile ⁽⁵⁾ , fabric, film and paper coating (> 5)	5—15 > 15	100 ⁽¹⁾ ⁽⁴⁾ 50/75 ⁽²⁾ ⁽³⁾ ⁽⁴⁾	25 ⁽⁴⁾ 20 ⁽⁴⁾				⁽¹⁾ Emission limit value applies to coating application and drying processes operated under contained conditions. ⁽²⁾ The first emission limit value applies to drying processes, the second to coating application processes. ⁽³⁾ For textile coating installations which use techniques which allow reuse of recovered solvents, the emission limit value applied to coating application and drying processes taken together shall be 150. ⁽⁴⁾ Coating activities which cannot be carried out under contained conditions (such as shipbuilding, aircraft painting) may be exempted from these values, in accordance with Article 59(3). ⁽⁵⁾ Rotary screen printing on textile is covered by activity No 3.

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	Activity (solvent consumption threshold in tonnes/ year)	Threshold (solvent consumption threshold in tonnes/ year)	Emission limit values in waste gases (mg C/Nm ³)	Fugitive emission limit values (per- centage of solvent input)		Total emission limit values		Special provisions
				New installations	Existing installa- tions	New installations	Existing installa- tions	
9	Winding wire coating (> 5)					10 g/kg ⁽¹⁾ 5 g/kg ⁽²⁾		⁽¹⁾ Applies for installations where average diameter of wire ≤ 0,1 mm. ⁽²⁾ Applies for all other instal- lations.
10	Coating of wooden surfaces (> 15)	15—25 > 25	100 ⁽¹⁾ 50/75 ⁽²⁾		25 20			⁽¹⁾ Emission limit value applies to coating application and drying processes operated under contained conditions. ⁽²⁾ The first value applies to drying processes, the second to coating application processes.
11	Dry cleaning					20 g/kg ⁽¹⁾ ⁽²⁾		⁽¹⁾ Expressed in mass of solvent emitted per kilogram of product cleaned and dried. ⁽²⁾ The emission limit value in point 2 of Part 4 does not apply for this activity.
12	Wood impregnation (> 25)		100 ⁽¹⁾		45	11 kg/m ³		⁽¹⁾ Emission limit value does not apply for impregnation with creo- sote.
13	Coating of leather (> 10)	10—25 > 25 > 10 ⁽¹⁾				85 g/m ² 75 g/m ² 150 g/m ²		Emission limit values are expressed in grams of solvent emitted per m ² of product produced. ⁽¹⁾ For leather coating activities in furnishing and particular leather goods used as small consumer goods like bags, belts, wallets, etc.

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	Activity (solvent consumption threshold in tonnes/ year)	Threshold (solvent consumption threshold in tonnes/ year)	Emission limit values in waste gases (mg C/Nm ³)	Fugitive emission limit values (per- centage of solvent input)		Total emission limit values		Special provisions
				New installations	Existing installa- tions	New installations	Existing installa- tions	
14	Footwear manufacture (> 5)						25 g per pair	Total emission limit value is expressed in grams of solvent emitted per pair of complete footwear produced.
15	Wood and plastic lamination (> 5)						30 g/m ²	
16	Adhesive coating (> 5)	5—15 > 15	50 ⁽¹⁾ 50 ⁽¹⁾		25 20			⁽¹⁾ If techniques are used which allow reuse of recovered solvent, the emission limit value in waste gases shall be 150.
17	Manufacture of coating mixture, varnishes, inks and adhesives (> 100)	100—1 000 > 1 000	150 150		5 3	5 % of solvent input 3 % of solvent input		The fugitive emission limit value does not include solvent sold as part of a coatings mixture in a sealed container.
18	Rubber conversion (> 15)		20 ⁽¹⁾		25 ⁽²⁾	25 % of solvent input		⁽¹⁾ If techniques are used which allow reuse of recovered solvent, the emission limit value in waste gases shall be 150. ⁽²⁾ The fugitive emission limit value does not include solvent sold as part of products or mixtures in a sealed container.

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	Activity (solvent consumption threshold in tonnes/ year)	Threshold (solvent consumption threshold in tonnes/ year)	Emission limit values in waste gases (mg C/Nm ³)	Fugitive emission limit values (per- centage of solvent input)		Total emission limit values		Special provisions
				New installations	Existing installa- tions	New installations	Existing installa- tions	
19	Vegetable oil and animal fat extraction and vegetable oil refining activities (> 10)					Animal fat: 1,5 kg/tonne Castor: 3 kg/tonne Rape seed: 1 kg/tonne Sunflower seed: 1 kg/tonne Soya beans (normal crush): 0,8 kg/tonne Soya beans (white flakes): 1,2 kg/tonne Other seeds and other vegetable matter: 3 kg/tonne ⁽¹⁾ 1,5 kg/ tonne ⁽²⁾ 4 kg/tonne ⁽³⁾	⁽¹⁾ Total emission limit values for installations processing individual batches of seeds and other vegetable matter should be set by the competent authority on a case- by-case basis, applying the best available techniques. ⁽²⁾ Applies to all fractionation processes excluding de-gumming (the removal of gums from the oil). ⁽³⁾ Applies to de-gumming.	
20	Manufacturing of pharmaceutical products (> 50)		20 ⁽¹⁾	5 ⁽²⁾	15 ⁽²⁾	5 % of solvent input	15 % of solvent input	⁽¹⁾ If techniques are used which allow reuse of recovered solvent, the emission limit value in waste gases shall be 150. ⁽²⁾ The fugitive emission limit value does not include solvent sold as part of products or mixtures in a sealed container.

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PART 3

Emission limit values for installations of the vehicle coating industry

1. The total emission limit values are expressed in terms of grams of organic solvent emitted in relation to the surface area of product in square metres and in kilograms of organic solvent emitted in relation to the car body.
2. The surface area of any product dealt with in the table under point 3 is defined as the surface area calculated from the total electrophoretic coating area, and the surface area of any parts that might be added in successive phases of the coating process which are coated with the same coatings as those used for the product in question, or the total surface area of the product coated in the installation.

The surface of the electrophoretic coating area is calculated using the following formula:

$$\frac{2 \times \text{total weight of product shell}}{\text{average thickness of metal sheet} \times \text{density of metal sheet}}$$

This method shall also be applied for other coated parts made out of sheets.

Computer aided design or other equivalent methods shall be used to calculate the surface area of the other parts added, or the total surface area coated in the installation.

3. The total emission limit values in the table below refer to all process stages carried out at the same installation from electrophoretic coating, or any other kind of coating process, through to the final wax and polish of topcoating inclusive, as well as solvent used in cleaning of process equipment, including spray booths and other fixed equipment, both during and outside of production time.

Activity (solvent consumption threshold in tonnes/year)	Production threshold (refers to annual production of coated item)	Total emission limit value	
		New installations	Existing installations
Coating of new cars (> 15)	> 5 000	45 g/m ² or 1,3 kg/body + 33 g/m ²	60 g/m ² or 1,9 kg/body + 41 g/m ²
	≤ 5 000 monocoque or > 3 500 chassis-built	90 g/m ² or 1,5 kg/body + 70 g/m ²	90 g/m ² or 1,5 kg/body + 70 g/m ²
		Total emission limit value (g/m ²)	
Coating of new truck cabins (> 15)	≤ 5 000	65	85
	> 5 000	55	75
Coating of new vans and trucks (> 15)	≤ 2 500	90	120
	> 2 500	70	90
Coating of new buses (> 15)	≤ 2 000	210	290
	> 2 000	150	225

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4. Vehicle coating installations below the solvent consumption thresholds mentioned in the table under point 3 shall meet the requirements for the vehicle refinishing sector set out in Part 2.

PART 4

Emission limit values relating to volatile organic compounds with specific risk phrases

1. For emissions of the volatile organic compounds referred to in Article 58 where the mass flow of the sum of the compounds causing the labelling referred to in that Article is greater than, or equal to, 10 g/h, an emission limit value of 2 mg/Nm³ shall be complied with. The emission limit value refers to the mass sum of the individual compounds.
2. For emissions of halogenated volatile organic compounds which are assigned or need to carry the hazard statements H341 or H351, where the mass flow of the sum of the compounds causing the hazard statements H341 or H351 is greater than, or equal to, 100 g/h, an emission limit value of 20 mg/Nm³ shall be complied with. The emission limit value refers to the mass sum of the individual compounds.

PART 5

Reduction scheme

1. The operator may use any reduction scheme, specially designed for his installation.
2. In the case of applying coatings, varnishes, adhesives or inks, the following scheme can be used. Where the following method is inappropriate, the competent authority may allow an operator to apply any alternative scheme achieving equivalent emission reductions to those achieved if the emission limit values of Parts 2 and 3 were to be applied. The design of the scheme shall take into account the following facts:
 - (a) where substitutes containing little or no solvent are still under development, a time extension shall be given to the operator to implement his emission reduction plans;
 - (b) the reference point for emission reductions should correspond as closely as possible to the emissions which would have resulted had no reduction action been taken.
3. The following scheme shall operate for installations for which a constant solid content of product can be assumed:
 - (a) The annual reference emission is calculated as follows:
 - (i) The total mass of solids in the quantity of coating and/or ink, varnish or adhesive consumed in a year is determined. Solids are all materials in coatings, inks, varnishes and adhesives that become solid once the water or the volatile organic compounds are evaporated.
 - (ii) The annual reference emissions are calculated by multiplying the mass determined in (i) by the appropriate factor listed in the table below. Competent authorities may adjust these factors for individual installations to reflect documented increased efficiency in the use of solids.

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Activity	Multiplication factor for use in item (a)(ii)
Rotogravure printing; flexography printing; laminating as part of a printing activity; varnishing as part of a printing activity; wood coating; coating of textiles, fabric film or paper; adhesive coating	4
Coil coating, vehicle refinishing	3
Food contact coating, aerospace coatings	2,33
Other coatings and rotary screen printing	1,5

- (b) The target emission is equal to the annual reference emission multiplied by a percentage equal to:
- (i) (the fugitive emission limit value + 15), for installations falling within item 6 and the lower threshold band of items 8 and 10 of Part 2,
 - (ii) (the fugitive emission limit value + 5) for all other installations.
- (c) Compliance is achieved if the actual solvent emission determined from the solvent management plan is less than or equal to the target emission.

PART 6

Emission monitoring

1. Channels to which abatement equipment is connected, and which at the final point of discharge emit more than an average of 10 kg/h of total organic carbon, shall be monitored continuously for compliance.
2. In the other cases, Member States shall ensure that either continuous or periodic measurements are carried out. For periodic measurements at least three measurement values shall be obtained during each measurement exercise.
3. Measurements are not required in the case where end-of-pipe abatement equipment is not needed to comply with this Directive.

PART 7

Solvent management plan

1. Principles

The solvent management plan shall be used to:

 - (a) verify compliance as specified in Article 62;
 - (b) identify future reduction options;
 - (c) enable provision of information on solvent consumption, solvent emissions and compliance with the requirements of Chapter V to the public.
2. Definitions

The following definitions provide a framework for the mass balance exercise.

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Inputs of organic solvents (I):

- I1 The quantity of organic solvents or their quantity in mixtures purchased which are used as input into the process in the time frame over which the mass balance is being calculated.
- I2 The quantity of organic solvents or their quantity in mixtures recovered and reused as solvent input into the process. The recycled solvent is counted every time it is used to carry out the activity.

Outputs of organic solvents (O):

- O1 Emissions in waste gases.
 - O2 Organic solvents lost in water, taking into account waste water treatment when calculating O5.
 - O3 The quantity of organic solvents which remains as contamination or residue in products output from the process.
 - O4 Uncaptured emissions of organic solvents into air. This includes the general ventilation of rooms, where air is released to the outside environment via windows, doors, vents and similar openings.
 - O5 Organic solvents and/or organic compounds lost due to chemical or physical reactions (including those which are destroyed, by incineration or other waste gas or waste water treatments, or captured, as long as they are not counted under O6, O7 or O8).
 - O6 Organic solvents contained in collected waste.
 - O7 Organic solvents, or organic solvents contained in mixtures, which are sold or are intended to be sold as a commercially valuable product.
 - O8 Organic solvents contained in mixtures recovered for reuse but not as input into the process, as long as not counted under O7.
 - O9 Organic solvents released in other ways.
3. Use of the solvent management plan for verification of compliance.

The use made of the solvent management plan shall be determined by the particular requirement which is to be verified, as follows:

- (a) verification of compliance with the reduction scheme as set out in Part 5, with a total emission limit value expressed in solvent emissions per unit product, or otherwise stated in Parts 2 and 3.
 - (i) for all activities using the reduction scheme as set out in Part 5, the solvent management plan shall be drawn up annually to determine the consumption (C). The consumption shall be calculated according to the following equation:

$$C = I1 - O8$$

A parallel exercise shall also be undertaken to determine solids used in coating in order to derive the annual reference emission and the target emission each year.

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- (ii) for assessing compliance with a total emission limit value expressed in solvent emissions per unit product or otherwise stated in Parts 2 and 3, the solvent management plan shall be drawn up annually to determine the emissions (E). The emissions shall be calculated according to the following equation:

$$E = F + O1$$

Where F is the fugitive emission as defined in point (b)(i). The emission figure shall then be divided by the relevant product parameter.

- (iii) for assessing compliance with the requirements of point (b)(ii) of Article 59(6), the solvent management plan shall be drawn up annually to determine total emissions from all activities concerned, and that figure shall then be compared with the total emissions that would have resulted had the requirements of Parts 2, 3 and 5 been met for each activity separately.

- (b) Determination of fugitive emissions for comparison with the fugitive emission limit values in Part 2:

- (i) The fugitive emission shall be calculated according to one of the following equations;

$$F = I1 - O1 - O5 - O6 - O7 - O8$$

or

$$F = O2 + O3 + O4 + O9$$

F shall be determined either by direct measurement of the quantities or by an equivalent method or calculation, for instance by using the capture efficiency of the process.

The fugitive emission limit value is expressed as a proportion of the input, which shall be calculated according to the following equation:

$$I = I1 + I2$$

- (ii) Determination of fugitive emissions shall be done by a short but comprehensive set of measurements and needs not be done again until the equipment is modified.

PART 8

Assessment of compliance with emission limit values in waste gases

1. In the case of continuous measurements the emission limit values shall be considered to be complied with if:
 - (a) none of the arithmetic averages of all valid readings taken during any 24-hour period of operation of an installation or activity except start-up and shut-down operations and maintenance of equipment exceeds the emission limit values,
 - (b) none of the hourly averages exceeds the emission limit values by more than a factor of 1,5.
2. In the case of periodic measurements the emission limit values shall be considered to be complied with if, in one monitoring exercise:
 - (a) the average of all the measurement values does not exceed the emission limit values,

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- (b) none of the hourly averages exceeds the emission limit value by more than a factor of 1,5.
- 3. Compliance with Part 4 shall be verified on the basis of the sum of the mass concentrations of the individual volatile organic compounds concerned. For all other cases, compliance shall be verified on the basis of the total mass of organic carbon emitted unless otherwise specified in Part 2.
- 4. Gas volumes may be added to the waste gas for cooling or dilution purposes where technically justified but shall not be considered when determining the mass concentration of the pollutant in the waste gas.



ANNEX VIII

Technical provisions relating to installations producing titanium dioxide

PART 1

Emission limit values for emissions into water

1. In case of installations using the sulphate process (as an annual average):

550 kg of sulphate per tonne of titanium dioxide produced.
2. In case of installations using the chloride process (as an annual average):
 - (a) 130 kg chloride per tonne of titanium dioxide produced using neutral rutile,
 - (b) 228 kg chloride per tonne of titanium dioxide produced using synthetic rutile,
 - (c) 330 kg chloride per tonne of titanium dioxide produced using slag. Installations discharging into salt water (estuarine, coastal, open sea) may be subject to an emission limit value of 450 kg chloride per tonne of titanium dioxide produced using slag.
3. For installations using the chloride process and using more than one type of ore, the emission limit values in point 2 shall apply in proportion to the quantity of the ores used.

PART 2

Emission limit values into air

1. The emission limit values which are expressed as concentrations in mass per cubic meter (Nm³) shall be calculated at a temperature of 273,15 K, and a pressure of 101,3 kPa.
2. For dust: 50 mg/Nm³ as an hourly average from major sources and 150 mg/Nm³ as an hourly average from any other source.
3. For gaseous sulphur dioxide and trioxide discharged from digestion and calcination, including acid droplets calculated as SO₂ equivalent:
 - (a) 6 kg per tonne of titanium dioxide produced as an annual average;
 - (b) 500 mg/Nm³ as an hourly average for plants for the concentration of waste acid.
4. For chlorine in the case of installations using the chloride process:
 - (a) 5 mg/Nm³ as a daily average;
 - (b) 40 mg/Nm³ at any time.

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PART 3

Emission monitoring

The monitoring of emissions into air shall include at least the continuous monitoring of:

- (a) gaseous sulphur dioxide and trioxide discharged from digestion and calcination from plants for the concentration of waste acid in installations using the sulphate process;
- (b) chlorine from major sources within installations using the chloride process;
- (c) dust from major sources.



ANNEX IX

PART A

Repealed Directives with their successive amendments

(referred to in Article 81)

Council Directive 78/176/EEC (OJ L 54, 25.2.1978, p. 19).	
Council Directive 83/29/EEC (OJ L 32, 3.2.1983, p. 28).	
Council Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).	only Annex I, point (b)
Council Directive 82/883/EEC (OJ L 378, 31.12.1982, p. 1).	
Act of Accession of 1985	only Annex I, point X.1(o)
Act of Accession of 1994	only Annex I, point VIII.A.6
Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).	only Annex III, point 34
Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ L 87, 31.3.2009, p. 109).	only Annex, point 3.1
Council Directive 92/112/EEC (OJ L 409, 31.12.1992, p. 11).	
Council Directive 1999/13/EC (OJ L 85, 29.3.1999, p. 1).	
Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).	only Annex I, point 17
Directive 2004/42/EC of the European Parliament and of the Council (OJ L 143, 30.4.2004, p. 87).	only Article 13(1)
Directive 2008/112/EC of the European Parliament and of the Council (OJ L 345, 23.12.2008, p. 68).	only Article 3
Directive 2000/76/EC of the European Parliament and of the Council (OJ L 332, 28.12.2000, p. 91).	
Regulation (EC) No 1137/2008 of the European Parliament and of the Council (OJ L 311, 21.11.2008, p. 1).	only Annex, point 4.8
Directive 2001/80/EC of the European Parliament and of the Council (OJ L 309, 27.11.2001, p. 1).	
Council Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).	only Annex, part B, point 2
Directive 2009/31/EC of the European Parliament and of the Council (OJ L 140, 5.6.2009, p. 114).	only Article 33
Directive 2008/1/EC of the European Parliament and of the Council (OJ L 24, 29.1.2008, p. 8).	
Directive 2009/31/EC of the European Parliament and of the Council (OJ L 140, 5.6.2009, p. 114).	only Article 37



PART B

List of time-limits for transposition into national law and application

(referred to in Article 81)

Directive	Time-limit for transposition	Time-limit for application
78/176/EEC	25 February 1979	
82/883/EEC	31 December 1984	
92/112/EEC	15 June 1993	
1999/13/EC	1 April 2001	
2000/76/EC	28 December 2000	28 December 2002 28 December 2005
2001/80/EC	27 November 2002	27 November 2004
2003/35/EC	25 June 2005	
2003/87/EC	31 December 2003	
2008/1/EC	30 October 1999 ⁽¹⁾	30 October 1999 30 October 2007

⁽¹⁾ Directive 2008/1/EC is a codified version of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26) and the time-limits for transposition and application remain in force.

ANNEX X

Correlation Table

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
Article 1(1)	Article 1	Article 1					Article 66
—	—	—	—	—	—	—	Article 2
Article 1(2), point (a)			Article 2(2)				Article 3(2)
Article 1(2), point (b)					Article 3(1)		Article 3(37)
Article 1(2), points (c), (d) and (e)							—
—	—	—	—	—	—	—	Article 66
Article 2							Article 67
Article 3							Article 11, points (d) and (e)
Article 4			Article 4	Article 3, introductory wording and (1)	Article 4(1)		Article 4(1), first subparagraph
Article 5							Article 11, points (d) and (e)
Article 6							Article 11, points (d) and (e)
Article 7(1)		Article 10					Article 70(1) and 70(2), first sentence
Article 7(2) and (3)							—
—	—	—	—	—	—	—	Article 70(2), second sentence and 70(3)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
Article 8(1)							—
Article 8(2)							Article 26(1), second subparagraph
Article 9							—
Article 10							—
Article 11							Article 12
Article 12							—
Article 13(1)			Article 17(1), first subparagraph and 17(3), first subparagraph, first sentence	Article 11(1), first sentence and 11(2)			Article 72(1), first sentence
—	—	—	—	—	—	—	Article 72(1), second sentence
Article 13(2), (3) and (4)							—
Article 14							—
Article 15	Article 14	Article 12	Article 21	Article 15	Article 21	Article 18(1) and (3)	Article 80
Article 16	Article 15	Article 13	Article 23	Article 17	Article 23	Article 20	Article 84
Annex I							—
Annex II section A introductory wording and point 1							—
Annex II section A point 2							—
Annex II section B							—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
	Article 2						—
	Article 3						—
	Article 4(1) and 4(2), first subparagraph						—
	Article 4(2), second subparagraph						—
	Article 4(3) and (4)						—
	Article 5						—
	Article 6						—
	Article 7						—
	Article 8						—
	Article 9						—
	Article 10						—
	Article 11(1)			Article 13(1)	Article 17(1)		Article 75(1)
—	—	—	—	—	—	—	Article 75(2)
	Article 11(2)				Article 17(2)		—
	Article 11(3)						—
	Article 12						—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
	Article 13						—
	Annex I						—
	Annex II						—
	Annex III						—
	Annex IV						—
	Annex V						—
		Article 2(1), introductory wording					—
		Article 2(1)(a), introductory wording					—
		Article 2(1)(a), first indent					Article 67, point (a)
		Article 2(1)(a), second indent					Article 67, point (b)
		Article 2(1)(a), third indent and 2(1)(b), third indent					Article 67, point (d)
		Article 2(1)(a), fourth, fifth, sixth and seventh indent					—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
		Article 2(1)(b), introductory wording and first, fourth, fifth, sixth and seventh indent					—
		Article 2(1)(b), second indent					Article 67, point (c)
		Article 2(1)(c)					—
		Article 2(2)					—
		Article 3					Article 67
		Article 4					Article 67
		Article 5					—
		Article 6, first paragraph, introductory wording					Article 68
		Article 6, first paragraph, point (a)					Annex VIII, Part 1, point 1
		Article 6, first paragraph, point (b)					Annex VIII, Part 1, point 2
		Article 6, second paragraph					Annex VIII, Part 1, point 3
		Article 7					—
		Article 8					—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
		Article 9(1) introductory wording					Article 69(2)
		Article 9(1)(a), introductory wording					—
		Article 9(1)(a)(i)					Annex VIII, Part 2, point 2
		Article 9(1)(a)(ii)					Annex VIII, Part 2, point 3, introductory wording, and point 3(a)
		Article 9(1)(a)(iii)					Article 69(1)
		Article 9(1)(a)(iv)					Annex VIII, Part 2, point 3(b)
		Article 9(1)(a)(v)					—
		Article 9(1)(b)					Annex VIII, Part 2, point 4
		Article 9(2) and (3)					—
		Article 11					Article 11, points (d) and (e)
		Annex					—
			Article 1				Article 1

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 2, introductory wording				Article 3, introductory wording
			Article 2(1)	Article 2(14)			Article 3(1)
			Article 2(3)	Article 2(1)			Article 3(3)
			Article 2(4)				—
			Article 2(5)	Article 2(9)	Article 3(8)	Article 2(1)	Article 3(4)
			Article 2(6), first sentence	Article 2(13)	Article 3(9)	Article 2(3), first part	Article 3(5)
			Article 2(6), second sentence				Article 15(1)
			Article 2(7)				Article 3(6)
			Article 2(8)	Article 2(5)			Article 71
			Article 2(9), first sentence	Article 2(7)	Article 3(12)		Article 3(7)
			Article 2(9), second sentence				Article 4(2), first subparagraph
—	—	—	—	—	—	—	Article 4(2), second subparagraph
—	—	—	—	—	—	—	Article 4(3)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 2(10)				—
—	—	—	—	—	—	—	Article 3(8)
			Article 2(11), first sentence				Article 3(9)
			Article 2(11), second sentence				Article 20(3)
			Article 2(12), first subparagraph and Annex IV, introductory wording				Article 3(10)
			Article 2(12), second subparagraph				Articles 14(5), point (a) and 14(6)
			Article 2(13)	Article 2(6)	Article 3(11)	Article 2(5)	Article 3(15)
			Article 2(14)				Article 3(16)
			Article 2(15)				Article 3(17)
—	—	—	—	—	—	—	Article 3(11) to (14), (18) to (23), (26) to (30) and (34) to (36)
			Article 3(1), introductory wording				Article 11, introductory wording
			Article 3(1), point (a)				Article 11, points (a) and (b)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 3(1), point (b)				Article 11, point (c)
			Article 3(1), point (c)				Article 11, points (d) and (e)
			Article 3(1), point (d)				Article 11, point (f)
			Article 3(1), point (e)				Article 11, point (g)
			Article 3(1), point (f)				Article 11, point (h)
			Article 3(2)				—
			Article 5(1)				—
			Article 5(2)				Article 80(1), second subparagraph
			Article 6(1), introductory wording				Article 12(1), first subparagraph, introductory wording
			Article 6(1), first subparagraph, points (a) to (d)				Article 12(1), first subparagraph, points (a) to (d)
—	—	—	—	—	—	—	Article 12(1), first subparagraph, point (e)
			Article 6(1), first subparagraph, point (e)				Article 12(1), first subparagraph, point (f)
			Article 6(1), first subparagraph, point (f)				Article 12(1), first subparagraph, point (g)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 6(1), first subparagraph, point (g)				Article 12(1), first subparagraph, point (h)
			Article 6(1), first subparagraph, point (h)				Article 12(1), first subparagraph, point (i)
			Article 6(1), first subparagraph, point (i)				Article 12(1), first subparagraph, point (j)
			Article 6(1), first subparagraph, point (j)				Article 12(1), first subparagraph, point (k)
			Article 6(1), second subparagraph				Article 12(1), second subparagraph
			Article 6(2)				Article 12(2)
			Article 7				Article 5(2)
			Article 8, first paragraph		Article 4(3)		Article 5(1)
			Article 8, second paragraph				—
			Article 9(1), first part of sentence				Article 14(1), first subparagraph
			Article 9(1), second part of sentence				—
			Article 9(2)				Article 5(3)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 9(3), first subparagraph, first and second sentence				Article 14(1), second subparagraph, introductory wording and points (a) and (b)
			Article 9(3), first subparagraph, third sentence				Article 14(2)
—	—	—	—	—	—	—	Article 14(3), (4), and (7)
—	—	—	—	—	—	—	Article 14(5), introductory wording and point (b) of first subparagraph and Article 14(5), second subparagraph
			Article 9(3), second subparagraph				—
			Article 9(3), third subparagraph				Article 9(1)
			Article 9(3), fourth subparagraph				Article 9(2)
			Article 9(3), fifth subparagraph				Article 9(3)
			Article 9(3), sixth subparagraph				Article 9(4)
—	—	—	—	—	—	—	Article 10

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 9(4), first part of first sentence				Article 15(2)
			Article 9(4), second part of first sentence				Article 15(4), first subparagraph
—	—	—	—	—	—	—	Article 15(4), second to fifth subparagraphs and Article 15(5)
			Article 9(4), second sentence				Article 14(1), second subparagraph, point (g)
—	—	—	—	—	—	—	Article 14(1), second subparagraph, point (h)
—	—	—	—	—	—	—	Article 15(3)
—	—	—	—	—	—	—	Article 16
			Article 9(5), first subparagraph				Article 14(1), second subparagraph, point (c)(i)
—	—	—	—	—	—	—	Article 14(1), second subparagraph, point (c)(ii)
—	—	—	—	—	—	—	Article 14(1), second subparagraph, point (d)
			Article 9(5), second subparagraph				—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Article 14(1), second subparagraph, point (e)
			Article 9(6), first subparagraph				Article 14(1), second subparagraph, point (f)
			Article 9(6), second subparagraph				—
			Article 9(7)				—
			Article 9(8)				Article 6 and Article 17(1)
—	—	—	—	—	—	—	Article 17(2), (3) and (4)
			Article 10				Article 18
			Article 11				Article 19
			Article 12(1)				Article 20(1)
			Article 12(2), first sentence				Article 20(2), first subparagraph
			Article 12(2), second sentence				Article 20(2), second subparagraph
			Article 12(2), third sentence				—
			Article 13(1)				Article 21(1)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Article 21(2), (3) and (4)
			Article 13(2), introductory wording				Article 21(5), introductory wording
			Article 13(2)(a)				Article 21(5), point (a)
			Article 13(2)(b)				—
			Article 13(2)(c)				Article 21(5), point (b)
			Article 13(2)(d)				—
—	—	—	—	—	—	—	Article 21(5), point (c)
—	—	—	—	—	—	—	Article 22
—	—	—	—	—	—	—	Article 23(1), first subparagraph
			Article 14, introductory wording and point (a)				Article 8(1)
			Article 14, point (b)				Article 7, point (a) and Article 14(1), point (d)(i)
—	—	—	—	—	—	—	Article 7, introductory wording and points (b) and (c)
—	—	—	—	—	—	—	Article 14(1), point (d)(ii)
			Article 14, point (c)				Article 23(1), second subparagraph

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Article 23(2) to (6)
			Article 15(1), first subparagraph, introductory wording and points (a) and (b)	Article 12(1), first subparagraph			Article 24(1), first subparagraph, introductory wording and points (a) and (b)
			Article 15(1), first subparagraph, point (c)				Article 24(1), first subparagraph, point (c)
			Article 15(1), second subparagraph				Article 24(1), second subparagraph
			Article 15(2)				Article 24(3)(b)
			Article 15(3)				Article 24(4)
			Article 15(4)				Article 24(2), introductory wording and points (a) and (b)
—	—	—	—	—	—	—	Article 24(2), points (e) to (f) and Article 24(3), introductory wording and point (a)
			Article 16				Article 25
			Article 17(1), second subparagraph				—
			Article 17(2), first subparagraph				Article 13(1)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Article 13(2) to (7)
			Article 17(2), second subparagraph				—
			Article 17(3), first subparagraph, second and third sentence	Article 11(1), second sentence			Article 72(2)
			Article 17(3), first subparagraph, fourth sentence				—
—	—	—	—	—	—	—	Article 72(3) and (4)
			Article 17(3), second subparagraph				—
			Article 17(3), third subparagraph	Article 11(3)			Article 73(1)
—	—	—	—	—	—	—	Article 73(2)
			Article 17(4)				—
—	—	—	—	—	—	—	Article 74
—	—	—	—	—	—	—	Article 27
			Article 18			Article 11	Article 26
			Article 19				—
			Article 20				—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
			Article 21				Article 80(2)
			Article 22		Article 18	Article 17	Article 81
—	—	—	—	—	—	—	Article 82
			Article 23	Article 16	Article 22	Article 19	Article 83
—	—	—	—	—	—	—	Article 2(1)
			Annex I, paragraph 1 of introductory wording				Article 2(2)
			Annex I, paragraph 2 of introductory wording				Annex I, first subparagraph of introductory wording, first sentence
—	—	—	—	—	—	—	Annex I, first subparagraph of introductory wording, second sentence
—	—	—	—	—	—	—	Annex I, second subparagraph of introductory wording
			Annex I, points 1.1 to 1.3				Annex I, points 1.1 to 1.3
			Annex I, point 1.4				Annex I, point 1.4(a)
—	—	—	—	—	—	—	Annex I, point 1.4(b)
			Annex I, point 2				Annex I, point 2
			Annex I, point 3.1				Annex I, point 3.1(a) and (b)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Annex I, point 3.1(c)
			Annex I, points 3.2 to 3.5				Annex I, points 3.2 to 3.5
			Annex I, point 4				Annex I, point 4
			Annex I, point 5, introductory wording				—
			Annex I, point 5.1				Annex I, points 5.1(b), (f), (g), (i), (j) and 5.2(b)
—	—	—	—	—	—	—	Annex I, points 5.1(a), (c), (d), (e), (h), (k)
			Annex I, point 5.2				Annex I, point 5.2(a)
			Annex I, point 5.3				Annex I, point 5.3(a)(i) and (ii)
—	—	—	—	—	—	—	Annex I, point 5.3(a)(iii) to (v) and 5.3(b)
			Annex I, point 5.4				Annex I, point 5.4
—	—	—	—	—	—	—	Annex I, points 5.5 and 5.6
			Annex I, points 6.1(a) and (b)				Annex I, points 6.1(a) and (b)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Annex I, point 6.1(c)
			Annex I, points 6.2 – 6.4(b)				Annex I, points 6.2 – 6.4(b)(ii)
—	—	—	—	—	—	—	Annex I, point 6.4 (b)(iii)
			Annex I, points 6.4(c) – 6.9				Annex I, points 6.4(c) – 6.9
—	—	—	—	—	—	—	Annex I, points 6.10 and 6.11
			Annex II				—
			Annex III				Annex II, ‘Air’, and ‘Water’, points 1 to 12
—	—	—	—	—	—	—	Annex II, ‘Water’, point 13
			Annex IV				Annex III
			Annex V				Annex IV
				Article 1			Article 56
				Article 2(2)			Article 57(1)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Article 2(3)			—
				Article 2(4)			Article 63(1)
				Article 2(8)			Article 4(1), third subparagraph
				Article 2(10)			Article 57(3)
				Article 2(11)			Article 57(2)
				Article 2(12)			Article 57(4)
				Article 2(15)			Article 57(5)
				Article 2(16)			Article 3(44)
				Article 2(17)			Article 3(45)
				Article 2(18)			Article 3(46)
				Article 2(19)			—
				Article 2(20)			Article 3(47)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Article 2(21)			Article 57(6)
				Article 2(22)			Article 57(7)
				Article 2(23)			Article 57(8)
				Article 2(24)			Article 57(9)
				Article 2(25)			Article 57(10)
				Article 2(26)			Article 57(11)
				Article 2(27)			—
				Article 2(28)			Article 63(1)
				Article 2(29)			—
				Article 2(30)			Article 57(12)
				Article 2(31)			Annex VII, Part 2, first sentence Annex VIII, Part 2, point 1
				Article 2(32)			—
				Article 2(33)			Article 57(13)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Article 3(2)			Article 4(1), second subparagraph
				Article 4(1), (2) and(3)			Article 4(1), first and second subparagraph
				Article 4(4)			Article 63(2)
				Article 5(1)			Article 59(1), first subparagraph, introductory wording
				Article 5(2)			Article 59(1) first subparagraph, points (a) and (b)
				Article 5(3), first subparagraph, point (a)			Article 59(2)
				Article 5(3), first subparagraph, point (b)			Article 59(3)
				Article 5(3), second subparagraph			Article 59(4)
—	—	—	—	—	—	—	Article 59(5)
				Article 5(4)			—
				Article 5(5)			Article 59(6)
				Article 5(6)			Article 58

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Article 5(7)			Annex VII, Part 4, point 1
				Article 5(8) first subparagraph			Annex VII, Part 4, point 2
				Article 5(8) second subparagraph			—
				Article 5(9)			—
				Article 5(10)			Article 59(7)
				Article 5(11), (12) and (13)			—
				Article 6			—
				Article 7(1), introductory wording and first, second, third and fourth indent			Article 64
				Article 7(1), closing wording			—
				Article 7(2)			—
				Article 8(1)			Article 14(1), point (d), Article 60
—	—	—	—	—	—	—	Article 61
				Article 8(2)			Annex VII, Part 6, point 1

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Article 8(3)			Annex VII, Part 6, point 2
				Article 8(4)			Annex VII Part 6, point 3
				Article 8(5)			—
				Article 9(1), first subparagraph, introductory wording			Article 62, first subparagraph, introductory wording
				Article 9(1), first subparagraph, first, second and third indent			Article 62, first subparagraph, points (a), (b) and (c)
				Article 9(1), second subparagraph			Article 62, second subparagraph
				Article 9(1), third subparagraph			Annex VII, Part 8, point 4
				Article 9(2)			Article 63(3)
				Article 9(3)			Annex VII, Part 8, point 1
				Article 9(4)			Annex VII, Part 8, point 2
				Article 9(5)			Annex VII, Part 8, point 3
				Article 10	Article 4(9)		Article 8(2)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Article 11(1), third to sixth sentences			—
				Article 12(1), second subparagraph			Article 65(1), first subparagraph
				Article 12(1), third subparagraph			Article 65(1), second subparagraph
				Article 12(2)			Article 65(2)
				Article 12(3)			Article 65(3)
				Article 13(2) and (3)			—
				Article 14	Article 19	Article 16	Article 79
				Annex I, first and second sentence of introductory wording			Article 56
				Annex I, third sentence of introductory wording and list of activities			Annex VII, Part 1
				Annex IIA			Annex VII, Parts 2 and 3
				Annex IIA, Part II, last sentence of paragraph 6			—
				Annex IIB, point 1, first and second sentences			Article 59(1), first subparagraph, point (b)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
				Annex IIB, point 1, third sentence			Article 59(1), second subparagraph
				Annex IIB, point 2			Annex VII, Part 5
				Annex IIB, point 2, second subparagraph (i) and table			—
				Annex III, point 1			—
				Annex III, point 2			Annex VII, Part 7, point 1
				Annex III, point 3			Annex VII, Part 7, point 2
				Annex III, point 4			Annex VII, Part 7, point 3
					Article 1, first paragraph		Article 42
					Article 1, second paragraph		—
					Article 2(1)		Article 42(1), first subparagraph
—	—	—	—	—	—	—	Article 42(1), second to fifth subparagraphs
					Article 2(2), introductory wording		Article 42(2), introductory wording
					Article 2(2)(a), introductory wording		Article 42(2)(a), introductory wording

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 2(2)(a), points (i) to (v)		Article 42(2)(a), point (i)
					Article 2(2)(a), point (vi)		Article 42(2)(a), point (ii)
					Article 2(2)(a), point (vii)		Article 42(2)(a), point (iii)
					Article 2(2)(a), point (viii)		Article 42(2)(a), point (iv)
					Article 2(2)(b)		Article 42(2)(b)
					Article 3(2), first subparagraph		Article 3(38)
					Article 3(2), second subparagraph		—
					Article 3(3)		Article 3(39)
					Article 3(4), first subparagraph		Article 3(40)
					Article 3(4), second subparagraph		Article 42(1), third subparagraph
—	—	—	—	—	—	—	Article 42(1), fourth subparagraph
					Article 3(5), first subparagraph		Article 3(41)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 3(5), second subparagraph		Article 42(1), fifth subparagraph
					Article 3(5), third subparagraph		Article 42(1), third subparagraph
					Article 3(6)		Annex VI, Part 1, point (a)
					Article 3(7)		Article 3(42)
—	—	—	—	—	—	—	Annex VI, Part 1, point (b)
					Article 3(10)		Article 3(43)
					Article 3(13)		Article 43
					Article 4(2)		Article 44
					Article 4(4), introductory wording and points (a) and (b)		Article 45(1), introductory wording and points (a) and (b)
					Article 4(4), point (c)		Article 45(1), point (e)
					Article 4(5)		Article 45(2)
					Article 4(6)		Article 45(3)
					Article 4(7)		Article 45(4)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 4(8)		Article 54
					Article 5		Article 52
					Article 6(1), first subparagraph		Article 50(1)
					Article 6(1), second subparagraph and 6(2)		Article 50(2)
					Article 6(1), third subparagraph		Article 50(3), first subparagraph
					Article 6(1), first part of fourth subparagraph		—
					Article 6(1), second part of fourth subparagraph		Article 50(3), second subparagraph
					Article 6(3)		Article 50(4)
					Article 6(4), first and second sentences of first subparagraph and Article 6(4), first and second sentences of second subparagraph		Article 51(1)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 6(4), third sentence of first subparagraph		Article 51(2)
—	—	—	—	—	Article 6(4), third sentence of second subparagraph	—	Article 51(3), first subparagraph
					Article 6(4), third subparagraph		Article 51(3), second subparagraph
					Article 6(4), fourth subparagraph		Article 51(4)
					Article 6(5), first part of sentence		—
					Article 6(5), second part of the sentence		Article 46(1)
					Article 6(6)		Article 50(5)
					Article 6(7)		Article 50(6)
					Article 6(8)		Article 50(7)
					Article 7(1) and Article 7(2), first subparagraph		Article 46(2), first subparagraph
					Article 7(2), second subparagraph		Article 46(2), second subparagraph

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 7(3) and Article 11(8), first subparagraph, introductory wording		Annex VI, Part 6, first part of point 2.7
					Article 7(4)		Article 46(2), second subparagraph
					Article 7(5)		—
					Article 8(1)		Article 45(1), point (c)
					Article 8(2)		Article 46(3)
					Article 8(3)		—
					Article 8(4), first subparagraph		Article 46(4), first subparagraph
					Article 8(4), second subparagraph		Annex VI, Part 6, point 3.2
					Article 8(4), third subparagraph		—
					Article 8(4), fourth subparagraph		—
					Article 8(5)		Article 46(4), second and third subparagraph

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 8(6)		Article 45(1), points (c) and (d)
					Article 8(7)		Article 46(5)
					Article 8(8)		—
					Article 9, first subparagraph		Article 53(1)
					Article 9, second subparagraph		Article 53(2)
					Article 9, third subparagraph		Article 53(3)
					Article 10(1) and (2)		—
					Article 10(3), first sentence		Article 48(2)
					Article 10(3), second sentence		—
					Article 10(4)		Article 48(3)
					Article 10(5)		Annex VI, Part 6, second part of point 1.3
					Article 11(1)		Article 48(1)
					Article 11(2)		Annex VI, Part 6, point 2.1

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 11(3)		Annex VI, Part 6, point 2.2
					Article 11(4)		Annex VI, Part 6, point 2.3
					Article 11(5)		Annex VI, Part 6, point 2.4
					Article 11(6)		Annex VI, Part 6, point 2.5, first subparagraph
—	—	—	—	—	—	—	Annex VI, Part 6, point 2.5, second subparagraph
					Article 11(7), first part of first sentence of first subparagraph		Annex VI, Part 6, point 2.6, introductory wording
					Article 11(7), second part of first sentence of first subparagraph		Annex VI, Part 6, point 2.6(a)
					Article 11(7), second sentence of first subparagraph		—
					Article 11(7), second subparagraph		—
					Article 11(7), point (a)		Annex VI, Part 6, point 2.6(b)
					Article 11(7), points (b) and (c)		—

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 11(7), point (d)		Annex VI, Part 6, point 2.6(c)
					Article 11(7), points (e) and (f)		—
					Article 11(8), first subparagraph, points (a) and (b)		Annex VI, Part 3, point 1
					Article 11(8), first subparagraph, point (c) and second subparagraph		Annex VI, Part 6, second subparagraph of point 2.7
					Article 11(8), first subparagraph, point (d)		Annex VI, Part 4, point 2.1, second subparagraph
					Article 11(9)		Article 48(4)
					Article 11(10)		Annex VI, Part 8, point 1.1
					Article 11(11)		Annex VI, Part 8, point 1.2
					Article 11(12)		Annex VI, Part 8, point 1.3
					Article 11(13)		Article 48(5)
—	—	—	—	—	—	—	Article 49
					Article 11(14)		Annex VI, Part 6, point 3.1
					Article 11(15)		Article 45(1), point (e)

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Article 11(16)		Annex VI, Part 8, point 2
					Article 11(17)		Article 8(2), point (a)
					Article 12(1)		Article 55(1)
					Article 12(2), first and second sentence		Article 55(2)
					Article 12(2), third sentence		Article 55(3)
					Article 13(1)		Article 45(1), point (f)
					Article 13(2)		Article 47
					Article 13(3)		Article 46(6)
					Article 13(4)		Annex VI, Part 3, point 2
					Article 14		—
					Article 15		—
					Article 16		—
					Article 20		—
					Annex I		Annex VI, Part 2
					Annex II, first part (without numbering)		Annex VI, Part 4, point 1

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Annex II, point 1, introductory wording		Annex VI, Part 4, point 2.1
					Annex II, points 1.1 and 1.2		Annex VI, Part 4, points 2.2 and 2.3
—	—	—	—	—	—	—	Annex VI, Part 4, point 2.4
					Annex II, point 1.3		—
					Annex II, point 2.1		Annex VI, Part 4, point 3.1
—	—	—	—	—	—	—	Annex VI, Part 4, point 3.2
					Annex II, point 2.2		Annex VI, Part 4, point 3.3 and 3.4
					Annex II, point 3		Annex VI, Part 4, point 4
					Annex III		Annex VI, Part 6, point 1
					Annex IV, table		Annex VI, Part 5
					Annex IV, final sentence		—
					Annex V, point (a), table		Annex VI, Part 3, point 1.1
					Annex V, point (a), final sentences		—
					Annex V, point (b), table		Annex VI, Part 3, point 1.2
					Annex V, point (b), final sentence		—
					Annex V, point (c)		Annex VI, Part 3, point 1.3

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
					Annex V, point (d)		Annex VI, Part 3, point 1.4
					Annex V, point (e)		Annex VI, Part 3, point 1.5
					Annex V, point (f)		Annex VI, Part 3, point 3
					Annex VI		Annex VI, Part 7
						Article 1	Article 28, first subparagraph
						Article 2(2)	Annex V, Part 1, point 1 and Part 2, point 1, first subparagraph
—	—	—	—	—	—	—	Annex V, Part 1, point 1 and Part 2, point 1, second subparagraph
						Article 2(3) second part	Annex V, Part 1, point 1 and Part 2, point 1, first subparagraph
—	—	—	—	—	—	—	Annex V, Part 1, point 1 and Part 2, point 1, second subparagraph
						Article 2(4)	—
						Article 2(6), first part	Article 3(24)
						Article 2(6), second part	Article 28, second subparagraph, point (j)

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
						Article 2(7), first subparagraph	Article 3(25)
						Article 2(7), second subparagraph, first sentence	—
						Article 2(7), second subparagraph, second sentence and points (a) to (i)	Article 28, second subparagraph and points (a) to (i)
						Article 2(7), second subparagraph, point (j)	—
						Article 2(7), third subparagraph	—
—	—	—	—	—	—	—	Article 29(1)
						Article 2(7), fourth subparagraph	Article 29(2)
—	—	—	—	—	—	—	Article 29(3)
						Article 2(8)	Article 3(32)
						Article 2(9)	—
						Article 2(10)	—

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
						Article 2(11)	Article 3(31)
						Article 2(12)	Article 3(33)
						Article 2(13)	—
						Article 3	—
						Article 4(1)	—
						Article 4(2)	—
						Article 4(3)to 4(8)	
						Article 5(1)	Annex V, Part 1, point 2, second subparagraph
							Annex V, Part 1, point 2, first, third and fourth subparagraphs
						Article 5(2)	—
						Article 6	—
						Article 7(1)	Article 37
						Article 7(2)	Article 30(5)
						Article 7(3)	Article 30(6)

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
						Article 8(1)	Article 40(1)
						Article 8(2), first part of first subparagraph	Article 40(2), first part of first subparagraph
						Article 8(2), second part of first subparagraph	—
—	—	—	—	—	—	—	Article 40(2), second part of first subparagraph
—	—	—	—	—	—	—	Article 40(2), second subparagraph
—	—	—	—	—	—	—	Article 40(3)
—	—	—	—	—	—	—	Article 41
						Article 8(2), second subparagraph	—
						Article 8(3) and (4)	—
						Article 9	Article 30(1)
—	—	—	—	—	—	—	Article 30(2), (3) and (4)
						Article 9a	Article 36
						Article 10, first paragraph, first sentence	Article 30(7), first sentence

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
—	—	—	—	—	—	—	Article 30(7), second sentence
—	—	—	—	—	—	—	Article 30(8) and (9)
—	—	—	—	—	—	—	Article 31 to 35
						Article 10, first paragraph, second sentence	—
						Article 10, second paragraph	—
						Article 12, first sentence	Article 38(1)
						Article 12, second sentence	—
—	—	—	—	—	—	—	Article 38(2), (3) and (4)
—	—	—	—	—	—	—	Article 39
						Article 13	Annex V, Part 3, third part of point 8
						Article 14	Annex V, Part 4
—	—	—	—	—	—	—	Annex V, Part 5, 6 and 7
						Article 15	—
						Article 18(2)	—
						Annex I	—
						Annex II	—
						Annex III and IV	Annex V, point 2 of Part 1 and Part 2

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Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
						Annex V A	Annex V, Part 1, point 3
						Annex V B	Annex V, Part 2, point 3
						Annex VI A	Annex V, Part 1, points 4 and 6
—	—	—	—	—	—	—	Annex V, Part 1, point 5
						Annex VI B	Annex V, Part 2, points 4 and 6
—	—	—	—	—	—	—	Annex V, Part 2, point 5
						Annex VII A	Annex V, Part 1, points 7 and 8
						Annex VII B	Annex V, Part 2, points 7 and 8
						Annex VIII A point 1	—
						Annex VIII A point 2	Annex V, Part 3, first part of point 1 and points 2, 3 and 5
—	—	—	—	—	—	—	Annex V, Part 3, second part of point 1
—	—	—	—	—	—	—	Annex V, Part 3, point 4
						Annex VIII A point 3	—
						Annex VIII A point 4	Annex V, Part 3, point 6

▼B

Directive 78/176/EEC	Directive 82/883/EEC	Directive 92/112/EEC	Directive 2008/1/EC	Directive 1999/13/EC	Directive 2000/76/EC	Directive 2001/80/EC	This Directive
						Annex VIII A point 5	Annex V, Part 3, points 7 and 8
						Annex VIII A point 6	Annex V, Part 3, points 9 and 10
—	—	—	—	—	—	—	Annex V, Part 3, point 11
—	—	—	—	—	—	—	Annex V, Part 4
						Annex VIII B	—
						Annex VIII C	—
			Annex VI			Annex IX	Annex IX
			Annex VII			Annex X	Annex X



Water Resources Act 1991

1991 CHAPTER 57

An Act to consolidate enactments relating to the National Rivers Authority and the matters in relation to which it exercises functions, with amendments to give effect to recommendations of the Law Commission. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

- C1 Act: definition applied (1.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [s. 219\(1\)](#)
- C2 Act: definition applied (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), [s. 72\(1\)](#)
- C3 Act applied (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), [s. 12\(1\)](#)
Act excluded (28.7.1995) by [1995 c. 25, s. 7\(6\)](#) (with ss. 115, 117); S.I. 1995/1983, [art. 2](#)
Act modified (1.4.1996) by [1995 c. 25, s. 14\(2\)\(b\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)
Act applied (18.12.1996) by [1996 c. 61, s. 2, Sch. 2 para. 9\(8\)\(c\)](#)
Act amended (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)
- C4 Act: transfer of certain functions (1.7.1999) by [1999/672, art. 2, Sch. 1](#)
- C5 Act applied (with modifications) (24.3.2005) by [New Forest National Park Authority \(Establishment\) Order 2005 \(S.I. 2005/421\)](#), [Sch. 3 para. 5\(2\)](#)
- C6 Act applied (24.3.2010) by [The South Downs National Park Authority \(Establishment\) Order 2010 \(S.I. 2010/497\)](#), [Sch. 3 para. 4\(2\)](#)
- C7 Act: power to amend conferred (1.10.2010) by [Flood and Water Management Act 2010 \(c. 29\)](#), [ss. 28, 49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2010/2169, [art. 4, Sch.](#)
- C8 Act: power to apply conferred (18.1.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), [s. 39\(12\)-\(14\), 49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2011/95, [art. 2\(c\)](#)
- C9 Act: power to apply conferred (18.1.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), [s. 38\(8\)-\(10\), 49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2011/95, [art. 2\(b\)](#)
- C10 Act applied (with modifications) (1.7.2015) by [The National Park Authorities \(England\) Order 2015 \(S.I. 2015/770\)](#), [Sch. 3 para. 5\(2\)](#)

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

C11 Act applied in part (Isles of Scilly) (with modifications) (E.W.) (27.3.2020 for specified purposes, otherwise 1.10.2021) by [The Isles of Scilly \(Application of Water Legislation\) Order 2020 \(S.I. 2020/214\)](#), **art. 3**

Commencement Information

I1 Act wholly in force at 1.12.1991 see [s. 225\(2\)](#).

PART I

PRELIMINARY

CHAPTER I

THE NATIONAL RIVERS AUTHORITY

F1

Textual Amendments

F1 Ss. 1-14 repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186](#), **art. 3**

F2

Textual Amendments

F2 Ss. 1-14 repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186](#), **art. 3**

F3

Textual Amendments

F3 Ss. 1-14 repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186](#), **art. 3**

F4

Textual Amendments

F4 Ss. 1-14 repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186](#), **art. 3**

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F55

Textual Amendments

F5 Ss. 1-14 repealed (1.4.1996) by 1996 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER II

COMMITTEES WITH FUNCTIONS IN RELATION TO THE AUTHORITY

Advisory committees

F66

Textual Amendments

F6 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F77

Textual Amendments

F7 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F88

Textual Amendments

F8 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Flood defence committees

F99

Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F9 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F10 **10**

Textual Amendments

F10 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F11 **11**

Textual Amendments

F11 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F12 **12**

Textual Amendments

F12 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F13 **13**

Textual Amendments

F13 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F14 **14**

Textual Amendments

F14 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

CHAPTER III

GENERAL DUTIES

15 General duties with respect to the water industry.

- (1) It shall be the duty of the Agency [^{F15}and the NRBW], in exercising any of [^{F16}their] powers under any enactment, to have particular regard to the duties imposed, by virtue of the provisions of Parts II to IV of the ^{M1}Water Industry Act 1991, on any water undertaker or sewerage undertaker which appears to the Agency [^{F17}or the NRBW, as the case may be,] to be or to be likely to be affected by the exercise of the power in question.
- (2) It shall be the duty of each of the Ministers, in exercising—
- (a) any power conferred by virtue of [^{F18}the 1995 Act,]this Act, the ^{M2}Land Drainage Act 1991, the Water Industry Act 1991[^{F19}, the Water Act 1989 or the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)] in relation to, or to decisions of, the Agency [^{F20}or the NRBW]; or
 - (b) any power which, but for any direction given by one of the Ministers, would fall to be exercised by the Agency [^{F20}or the NRBW],
- to take into account the duty imposed on the Agency [^{F21}and the NRBW] by subsection (1) above.

Textual Amendments

- F15** Words in s. 15(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(2)(a)** (with Sch. 7)
- F16** Word in s. 15(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(2)(b)** (with Sch. 7)
- F17** Words in s. 15(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(2)(c)** (with Sch. 7)
- F18** Words in s. 15(2)(a) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 130** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F19** Words in s. 15(2)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(3)(a)** (with Sch. 7)
- F20** Words in s. 15(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(3)(b)** (with Sch. 7)
- F21** Words in s. 15(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(3)(c)** (with Sch. 7)

Marginal Citations

- M1** 1991 c. 56.
M2 1991 c. 59.

^{F22}16

Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F22 Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F23 **17**

Textual Amendments

F23 Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F24 **18**

Textual Amendments

F24 Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

PART II

WATER RESOURCES MANAGEMENT

Modifications etc. (not altering text)

C12 Pt. II: transfer of functions to the Environment Agency (1.4.1996) by 1995 c. 25, s. 2(1)(a)(i) (with ss. 115, 117); S.I. 1996/186, **art. 3**

CHAPTER I

GENERAL MANAGEMENT FUNCTIONS

19 **General management of resources by the [^{F25}Agency.]**

- (1) It shall be the duty of the [^{F26}Agency] to take all such action as it may from time to time consider, in accordance (if any have been given for the purposes of this section) with the directions of the Secretary of State, to be necessary or expedient for the purpose—
 - (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
 - (b) of securing the proper use of water resources in England and Wales.
- (2) Nothing in this section shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the ^{M3}Water Industry Act 1991 (general duty to maintain water supply system).

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

- F25** Words in s. 19 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F26** Words in s. 19 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

- M3** 1991 c. 56.

20 Water resources management schemes.

- (1) It shall be the duty of the [^{F27}appropriate agency] so far as reasonably practicable to enter into and maintain such arrangements with water undertakers for securing the proper management or operation of—
- (a) the waters which are available to be used by water undertakers for the purposes of, or in connection with, the carrying out of their functions; and
 - (b) any reservoirs, apparatus or other works which belong to, are operated by or are otherwise under the control of water undertakers for the purposes of, or in connection with, the carrying out of their functions,
- as the [^{F27}appropriate agency] from time to time considers appropriate for the purpose of carrying out its functions under section 6(2) [^{F28}or, as the case may be, section 6(2A)] of the 1995 Act.
- (2) Without prejudice to the power of the [^{F27}appropriate agency] and any water undertaker to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
- (a) make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which will be used by the undertaker in the carrying out of its functions;
 - (b) contain provision requiring payments to be made by the [^{F27}appropriate agency] to the undertaker; and
 - (c) require the reference to and determination by the Secretary of State or the [^{F29}Water Services Regulation Authority] of questions arising under the arrangements.
- (3) The [^{F27}appropriate agency] shall send a copy of any arrangements entered into by it under this section to the Secretary of State; and the obligations of a water undertaker by virtue of any such arrangements shall be enforceable under section 18 of the ^{M4}Water Industry Act 1991 (enforcement orders) by the Secretary of State.

Textual Amendments

- F27** Words in s. 20 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 266(2)** (with Sch. 7)
- F28** Words in s. 20(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 266(3)** (with Sch. 7)
- F29** Words in s. 20(2)(c) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(2)**; S.I. 2005/2714, art. 4(f) (with Sch. para. 8)

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Marginal Citations

M4 1991 c. 56

[^{F30}20A Water resources management schemes: other abstractors

- (1) The [^{F31}appropriate agency] may enter into and maintain such arrangements with holders of abstraction licences other than water undertakers for securing the proper management or operation of—
- (a) the waters from which they have the right by virtue of their licences to abstract water; and
 - (b) any reservoirs, apparatus or other works which are used for the purposes of or in connection with their abstractions and which belong to them, are operated by them or are otherwise under their control,
- as the [^{F31}appropriate agency] from time to time considers appropriate for the purpose of carrying out its functions under section 6(2) [^{F32}or, as the case may be, section 6(2A)] of the 1995 Act.
- (2) Without prejudice to the power of the [^{F31}appropriate agency] and any holder of an abstraction licence to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
- (a) make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which the holder of the licence will use for the purposes of or in connection with his abstraction;
 - (b) contain provision requiring payments to be made by the [^{F31}appropriate agency] to the holder of the licence; and
 - (c) require the reference to and determination by the Secretary of State or the Water Services Regulation Authority of questions arising under the arrangements.
- (3) The [^{F31}appropriate agency] shall send a copy of any arrangements entered into by it under this section to the Secretary of State.
- (4) In this section, references to abstraction licences are to licences under Chapter 2 of this Part to abstract water.]

Textual Amendments

- F30** S. 20A inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 28**, 105(3); S.I. 2004/2528, art. 2(b) (with [Sch. para. 8](#))
- F31** Words in s. 20A substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 266(2)** (with [Sch. 7](#))
- F32** Words in s. 20A(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 266(3)** (with [Sch. 7](#))

[^{F33}20B Water resources management schemes: referral to Secretary of State

- (1) This section applies where—
- (a) the [^{F34}appropriate agency] has sought to enter into arrangements acceptable to it under section 20 or 20A above, but is satisfied that the other party is

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- unwilling to enter into such arrangements or to do so on terms appearing to the [F34 appropriate agency] to be reasonable; or
- (b) having entered into such arrangements, the [F34 appropriate agency] has sought to renew or vary them but is satisfied that the other party is unwilling to do so or to do so on terms appearing to the [F34 appropriate agency] to be reasonable.
- (2) Where this section applies, the [F34 appropriate agency] may refer to the Secretary of State the question (as the case may be)—
- (a) whether such arrangements should be entered into, and if so, on what terms; or
- (b) whether the arrangements should be renewed or varied (as the case may be), and if so, on what terms.
- (3) If the Secretary of State determines that arrangements should be entered into or (as the case may be) renewed or varied, such arrangements on the terms determined by the Secretary of State shall be enforceable—
- (a) by civil proceedings by the Secretary of State for an injunction or for any other appropriate relief; and
- (b) where the other party is a water undertaker, also under section 18 of the Water Industry Act 1991 (enforcement orders) by the Secretary of State.
- (4) The functions of the Secretary of State under subsection (2) above shall be treated for the purposes of section 114 of the 1995 Act (delegation or reference of appeals) as if they were functions to which paragraph (a) of subsection (1) of that section applied.]

Textual Amendments

F33 S. 20B inserted (1.10.2004) by [Water Act 2003 \(c. 37\), ss. 29\(1\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(b\)](#) (with [Sch. para. 8](#))

F34 Words in s. 20B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 267](#) (with [Sch. 7](#))

[F35] 20C Proposals for bulk supply arrangements

- (1) In the circumstances mentioned in subsection (2) below, the [F36 appropriate agency] may, in carrying out its functions under section 6(2) [F37 or, as the case may be, section 6(2A)] of the 1995 Act, propose to a qualifying person (within the meaning of section 40 of the Water Industry Act 1991) that he make an application under that section for a bulk supply of water from a water undertaker.
- (2) The circumstances referred to in subsection (1) above are that it appears to the [F36 appropriate agency] that such a bulk supply is necessary in order to secure the proper use of water resources.
- (3) The [F36 appropriate agency] shall not make such a proposal without first consulting the Water Services Regulation Authority.
- (4) The [F36 appropriate agency] may include in its proposal the period for which, and terms and conditions on which, the [F36 appropriate agency] considers it appropriate that the bulk supply should be given.]

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Textual Amendments

- F35** S. 20C inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 31(1)**, 105(3); S.I. 2004/2528, art. 2(c) (with [Sch. para. 8](#))
- F36** Words in s. 20C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 268(2)** (with [Sch. 7](#))
- F37** Words in s. 20C(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 268(3)** (with [Sch. 7](#))

21 Minimum acceptable flows.

- (1) The [^{F38}appropriate agency] may, if it thinks it appropriate to do so, submit a draft statement to the Secretary of State containing, in relation to any inland waters that are not discrete waters—
- (a) provision for determining the minimum acceptable flow for those waters; or
 - (b) where any provision for determining such a flow is for the time being in force in relation to those waters, provision for amending that provision or for replacing it with different provision for determining the minimum acceptable flow for those waters.
- (2) The provision contained in any statement for determining the minimum acceptable flow for any inland waters shall, in relation to the inland waters to which it relates, set out—
- (a) the control points at which the flow in the waters is to be measured;
 - (b) the method of measurement which is to be used at each control point; and
 - (c) the flow which is to be the minimum acceptable flow at each control point or, where appropriate, the flows which are to be the minimum acceptable flows at each such point for the different times or periods specified in the statement.
- (3) Before preparing so much of any draft statement under this section as relates to any particular inland waters, the [^{F38}appropriate agency] shall consult—
- [^{F39}(za) if those waters are in Wales and there are related inland waters in England, the Agency;
 - (zb) if those waters are in England and there are related inland waters in Wales, the NRBW;]
 - (a) any water undertaker having the right to abstract water from those waters;
 - (b) any other water undertaker having the right to abstract water from any related underground strata;
 - (c) the drainage board for any internal drainage district from which water is discharged into those waters or in which any part of those waters is situated;
 - (d) any navigation authority, harbour authority or conservancy authority having functions in relation to those waters or any related inland waters;
 - (e) if those waters are ^{F40}... situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales) and they or any related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, [^{F41}the Secretary of State for Transport]; and
 - (f) any person authorised by a licence under Part I of the ^{M5}Electricity Act 1989 to generate electricity [^{F42}who has a right to abstract water from those waters].

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- (4) In determining the flow to be specified in relation to any inland waters under subsection (2)(c) above, the [^{F38}appropriate agency] shall have regard—
- (a) to the flow of water in the inland waters from time to time;
 - (b) in the light of its duties under [^{F43}sections 6(1), 7 and 8 of the 1995 Act], to the character of the inland waters and their surroundings; and
 - (c) to any water quality objectives established under Chapter I of Part III of this Act in relation to the inland waters or any other inland waters which may be affected by the flow in the inland waters in question.
- (5) The flow specified in relation to any inland waters under subsection (2)(c) above shall be not less than the minimum which, in the opinion of the [^{F38}appropriate agency], is needed for safeguarding the public health and for meeting (in respect of both quantity and quality of water)—
- (a) the requirements of existing lawful uses of the inland waters, whether for agriculture, industry, water supply or other purposes; and
 - (b) the requirements, in relation to both those waters and other inland waters whose flow may be affected by changes in the flow of those waters, of navigation, fisheries or land drainage.
- (6) The provisions of Schedule 5 to this Act shall have effect with respect to draft statements under this section and with respect to the approval of statements submitted as draft statements.
- (7) The approval under Schedule 5 to this Act of a draft statement under this section shall bring into force, on the date specified in that approval, so much of that statement, as approved, as contains provision for determining, amending or replacing the minimum acceptable flow for any inland waters.
- (8) For the purposes of subsection (3) above—
- (a) underground strata are related underground strata in relation to any inland waters if—
 - (i) a water undertaker has a right to abstract water from the strata; and
 - (ii) it appears to the [^{F38}appropriate agency], having regard to the extent to which the level of water in the strata depends on the flow of those waters, that the exercise of that right may be substantially affected by so much of the draft statement in question as relates to those waters;
 - (b) inland waters are related inland waters in relation to any other inland waters, where it appears to the [^{F38}appropriate agency] that changes in the flow of the other waters may affect the flow of the first-mentioned inland waters.
- (9) For the purposes of subsection (5) above the [^{F38}appropriate agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of any inland waters unless—
- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
 - (b) that decision has not been quashed or reversed;
- ^{F44}
- [^{F45}(10) In subsection (5) above, the reference to land drainage includes—
- (a) defence against water (including sea water), irrigation (other than spray irrigation), warping and the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse; and

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(b) the provision of flood warning systems.]

Textual Amendments

- F38** Words in s. 21 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 269(2)** (with Sch. 7)
- F39** S. 21(3)(za)(zb) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 269(3)(a)** (with Sch. 7)
- F40** Words in s. 21(3)(e) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 269(3)(b)** (with Sch. 7)
- F41** Words in s. 21(3)(e) substituted (25.11.2002) by [S.I. 2002/2626](#), art. 20, **Sch. 2 para. 18(2)**
- F42** Words in s. 21(3)(f) added (21.9.1995) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 133(1)** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3
- F43** Words in s. 21(4)(b) substituted (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 133(2)** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3
- F44** Words in s. 21(9) repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), ss. 8(2)(a), 105(3), **Sch. 9 Pt. 1**; [S.I. 2017/1043](#), art. 2(c)(h)
- F45** S. 21(10) added (1.1.2018) by [Water Act 2003 \(c. 37\)](#), ss. 8(2)(b), 105(3); [S.I. 2017/1043](#), art. 2(c)

Marginal Citations

M5 [1989 c. 29](#).

22 Directions to the [^{F46}appropriate agency] to consider minimum acceptable flow.

- (1) If the [^{F46}appropriate agency] is directed by the Secretary of State to consider whether the minimum acceptable flow for any particular inland waters ought to be determined or reviewed, the [^{F46}appropriate agency] shall consider that matter as soon as reasonably practicable after being directed to do so.
- (2) After considering any matter under subsection (1) above the [^{F46}appropriate agency] shall submit to the Secretary of State with respect to the inland waters in question either—
 - (a) such a draft statement as is mentioned in subsection (1) of section 21 above; or
 - (b) a draft statement that no minimum acceptable flow ought to be determined for those waters or, as the case may require, that the minimum acceptable flow for those waters does not need to be changed.

and subsections (6) and (7) of that section shall apply in relation to a draft statement under this subsection as they apply in relation to a draft statement under that section.
- (3) Without prejudice to the generality of paragraph 4 of Schedule 5 to this Act, the power of the Secretary of State under that paragraph to alter a draft statement before approving it shall include power to substitute a statement containing or amending any such provision as is mentioned in subsection (2) of section 21 above for such a draft statement as is mentioned in subsection (2)(b) of this section.

Textual Amendments

- F46** Words in s. 22 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(a)** (with Sch. 7)

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23 Minimum acceptable level or volume of inland waters.

- (1) Where it appears to the [^{F47}appropriate agency], in the case of any particular inland waters, that it would be appropriate to measure the level or the volume (either instead of or in addition to the flow) the [^{F47}appropriate agency] may determine that sections 21 and 22 above shall apply in relation to those inland waters as if any reference to the flow were or, as the case may be, included a reference to the level or to the volume.
- (2) Where the [^{F47}appropriate agency] makes a determination under subsection (1) above with respect to any inland waters, any draft statement prepared for the purposes of section 21 or 22 above, in so far as it relates to those waters, shall state—
 - (a) whether the level or the volume is to be measured; and
 - (b) whether it is to be measured instead of, or in addition to, the flow.
- (3) Chapter II of this Part shall apply in relation to any inland waters with respect to which a determination has been made under subsection (1) above as if any reference in that Chapter to the flow were, or (as the case may be) included, a reference to the level or, as the case may be, the volume.

Textual Amendments

- F47** Words in ss. 23, 24 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(a\)](#) (with Sch. 7)

CHAPTER II

ABSTRACTION AND IMPOUNDING

Modifications etc. (not altering text)

- C13** Chapter II of Part II excluded (1.4.1996) by [1995 c. 25, s. 6\(3\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- C14** Chapter II of Part II modified (18.12.1996) by [1996 c. 61, s. 52, Sch. 15 Pt. III para. 11](#)
- C15** Pt. II Ch. II modified (22.3.2005) by [Midland Metro \(Wednesbury to Brierley Hill and Miscellaneous Amendments\) Order 2005 \(S.I. 2005/927\)](#), [Sch. 11 para. 11](#) (with art. 51)
- C16** Pt. II Ch. II modified (26.8.2005) by [River Tyne \(Tunnels\) Order 2005 \(S.I. 2005/2222\)](#), art. 1, [Sch. 10 para. 14](#) (with arts. 45(1), 48, Sch. 10 paras. 21, 29)
- C17** Pt. II Ch. II modified (19.3.2007) by [Ouseburn Barrage Order 2007 \(S.I. 2007/608\)](#), art. 1, [Sch. 6 para. 18](#) (with arts. 46-48, Sch. 6 paras. 17(5), 23)
- C18** Pt. II Ch. II modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 17 para. 11](#)
- C19** Pt. II Ch. II modified (9.6.2009) by [Nottingham Express Transit System Order 2009 \(S.I. 2009/1300\)](#), arts. 1, [71\(12\)](#) (with Sch. 13 para. 14(2), Sch. 14 para. 19, Sch. 16)
- C20** Pt. II Ch. II modified (20.7.2010) by [The Network Rail \(Nuneaton North Chord\) Order 2010 \(S.I. 2010/1721\)](#), art. 1, [Sch. 11 para. 12](#)
- C21** Pt. II Ch. II modified (27.8.2010) by [The Llangollen and Corwen Railway Order 2010 \(S.I. 2010/2136\)](#), art. 1(1), [Sch. 4 para. 12](#)
- C22** Pt. II Ch. II modified (1.9.2010) by [The Port of Bristol \(Deep Sea Container Terminal\) Harbour Revision Order 2010 \(S.I. 2010/2020\)](#), art. 1(2), [Sch. 6 para. 11\(1\)](#) (with arts. 18, 19)
- C23** Pt. II Ch. II modified (1.2.2011) by [The River Mersey \(Mersey Gateway Bridge\) Order 2011 \(S.I. 2011/41\)](#), art. 1, [Sch. 10 para. 41\(1\)](#) (with art. 51, Sch. 10 paras. 6885)

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Restrictions on abstraction and impounding

24 Restrictions on abstraction.

- (1) Subject to the following provisions of this Chapter and to any drought order [^{F48}or drought permit] under Chapter III of this Part, no person shall—
 - (a) abstract water from any source of supply; or
 - (b) cause or permit any other person so to abstract any water,
 except in pursuance of a licence under this Chapter granted by the [^{F47}appropriate agency] and in accordance with the provisions of that licence.
- (2) Where by virtue of subsection (1) above the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Chapter, no person shall begin, or cause or permit any other person to begin—
 - (a) to construct any well, borehole or other work by which water may be abstracted from those strata;
 - (b) to extend any such well, borehole or other work; or
 - (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,
 unless the conditions specified in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are—
 - (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Chapter; and
 - (b) that—
 - (i) the well, borehole or work, as constructed or extended; or
 - (ii) the machinery or apparatus, as installed or modified,
 fulfils the requirements of that licence as to the means by which water is authorised to be abstracted.
- (4) A person shall be guilty of an offence if—
 - (a) he contravenes subsection (1) or (2) above; or
 - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (5) A person who is guilty of an offence under this section shall be liable [^{F49}on summary conviction, or on conviction on indictment, to a fine].
- (6) The restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the ^{M6}Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

Textual Amendments

F47 Words in ss. 23, 24 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(a\)](#) (with Sch. 7)

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- F48** By S.I. 1996/593, reg. 3, **Sch. 2 para. 8** it is provided that the words “or drought permit” be substituted (1.4.1996) for the words following “drought order”
- F49** Words in s. 24(5) substituted (12.3.2015) by **The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664)**, reg. 1(1), **Sch. 4 para. 24(2)** (with reg. 5(1))

Modifications etc. (not altering text)

- C24** S. 24 excluded (15.1.2010) by **The Eels (England and Wales) Regulations 2009 (S.I. 2009/3344)**, regs. 1(b), **21(1)** (with reg. 1(d))
- C25** S. 24 excluded (22.12.2017) by **The M20 Junction 10a Development Consent Order 2017 (S.I. 2017/1202)**, arts. 1, **3(1)(b)** (with arts. 4, 37)
- C26** S. 24 excluded (31.5.2018) by **The Silvertown Tunnel Order 2018 (S.I. 2018/574)**, arts. 1(2), **3(1)(m)**
- C27** S. 24 excluded (13.3.2024) by **The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 (S.I. 2024/230)**, arts. 1, **6** (with Sch. 11 paras. 5, 22, 37, 47, 82, 110)
- C28** S. 24(1) restricted (16.3.1992) by **Aire and Calder Navigation Act 1992 (c. iv)**, s. **17(2)**
- C29** S. 24(1) restricted (22.7.2008) by **Crossrail Act 2008 (c. 18)**, **Sch. 14 para. 15**
- C30** S. 24(1) excluded (21.8.2013) by **The Croxley Rail Link Order 2013 (S.I. 2013/1967)**, arts. 1, **40(1)**
- C31** S. 24(1) excluded (15.12.2014) by **The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102)**, arts. 1, **17(1)** (with Sch. 8 para. 45)
- C32** S. 24(1) restricted (12.1.2016) by **The London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015/2044)**, arts. 1, **36(1)**
- C33** S. 24(1) restricted (23.2.2017) by **High Speed Rail (London - West Midlands) Act 2017 (c. 7)**, s. 70(1), **Sch. 21 para. 1**
- C34** S. 24(1) excluded (2.1.2018) by **The Boston Barrier Order 2017 (S.I. 2017/1329)**, arts. 1, **20(1)** (with arts. 55-57, Sch. 8 para. 13)
- C35** S. 24(1) restricted (11.2.2021) by **High Speed Rail (West Midlands - Crewe) Act 2021 (c. 2)**, s. 64(1), **Sch. 21 para. 1**
- C36** S. 24(1) excluded (25.3.2022) by **The Bridgwater Tidal Barrier Order 2022 (S.I. 2022/299)**, arts. 1, **20(1)** (with art. 55)
- C37** S. 24(2) applied (1.1.2018) by **The Water Abstraction and Impounding (Exemptions) Regulations 2017 (S.I. 2017/1044)**, regs. 1, **4(6)**
- C38** S. 24(2) excluded (1.1.2018) by **The Water Abstraction and Impounding (Exemptions) Regulations 2017 (S.I. 2017/1044)**, regs. 1, **9(1)**

Marginal Citations

- M6** 1963 c. 38.

[^{F50}24A Abstraction licences

- (1) Each licence to abstract water shall be of one of the following three types—
- (a) a licence to abstract water from one source of supply over a period of twenty-eight days or more for any purpose (a “full licence”);
 - (b) a licence to abstract water from one source of supply over a period of twenty-eight days or more for the purpose of—
 - (i) transferring water to another source of supply; or
 - (ii) transferring water to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations (whether underground or on the surface),in either case without intervening use (a “transfer licence”);

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- (c) a licence to abstract water from one source of supply over a period of less than twenty-eight days (a “temporary licence”).
- (2) In this Act, a reference (however expressed) to a licence to abstract water is to be taken as a reference to all types of licence, unless it is clear that a different meaning is intended.]

Textual Amendments

F50 S. 24A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. **1(1)**, 105(3); S.I. 2006/984, art. 2(a) (with [Sch. paras. 1, 2](#))

25 Restrictions on impounding.

[^{F51}(1) Subject to the following provisions of this Chapter and to any drought order or drought permit under Chapter 3 of this Part, no person shall—

- (a) begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters; or
- (b) cause or permit the flow of any inland waters which are not discrete waters to be obstructed or impeded at any point by means of impounding works,

unless (in either case) the conditions mentioned in subsection (1A) below are satisfied.

(1A) The conditions are—

- (a) a licence under this Chapter granted by the [^{F52}appropriate agency] to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;
- (b) the impounding works will not (or, as the case may be, do not) obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and
- (c) any other conditions or requirements imposed by the provisions, as for the time being in force, of the licence (whether as to the provision of compensation water or otherwise) are complied with.]

(2) A person shall be guilty of an offence if—

- (a) he contravenes subsection (1) above; or
- (b) he is for the purposes of this section the holder of a licence under this Chapter and ^{F53}... does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.

(3) A person who is guilty of an offence under this section shall be liable [^{F54}on summary conviction, or on conviction on indictment, to a fine].

(4) Subject to subsection (5) below, the restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the ^{M7}Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

(5) Subject to subsection (6) below, the restriction on impounding works [^{F55}shall not apply in respect of any impounding works], if—

- (a) the construction or alteration of those works; or

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- (b) the obstruction or impeding of the flow of the inland waters resulting from the construction or alteration of the works,
is authorised (in whatsoever terms, and whether expressly or by implication) by virtue of any such statutory provision as at the coming into force of this Act was an alternative statutory provision for the purposes of section 36(2) of the Water Resources Act 1963.
- (6) The provisions of this Chapter shall have effect in accordance with subsection (7) below where by virtue of any such provision as is mentioned in subsection (5) above and is for the time being in force—
- (a) any water undertaker or sewerage undertaker to which rights under that provision have been transferred in accordance with a scheme under Schedule 2 to the ^{M8}Water Act 1989 or Schedule 2 to the ^{M9}Water Industry Act 1991; or
- (b) any other person,
is authorised (in whatsoever terms, and whether expressly or by implication) to obstruct or impede the flow of any inland waters by means of impounding works (whether those works have already been constructed or not).
- (7) Where subsection (6) above applies, the provisions of this Chapter shall have effect (with the necessary modifications), where the reference is to the revocation or variation of a licence under this Chapter, as if—
- (a) any reference in those provisions to a licence under this Chapter included a reference to the authorisation mentioned in that subsection; and
- (b) any reference to the holder of such a licence included a reference to the undertaker or other person so mentioned.
- (8) In this Chapter “impounding works” means either of the following, that is to say—
- (a) any dam, weir or other works in any inland waters by which water may be impounded;
- (b) any works for diverting the flow of any inland waters in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a) above.

[^{F56}(9) In relation to impounding works, references to alteration include the removal or partial removal of those works, and cognate expressions shall be construed accordingly.]

Textual Amendments

- F51** S. 25(1)(1A) substituted for s. 25(1) (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(2\), 105\(3\)](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)](#) (with [Sch. para. 2](#))
- F52** Words in s. 25(1A)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 270\(b\)](#) (with [Sch. 7](#))
- F53** Words in s. 25(2) repealed (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(3\), 105\(3\), Sch. 9 Pt. 1](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)\(s\)\(ii\)](#) (with [Sch. para. 2](#))
- F54** Words in s. 25(3) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\), reg. 1\(1\), Sch. 4 para. 24\(3\)](#) (with [reg. 5\(1\)](#))
- F55** Words in s. 25(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(4\), 105\(3\)](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)](#) (with [Sch. para. 2](#))
- F56** S. 25(9) added (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(5\), 105\(3\)](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)](#) (with [Sch. para. 2](#))

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Modifications etc. (not altering text)

- C39** S. 25 excluded (15.1.2010) by [The Eels \(England and Wales\) Regulations 2009 \(S.I. 2009/3344\)](#), regs. 1(b), **21(1)** (with reg. 1(d))
- C40** S. 25 excluded (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), arts. 1, **46** (with arts. 51, 53)
- C41** S. 25 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 2**
- C42** S. 25 excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(2)** (with arts. 55-57, Sch. 8 para. 13)
- C43** S. 25 excluded (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\)](#), s. 64(1), **Sch. 21 para. 2**
- C44** S. 25 excluded (25.3.2022) by [The Bridgwater Tidal Barrier Order 2022 \(S.I. 2022/299\)](#), arts. 1, **20(2)** (with art. 55)
- C45** S. 25(1)(b) modified (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 3, 105(3)**; S.I. 2006/984, art. 2(c) (with Sch. para. 2)

Marginal Citations

- M7** 1963 c. 38.
M8 1989 c. 15.
M9 1991 c. 56.

[^{F57}25A Enforcement notices

- (1) Subject to the following provisions of this section, where it appears to the [^{F58}appropriate agency] that a person is—
 - (a) in breach of section 24(1) or (2) or section 25(1) above; or
 - (b) for the purposes of section 24 or 25 above a holder of a licence under this Chapter and has not complied with a condition or requirement imposed by the provisions, as for the time being in force, of that licence,
 the [^{F58}appropriate agency] shall be entitled to serve an enforcement notice on him if the condition in subsection (2) below is satisfied.
- (2) The condition is that it appears to the [^{F58}appropriate agency] that the breach or failure to comply is causing or is likely to cause significant damage to the environment.
- (3) An enforcement notice is a notice requiring the person on whom it is served—
 - (a) to cease his breach of section 24(1) or (2) or section 25(1) above, or to comply with the condition or requirement in question; and
 - (b) to carry out any works or operations specified in the notice.
- (4) The works or operations which may be specified are works or operations which it appears to the [^{F58}appropriate agency] are appropriate for the purpose of remedying or mitigating the effects of the breach or failure to comply, and may include—
 - (a) works or operations for the purpose, so far as it is reasonably practicable to do so, of restoring any affected waters, including any flora and fauna dependent on them, to their state immediately before the breach or failure to comply; and
 - (b) in the case of a breach of section 25(1) above, the removal of any unauthorised impounding works or the reversal of any unauthorised alteration to impounding works.
- (5) An enforcement notice must specify the periods within which the person on whom it is served must do each of the things specified in the notice.

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- (6) Before serving an enforcement notice on any person, the [^{F58}appropriate agency] shall take reasonable steps to consult that person about the works or operations which are to be specified in the notice.
- (7) The Secretary of State may by regulations make provision for or in connection with—
- (a) the form or content of enforcement notices;
 - (b) requirements for consultation, before the service of an enforcement notice, with persons other than the person upon whom the notice is to be served;
 - (c) steps to be taken for the purposes of any consultation required under subsection (6) above or regulations made by virtue of paragraph (b) above;
 - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of an enforcement notice.
- (8) An enforcement notice is not invalid, or invalidly served, merely because of a failure to comply with subsection (6) above or with regulations made by virtue of subsection (7) (b) above.
- (9) The Secretary of State may, if he thinks fit in relation to any person, give directions to the [^{F58}appropriate agency] as to whether or how it should exercise its powers under this section.
- (10) In proceedings for any offence under section 24 or 25 above against a person upon whom an enforcement notice has been served, the following are not to be taken as evidence that he has committed the offence—
- (a) the fact that an enforcement notice has been served on him;
 - (b) the fact that he does not appeal against it;
 - (c) the fact that on an appeal against it the notice is confirmed (whether with or without modifications).

Textual Amendments

F57 Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30, 105(3)**; S.I. 2006/984, art. 2(o)

F58 Words in s. 25A substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(c)** (with Sch. 7)

Modifications etc. (not altering text)

C46 S. 25A excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

C47 Ss. 25A(5)-(9) applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 4(3)(a), 105(3)**; S.I. 2006/984, art. 2(d)

25B Rights of entry and appeals

Sections 161B and 161C below (including any power to make regulations) shall apply in relation to enforcement notices as they apply in relation to works notices under section 161A below.

Textual Amendments

F57 Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30, 105(3)**; S.I. 2006/984, art. 2(o)

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Modifications etc. (not altering text)

C48 S. 25B excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

25C Consequences of not complying with an enforcement notice

- (1) If a person on whom the [^{F59}appropriate agency] serves an enforcement notice fails to comply with any of its requirements, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable [^{F60}on summary conviction, or on conviction on indictment, to a fine].
- (3) If a person on whom an enforcement notice has been served fails to comply with any of its requirements, the [^{F59}appropriate agency] may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the [^{F59}appropriate agency] in doing it.
- (4) If the [^{F59}appropriate agency] is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the [^{F59}appropriate agency] may take proceedings in the High Court for the purpose of securing compliance with the notice.]

Textual Amendments

- F57** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30, 105(3)**; [S.I. 2006/984](#), art. 2(o)
- F59** Words in s. 25C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(d)** (with Sch. 7)
- F60** Words in s. 25C(2) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 24(4)** (with reg. 5(1))

Modifications etc. (not altering text)

C49 S. 25C excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

Rights to abstract or impound

[^{F61}26 Rights of navigation, harbour and conservancy authorities.

- (1) Subject to subsection (2) below, the restriction on abstraction shall not apply to any transfer, without intervening use, of water from inland waters described in the first column of the Table below to inland waters described in the corresponding entry in the second column, if the transfer is in the course of, or results from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.

Transfer from

A water system of the authority's.

Transfer to

The same water system.

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A water system of the authority's.	Inland waters not forming part of that water system.
A supply reservoir of the authority's.	A water system of the authority's with which that reservoir is connected.

- (2) Subsection (1) above shall not apply to a transfer of water from a water system to any inland waters outside that water system in order to—
- (a) empty a dry dock; or
 - (b) introduce into those inland waters all or part of a quantity of water to be abstracted from any connected inland waters in pursuance of a licence to do so granted under this Chapter.
- (3) The restriction on impounding works shall not apply to—
- (a) the construction or alteration of impounding works; or
 - (b) the obstruction or impeding of inland waters by means of impounding works, in the course of the performance by a navigation authority, harbour authority or conservancy authority of their functions as such an authority, unless the construction, alteration, obstruction or impeding affects any inland waters in relation to which the authority does not have functions.
- (4) In this section, references to—
- (a) an authority's water system are to a water system in relation to which the authority has functions;
 - (b) an authority's supply reservoir are to a reservoir—
 - (i) belonging to a navigation authority;
 - (ii) used for the purposes of supplying that navigation authority's water system; and
 - (iii) which does not discharge to any inland waters other than that water system.
- (5) For the purposes of this section, “water system” means the canals, the harbours, or the canals and harbours constituting the system in question—
- (a) together with the locks, docks, balancing reservoirs, weirs and other works associated with the system (other than any supply reservoir as described in subsection (4)(b) above); but
 - (b) excluding any part of the system which consists of a navigable river or part of one.]

Textual Amendments

F61 S. 26 substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), ss. 5, 105(3); S.I. 2017/1043, art. 2(a)

[^{F62}27 Rights to abstract small quantities.

- (1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres in any period of twenty-four hours, if the abstraction does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted during the period.

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- (2) In the case of any abstraction of water from underground strata which falls within subsection (1) above, the restriction imposed by section 24(2) above shall not apply—
 - (a) to the construction or extension of any well, borehole or other work; or
 - (b) to the installation or modification of machinery or other apparatus,
 if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (3) Where a person is authorised by a licence under this Chapter to carry on a particular abstraction operation (or series of operations), this section does not permit him to carry it on beyond the authorisation conferred by the licence.

Textual Amendments

F62 Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), [ss. 6\(1\), 105\(3\)](#); [S.I. 2004/641, art. 3\(a\)](#) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968, art. 2\(a\)](#)

27A Variation of small quantity threshold

- (1) The Secretary of State may by order made by statutory instrument provide that section 27(1) above is to have effect in relation to—
 - (a) a geographical area; or
 - (b) a class of inland waters; or
 - (c) a class of underground strata; or
 - (d) a class of inland waters or of underground strata within a geographical area,
 (in each case as specified in the order) as if for “twenty cubic metres” there were substituted another quantity specified in the order.
- (2) The Secretary of State shall not make such an order except upon the application of the [^{F63}appropriate agency]; but he may direct the [^{F63}appropriate agency] to make such an application.
- (3) Such an order may—
 - (a) make different provision in relation to the different paragraphs in subsection (1) above; and
 - (b) make different provision for different areas, waters or underground strata.
- (4) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (1) above and with respect to the making of such orders.
- (5) An order under subsection (1) above which specifies a greater quantity than the one which previously had effect in relation to the area, waters or strata in question may make provision for a licence to abstract water granted under this Chapter—
 - (a) which is for the time being in force; but
 - (b) which by virtue of the order has become wholly or partly unnecessary,
 to cease to have effect, or to cease to have effect to the extent specified in the order.
- (6) An order under subsection (1) above may include provision for or in relation to the payment by the [^{F63}appropriate agency] of compensation, in cases specified in the order, to a person who—

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- (a) immediately before the making of an order under subsection (1) above, had been in a position to carry out an abstraction to which, by virtue of section 27(1) above, the restriction on abstraction did not apply;
 - (b) following the making of that order, requires a licence under this Chapter in order to carry out that abstraction; and
 - (c) has suffered loss or damage as a result of his having been—
 - (i) refused such a licence in respect of that abstraction; or
 - (ii) granted such a licence, but in respect of an abstraction of more limited extent than the one he had been in a position to carry out.
- (7) Paragraphs (e) and (f) of section 219(2) below apply in relation to orders under subsection (1) above as they apply to regulations made under this Act.
- (8) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F62** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), [ss. 6\(1\), 105\(3\)](#); [S.I. 2004/641](#), [art. 3\(a\)](#) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968](#), [art. 2\(a\)](#)
- F63** Words in [s. 27A](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(e\)](#) (with [Sch. 7](#))

28 Curtailment of rights under section 27.

- [^{F64}(1) The provisions of this section shall have effect where a person (“the occupier”) is entitled, by virtue of subsection (6) of section 27 above, to a protected right for the purposes of this Chapter by reason of his being the occupier of such a holding as is mentioned in subsection (4) of that section in relation to an abstraction falling within that subsection (“the holding”).
- (2) If it appears to the [^{F65}Agency] that the occupier is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on part of the holding (“the relevant part”), but is not so entitled to abstract water for use on other parts of the holding—
- (a) the [^{F65}Agency] may serve on him a notice specifying the relevant part of the holding; and
 - (b) subject to the following provisions of this section, the notice shall have effect so as to require subsections (3) and (4) of section 27 above to be construed in relation to the holding as if the references in subsection (4) to use on the holding were references to use on the part of the holding specified in the notice.
- (3) Where a notice is served under subsection (2) above and the occupier objects to the notice on the grounds—
- (a) that he is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on every part of the holding; or
 - (b) that he is so entitled to abstract water for use on a larger part of the holding than that specified in the notice,

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he may, within such period (not being less than twenty-eight days from the date of service of the notice) and in such manner as may be prescribed, appeal to the court against the notice.

(4) On any appeal under subsection (3) above, the court shall determine the matter in dispute and, in accordance with its decision, confirm, quash or vary the [^{F65}Agency’s] notice and—

- (a) where the court quashes a notice served under subsection (2) above, paragraph (b) of that subsection shall not have effect; and
- (b) where the court varies such a notice, that paragraph shall have effect, but with the substitution, for the reference to the part of the holding specified in the notice, of a reference to the part specified in the notice as varied by the court.

(5) In this section—

“the court” means the county court for the district in which the holding, or the part of the holding which is contiguous to the inland waters in question, is situated; and

“entitled” (except in subsection (1) above) means entitled apart from this Chapter or any other statutory provision.]

Textual Amendments

F64 S. 28 repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 6(2), 105(3), [Sch. 9 Pt. 1](#); S.I. 2005/968, art. 2(a)(n)

F65 Words in s. 28 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

29 Rights to abstract for drainage purposes etc.

(1) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in the course of, or resulting from, any operations for purposes of land drainage.

[^{F66}(1A) The restriction on abstraction shall not apply to any abstraction of water from inland waters within the district of an internal drainage board if—

- (a) the abstraction is carried out by or on behalf of that board in connection with its functions;
- (b) the water abstracted is transferred to another area of inland waters within the board’s district without intervening use; and
- (c) the sole or main purpose of the transfer is to augment that other area of inland waters.]

[^{F67}(2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within subsection (1) or (1A) above) is an emergency abstraction and the person abstracting the water complies with subsection (2B) below.

(2A) An abstraction of water is an emergency abstraction if, in the opinion of the abstractor, an emergency has arisen which makes the abstraction necessary to prevent immediate danger of interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface) or, in relation to such operations, to prevent an immediate risk—

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- (a) to a human being of death, personal injury or harm to health;
 - (b) of serious damage to works resulting from any such operations; or
 - (c) of serious damage to the environment.
- (2B) In the case of any emergency abstraction, the person abstracting the water shall before the end of the period of five days beginning with the date on which the abstraction started give notice to the appropriate agency of—
- (a) the abstraction and of the source of supply in question; and
 - (b) the reasons for the abstractor’s opinion that an emergency had arisen and that the abstraction was necessary.
- (2C) The appropriate agency may give notice to the person referred to in subsection (2B) above that in the appropriate agency's opinion an emergency had not arisen, or that the abstraction is not, or is no longer, necessary for any of the reasons set out in subsection (2A) above; and, if the appropriate agency does so, the restriction on abstraction shall apply to the abstraction from the time when the notice is served (and, if applicable, the restriction imposed by section 24(2) above shall apply accordingly).]
- ^{F68}(3)
- (4) In the case of any abstraction of water from underground strata which falls within subsection (1) or (2) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
 - (b) to the installation or modification of machinery or other apparatus,
- if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- [^{F69}(5) In this section, “land drainage”—
- (a) includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea; but
 - (b) does not include warping, irrigation (including spray irrigation), or transferring water from one source of supply to another (whether with or without intervening use) solely or mainly in order to augment the latter.]

Textual Amendments

F66 S. 29(1A) inserted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(2)**, 105(3); S.I. 2017/1043, art. 2(b)

F67 S. 29(2)-(2C) substituted for s. 29(2) (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(3)**, 105(3); S.I. 2017/1043, art. 2(b) (as amended (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), Sch. 2 para. 417(2)(a) (with Sch. 7))

F68 S. 29(3) repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(4)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2017/1043, art. 2(b)(h)

F69 S. 29(5) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(5)**, 105(3); S.I. 2017/1043, art. 2(b)

^{F70}**30** Notices with respect to borings not requiring licences.

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Textual Amendments

F70 S. 30 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 8(3), 105(3), [Sch. 9 Pt. 1](#); S.I. 2006/984, art. 2(e)(s)(ii) (with savings in [Sch. paras. 4, 5](#))

F71 31 Appeals against conservation notices under section 30.

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Textual Amendments

F71 S. 31 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 8(3), 105(3), [Sch. 9 Pt. 1](#); S.I. 2006/984, art. 2(e)(s)(ii) (with savings in [Sch. paras. 4, 5](#))

32 Miscellaneous rights to abstract.

- (1) The restriction on abstraction shall not apply to any abstraction by machinery or apparatus installed on a vessel, where the water is abstracted for use on that, or any other, vessel.
- (2) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply to the doing of anything—
 - (a) for [^{F72}extinguishing fires or protecting life and property in the event of fire]; or
 - (b) for the purpose of testing apparatus used for [^{F73}either of] those purposes or of training or practice in the use of such apparatus.
- (3) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply—
 - (a) to any abstraction of water;
 - (b) to the construction or extension of any well, borehole or other work; or
 - (c) to the installation or modification of machinery or other apparatus,
 if the abstraction, construction, extension, installation or modification is for any of the purposes specified in subsection (4) below and takes place with the consent of the [^{F74}appropriate agency] and in compliance with any conditions imposed by the [^{F74}appropriate agency].
- (4) The purposes mentioned in subsection (3) above are—
 - (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
 - (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work or any inland waters.

Textual Amendments

F72 Words in s. 32(2)(a) substituted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(a\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2

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- F73** Words in s. 32(2)(b) inserted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(b\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F74** Words in s. 32(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(f\)](#) (with Sch. 7)

^{F75}33 Power to provide for further rights to abstract.

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Textual Amendments

- F75** S. 33 repealed with a saving (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 10(11), 105(3), [Sch. 9 Pt. 1](#); S.I. 2004/641, art. 3(c)(z)

[^{F76}33A Power to provide for further exemptions

- (1) The Secretary of State may make regulations providing for further cases in which—
 - (a) the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions imposed by section 24 above); or
 - (b) the restriction on impounding works,shall not apply; and in this section such a case is referred to as an “exemption”.
- (2) The regulations may, in particular, make provision, in relation to an exemption—
 - (a) for the exemption to apply only for a prescribed period;
 - (b) for the exemption not to apply unless prescribed conditions are satisfied, or continue to be satisfied;
 - (c) for the [^{F77}appropriate agency] to be notified, or its consent obtained—
 - (i) before any particular abstraction operation or series of such operations begins; or
 - (ii) in connection with such an operation or series of operations relating to the abstraction of water in underground strata, before any other thing which is mentioned in section 24(2) above is done; or
 - (iii) before any impounding works are constructed or altered,in reliance on the exemption.
- (3) The regulations may provide for an exemption to apply generally or to relate to—
 - (a) a prescribed geographical area;
 - (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 above); or
 - (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works).
- (4) Subject to subsection (5) below, if regulations under this section provide for an exemption falling within subsection (1)(a) above, the regulations shall—
 - (a) if appropriate, make provision for the exemption not to permit a person who is authorised by a licence under this Chapter to carry on an abstraction operation (or series of operations) to carry it on beyond the authorisation conferred by the licence; and

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- (b) make provision as to whether or not, in relation to any abstraction, the exemption provided for by the regulations is to be counted cumulatively with any other exemption which a person has by virtue of this section or section 27 above.
- (5) The regulations may make provision for a licence granted under this Chapter and which is for the time being in force to cease to have effect, or to cease to have effect to the extent specified in the regulations, if it authorises an activity which falls to any extent within the exemption provided for by the regulations.]

Textual Amendments

- F76** S. 33A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 9**, 105(3); S.I. 2004/641, art. 3(b) (with Sch. 3 paras. 17)
- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

Applications for a licence

34 Regulations with respect to applications.

- (1) Any application for a licence under this Chapter shall be made in such manner as may be prescribed, and shall include such particulars, [^{F78}be accompanied by such reports,] and be verified by such evidence, as may be prescribed.
- (2) The Secretary of State may by regulations make provision as to the manner in which applications for the grant of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on such applications [^{F79}, and provision for making such applications available for public inspection.]
- (3) Without prejudice to the generality of subsection (2) above, provision shall be made by regulations under this section for securing that, in such circumstances as may be prescribed (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park ^{F80} . . . authorities)—
- (a) notice of any such application will be given to such one or more National Park ^{F80} . . . authorities as may be determined in accordance with the regulations; and
 - (b) the matters to which the [^{F77}appropriate agency] or, as the case may be, the Secretary of State is to have regard in dealing with the application will include any representations made by any such National Park ^{F80} . . . authority within such period and in such manner as may be prescribed.
- (4) The preceding provisions of this section shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

^{F81}(5)

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Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F78** Words in s. 34(1) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 2\(a\)](#); [S.I. 2004/2528](#), [art. 2\(t\)\(i\)](#) (with [Sch. para. 8](#))
- F79** Words in s. 34(2) added (1.10.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 2\(b\)](#); [S.I. 2004/2528](#), [art. 2\(t\)\(i\)](#) (with [Sch. para. 8](#))
- F80** Words in s. 34 repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), [Sch. 24](#) (with ss. 7(6), 115, 117); [S.I. 1996/2560](#), [art. 2](#), [Sch.](#)
- F81** S. 34(5) repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), [Sch. 24](#) (with ss. 7(6), 115, 117); [S.I. 1996/2560](#), [art. 2](#), [Sch.](#)

35 Restrictions on persons who may make applications for abstraction licences.

- (1) No application for a licence under this Chapter to abstract water shall be entertained unless it is made by a person entitled to make the application in accordance with the following provisions of this section.
- ^{F82}(2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, as respects the place (or, if more than one, as respects each of the places) at which the proposed abstractions are to be effected, he satisfies the [^{F77}appropriate agency] that—
- (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land contiguous to the inland waters at that place (or those places); and
- (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).
- (3) In relation to abstractions from underground strata, a person shall be entitled to make the application if he satisfies the [^{F77}appropriate agency] that—
- (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of or comprising those underground strata; and
- (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).
- (3A) The [^{F77}appropriate agency] may, in particular, take evidence of a person's occupation of land to be evidence of his right of access to it.]
- (4) Any reference in this section to a person who [^{F83}will have a right of access to] land of any description—
- (a) includes a reference to a person who satisfies the [^{F77}appropriate agency] that he has entered into negotiations for the acquisition of an interest in land of that description such that, if the interest is acquired by him, he will be entitled to [^{F84}a right of access to] that land; and
- (b) without prejudice to the application of paragraph (a) above to a person who is or can be authorised to acquire land compulsorily, also includes any person who satisfies the [^{F77}appropriate agency] that by virtue of any enactment, the

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compulsory acquisition by that person of land of that description either has been authorised or can be authorised and has been initiated.

- (5) In subsection (4) above the reference to initiating the compulsory acquisition of land by a person is a reference to—
- (a) the submission to the relevant Minister of a draft of an order which, if made by that Minister in the form of the draft, will authorise that person to acquire that land compulsorily, with or without other land; or
 - (b) the submission to the relevant Minister of an order which, if confirmed by that Minister as submitted will authorise that person to acquire that land compulsorily, with or without other land.
- (6) In subsection (5) above “the relevant Minister”, in relation to the compulsory acquisition of land by any person, means the Minister who, in accordance with the enactment mentioned in subsection (4)(b) above, is empowered to authorise that person to acquire land compulsorily.

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F82** S. 35(2)(3)(3A) substituted for s. 35(2)(3) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(2)**, 105(3); S.I. 2006/984, art. 2(f) (with Sch. paras. 67(3))
- F83** Words in s. 35(4) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(3)(a)**, 105(3); S.I. 2006/984, art. 2(f) (with Sch. paras. 67(3))
- F84** Words in s. 35(4)(a) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(3)(b)**, 105(3); S.I. 2006/984, art. 2(f) (with Sch. paras. 67(3))

Modifications etc. (not altering text)

- C50** S. 35 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(1)**

^{F85}36 Application for combined abstraction and impounding licence.

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Textual Amendments

- F85** S. 36 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 12, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(g)(s)(ii) (with Sch. paras. 1, 2)

[^{F86}36A Applications: types of abstraction licence

- (1) The [^{F77}appropriate agency] may decide that—
- (a) an application for a full licence, a transfer licence or a temporary licence ought to be for one of the other types of licence;
 - (b) a number of applications for licences (of any type or types) to abstract water from a particular source of supply ought to be treated as an application for a single such licence (of any type);

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- (c) an application for a single licence (of any type) to abstract water from a particular source of supply ought to be treated as a number of applications for such licences (of any type or types); or
 - (d) any such application as is referred to above ought to be accompanied by an application for revocation of an existing licence to abstract water.
- (2) The [^{F77}appropriate agency] may arrive at the decision referred to in paragraph (a), (b), (c) or (d) of subsection (1) above on the basis of its assessment of any one or more of the following—
 - (a) the likely effect of the abstraction (or abstractions) for which the applicant has applied for a licence (or licences);
 - (b) the likely effect of that abstraction (or those abstractions) taken together with abstractions under any other licence held by the applicant, or abstractions which would be authorised under any other licence for which the applicant has applied;
 - (c) any other prescribed matter.
- (3) If the [^{F77}appropriate agency] does so decide, it shall serve a notice of its decision on the applicant; and, subject to subsections (4) to (8) below, shall deal with the application (or applications) accordingly (which, if the [^{F77}appropriate agency] made the decision referred to in paragraph (d) of subsection (1) above in relation to any application (or applications), means not publishing any notice under section 37 below, or taking any further step in connection with the application (or applications), until the application for revocation has been received).
- (4) The applicant may by notice appeal to the Secretary of State against the decision, and shall serve a copy of any such notice on the [^{F77}appropriate agency].
- (5) That notice, and the copy of it, shall be served in such manner and within such period as may be prescribed.
- (6) If the [^{F77}appropriate agency] serves a notice under subsection (3) above, it shall not publish any notice under section 37 below, or take any further step in connection with the application (or applications), before—
 - (a) the end of the period within which notice of an appeal may be served on the Secretary of State; or
 - (b) if notice of an appeal is so served, the appeal has been determined.
- (7) The Secretary of State—
 - (a) may allow or dismiss the appeal, or vary any part of the decision of the [^{F77}appropriate agency], whether the appeal relates to that part of the decision or not; and
 - (b) shall direct the [^{F77}appropriate agency] to deal with the application, or applications, accordingly (which, if the [^{F77}appropriate agency's] decision was made under paragraph (d) of subsection (1) above in relation to any such application, and that decision is upheld, may mean not publishing any notice under section 37 below, or taking any further step in connection with the application, until the application for revocation has been received).
- (8) Subsections (2) and (7) of section 44 below apply in relation to an appeal under this section as they apply in relation to an appeal under section 43 below.
- (9) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).]

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Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F86** S. 36A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(1)**, 105(3); S.I. 2006/984, art. 2(h) (with Sch. para. 7)

Modifications etc. (not altering text)

- C51** S. 36A excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(2)**

[^{F87}37 Publication of application for licence.

- (1) The [^{F77}appropriate agency] shall publish a notice of an application for—
 - (a) a full licence or a transfer licence; or
 - (b) a licence under this Chapter to obstruct or impede the flow of any inland waters by means of impounding works,
 in the prescribed way or (if no way is prescribed) in a way calculated to bring the application to the attention of persons who in the [^{F77}appropriate agency's] view are likely to be affected by the licence.
- (2) Not later than the date on which that notice is first published, the [^{F77}appropriate agency] shall also serve a copy of it on the persons referred to in subsection (3) below (except the applicant, if the applicant is one of those persons).
- (3) Those persons are—
 - (a) any water undertaker within whose area any proposed point of abstraction or impounding is situated;
 - (b) any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at any such proposed point; and
 - (c) the drainage board for any internal drainage district within which any such proposed point is situated,
 but paragraphs (b) and (c) above do not apply if the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters.
- (4) A notice for the purposes of the preceding provisions of this section shall—
 - (a) be in the prescribed form and shall include any prescribed matters; and
 - (b) state that any person may make representations in writing to the [^{F77}appropriate agency] with respect to the application at any time before the end of a period specified in the notice.
- (5) The period referred to in subsection (4)(b) above—
 - (a) begins on the date the notice referred to in subsection (1) above is first published as mentioned there; and
 - (b) shall not end before the end of the period of twenty-eight days beginning with that date.
- (6) The Secretary of State may make regulations providing for—
 - (a) the requirements of subsection (2) above, or of both subsections (1) and (2) above, not to apply in prescribed cases;

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- (b) notices of applications to exclude prescribed classes of information, either generally or as respects prescribed classes of application.
- (7) In this section, “proposed point of abstraction or impounding”, in relation to an application for a licence referred to in subsection (1) above, means a place where a licence, if granted in accordance with the application, would authorise—
- (a) water to be abstracted; or
 - (b) the flow of inland waters to be obstructed or impeded by means of impounding works,
- (as the case may be).
- (8) This section is subject to section 37A below.]

Textual Amendments

F77 Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

F87 S. 37 substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(1)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 12)

Modifications etc. (not altering text)

C52 S. 37(1)(2) excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 3**

C53 S. 37(1)(2) applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 2**

C54 S. 37(1)(2) excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 7

[^{F88}37A Power to dispense with publication requirements

The Secretary of State may by regulations make provision for—

- (a) enabling the [^{F77}appropriate agency]; or
- (b) him, in the case of applications referred to him in accordance with section 41 below,

to direct or determine that the requirements of subsections (1) and (2) of section 37 above may in any case (except where the [^{F77}appropriate agency] is the applicant) be dispensed with, if in that case it appears to the [^{F77}appropriate agency] (or, as the case may be, the Secretary of State) to be appropriate to do so.]

Textual Amendments

F77 Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

F88 S. 37A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(2)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)

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Consideration of licence applications

38 General consideration of applications.

- (1) The [F77 appropriate agency] shall not determine any application for a licence under this Chapter before the end of the period specified [F89 in the notice referred to in section 37(4)(b)] above.
- [F90(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—
- (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
 - (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.
- (1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).
- (1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.]
- (2) Subject to the following provisions of this Chapter, on any application to the [F77 appropriate agency] for a licence under this Chapter, the [F77 appropriate agency]—
- (a) may grant a licence containing such provisions as the [F77 appropriate agency] considers appropriate; or
 - (b) if, having regard to the provisions of this Chapter, the [F77 appropriate agency] considers it necessary or expedient to do so, may refuse to grant a licence.
- (3) Without prejudice to section 39(1) below, the [F77 appropriate agency], in dealing with any application for a licence under this Chapter, shall have regard to [F91 all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to]—
- (a) any representations in writing relating to the application which are received by the [F77 appropriate agency] before the end of the period mentioned in subsection (1) above; and
 - (b) the requirements of the applicant, in so far as they appear to the [F77 appropriate agency] to be reasonable requirements.
- [F92 and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the [F77 appropriate agency] under section 20C above.]
- [F93(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if in relation to the application in question the requirements of section 37(1) above do not

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apply by virtue of section 37(6)(a) above or have been dispensed with by virtue of section 37A above.]

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F89** Words in s. 38(1) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 14\(3\)\(a\)\(i\)](#), 105(3); [S.I. 2006/984](#), [art. 2\(i\)](#) (with [Sch. paras. 1, 2](#))
- F90** S. 38(1A)-(1C) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 15\(2\)](#), 105(3); [S.I. 2004/641](#), [art. 3\(d\)](#) (with [Sch. 3 paras. 2, 7](#))
- F91** Words in s. 38(3) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 15\(3\)](#), 105(3); [S.I. 2004/641](#), [art. 3\(d\)](#) (with [Sch. 3 paras. 2, 7](#))
- F92** Words in s. 38(3) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 31\(2\)](#), 105(3); [S.I. 2004/2528](#), [art. 2\(c\)](#) (with [Sch. para. 8](#))
- F93** S. 38(4) added (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 14\(3\)\(a\)\(ii\)](#), 105(3); [S.I. 2006/984](#), [art. 2\(i\)](#) (with [Sch. paras. 1, 2](#))

Modifications etc. (not altering text)

- C55** S. 38 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 8\(3\)](#)

39 Obligation to have regard to existing rights and privileges.

- (1) [^{F94}Subject to subsection (1A) below,] the [^{F77}appropriate agency] shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—
- the abstraction of water; or
 - the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from any rights which, at the time when the application is determined by the [^{F77}appropriate agency], are protected rights for the purposes of this Chapter.

[^{F95}(1A) Subsection (1) above does not apply when—

- the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- the determination of an application is being concluded in accordance with subsection (1C) of that section.]

- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the [^{F77}appropriate agency], in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.

^{F96}(3)

- (4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—
- abstracting water; or
 - so obstructing or impeding the flow of any such waters,

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in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in [^{F97}(as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there].

- (5) For the purposes of subsection (2) above the [^{F77}appropriate agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—
- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
 - (b) that decision has not been quashed or reversed.

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F94** Words in s. 39(1) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(2)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)
- F95** S. 39(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(3)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)
- F96** S. 39(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(4)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2005/968, art. 2(c)(n)
- F97** Words in s. 39(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(5)**, 105(3); S.I. 2005/968, art. 2(c)

Modifications etc. (not altering text)

- C56** S. 39 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(4)**

[^{F98}39A Protected rights for the purposes of this Chapter

- (1) For the purposes of this Chapter, a right is a protected right if—
- (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
 - (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
 - (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
 - (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
 - (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
 - (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.
- (2) A person who is in a position to carry out an abstraction of a quantity of water which—
- (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
 - (b) also falls within subsection (4) or (5) below,

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shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.

- (3) The maximum quantity is the lower of the following—
 - (a) twenty cubic metres;
 - (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).
- (4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—
 - (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
 - (b) it is abstracted for use on that holding for either or both of the following purposes—
 - (i) the domestic purposes of the occupier’s household;
 - (ii) agricultural purposes other than spray irrigation.
- (5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.
- (6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.
- (7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—
 - (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
 - (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.
- (8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—
 - (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
 - (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.
- (9) The period referred to in subsection (8)(a) above is—
 - (a) four years; or
 - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for

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emergency purposes only, such longer period as the [F77appropriate agency] may determine on the application of the holder of the old licence.

- (10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.
- (11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.
- (12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.]

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F98** S. 39A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(1)**, 105(3); S.I. 2005/968, art. 2(d) (with Sch. 1 para. 2)

[F99] 39B Register of certain protected rights

- (1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the [F77appropriate agency], of one or more registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.
- (2) The regulations may, in particular, provide for—
 - (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
 - (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
 - (c) the form and contents of the register, and its inspection by members of the public;
 - (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
 - (e) cases in which it is the duty of the [F77appropriate agency] to include a protected right in the register without an application for inclusion having been made.
- (3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.
- (4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.
- (5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.

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- (6) An order under subsection (3) above may be made only on the application of the [^{F77}appropriate agency]; but the Secretary of State may direct the [^{F77}appropriate agency] to make such an application.
- (7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.
- (8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.]

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F99** S. 39B inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 18, 105(3)**; S.I. 2004/641, art. 3(f) (with Sch. 3 paras. 3, 7)

40 Obligation to take river flow etc. into account.

- (1) Without prejudice to sections 38(3) and 39(1) above, subsection (2) or, as the case may be, subsection (3) below shall apply where any application for a licence under this Chapter relates to abstraction from any inland waters or to obstructing or impeding the flow of any inland waters by means of impounding works.
- (2) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time when no minimum acceptable flow for the inland waters in question has been determined under Chapter I of this Part, the [^{F77}appropriate agency], in dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.
- (3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined under Chapter I of this Part, the [^{F77}appropriate agency], in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—
 - (a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or
 - (b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.
- (4) Without prejudice to sections 38(3) and 39(1) above, where—
 - (a) an application for a licence under this Chapter relates to abstraction from underground strata; and

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- (b) it appears to the [^{F77}appropriate agency] that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are [^{F100}not discrete waters],

subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

Textual Amendments

F77 Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

F100 Words in s. 40(4)(b) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 3**; [S.I. 2017/1043](#), art. 2(g)

Modifications etc. (not altering text)

C57 S. 40(1) applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(5)**

Call-in of applications

41 Secretary of State’s power to call in applications

- (1) The Secretary of State may give directions to the [^{F77}appropriate agency] requiring applications for licences under this Chapter to be referred to him, instead of being dealt with by the [^{F77}appropriate agency].

- (2) A direction under this section—

- (a) may relate either to a particular application or to applications of a class specified in the direction; and
- (b) may except from the operation of the direction such classes of applications as may be specified in the direction in such circumstances as may be so specified.

- [^{F101}(3) An application may not be referred to the Secretary of State under this section—

- (a) if in relation to the application the [^{F77}appropriate agency] is still considering whether to make any such decision as is referred to in subsection (1) of section 36A above, or if it has made such a decision but has not yet served the notice referred to in subsection (3) of that section; or
- (b) where the [^{F77}appropriate agency] has served a notice on the applicant under subsection (3) of that section, until the period for appealing under that section has expired or (if the applicant appeals) the appeal has been determined.]

Textual Amendments

F77 Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

F101 S. 41(3) added (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(2)**, 105(3); [S.I. 2006/984](#), art. 2(h) (with Sch. para. 7)

Modifications etc. (not altering text)

C58 S. 41 applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(5)**

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42 Consideration of called-in applications.

- (1) Subject to the following provisions of this section and to section 46 below, the Secretary of State, on considering a called-in application—
 - (a) may determine that a licence shall be granted containing such provisions as he considers appropriate; or
 - (b) if, having regard to the provisions of this Act, he considers it necessary or expedient to do so, may determine that no licence shall be granted.
 - (2) Before determining a called-in application, the Secretary of State may, if he thinks fit—
 - (a) cause a local inquiry to be held; or
 - (b) afford to the applicant and the [^{F77}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [^{F77}appropriate agency] to be heard with respect to the application.
 - (3) The provisions of sections 37, 38(1) and (3), 39(2) and 40 above shall apply in relation to any called-in application as if—
 - (a) any reference in those provisions to the [^{F77}appropriate agency], except the references in sections [^{F102}37] and 38(3)(a), were a reference to the Secretary of State; and
 - (b) any reference to section 39(1) above were a reference to subsection (4) below.
 - (4) [^{F103}Subject to subsection (4A) below,] in determining any called-in application and, in particular, in determining what (if any) direction to give under subsection (5) below, the Secretary of State shall consider whether any such direction would require the grant of a licence which would so authorise—
 - (a) the abstraction of water; or
 - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [^{F104}(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) Where the decision of the Secretary of State on a called-in application is that a licence is to be granted, the decision shall include a direction to the [^{F77}appropriate agency] to grant a licence containing such provisions as may be specified in the direction.
 - (6) The decision of the Secretary of State on any called-in application shall be final.
 - (7) In this section “called-in application” means an application referred to the Secretary of State in accordance with directions under section 41 above.

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(g\)](#) (with Sch. 7)
- F102** Word in s. 42(3)(a) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 14\(3\)\(b\)](#), 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)

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- F103** Words in s. 42(4) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(6)(a)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))
- F104** S. 42(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(6)(b)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))

Modifications etc. (not altering text)

- C59** S. 42 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 7**

Appeals with respect to decisions on licence applications

43 Appeals to the Secretary of State.

- (1) Where an application has been made to the [^{F77}appropriate agency] for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—
- (a) the applicant is dissatisfied with the decision of the [^{F77}appropriate agency] on the application; or
 - (b) the [^{F77}appropriate agency] fails within the period specified in subsection (2) below to give to the applicant either—
 - (i) notice of the [^{F77}appropriate agency's] decision on the application; or
 - (ii) notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.
- [^{F105}(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]
- (2) The period mentioned in subsection (1)(b) above is—
- (a) except in a case falling within paragraph (b) below, such period as may be prescribed; and
 - (b) where an extended period is at any time agreed in writing between the applicant and the [^{F77}appropriate agency], the extended period.
- (3) A notice of appeal under this section shall be served—
- (a) in such manner as may be prescribed; and
 - (b) within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
 - (i) the date on which the decision to which it relates was notified to the applicant; or
 - (ii) the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.
- (4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the [^{F77}appropriate agency].
- (5) Where any representations in writing with respect to an application were made within the period specified [^{F106}in any such notice as is referred to in section 37(4)(b)] above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the [^{F77}appropriate agency] to serve a copy of the notice of appeal on each of the persons who made those representations.

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Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F105** S. 43(1A) inserted (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)](#), [Sch. 22 para. 134](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)
- F106** Words in s. 43(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 14\(3\)\(c\)](#), [105\(3\)](#); [S.I. 2006/984](#), [art. 2\(i\)](#) (with [Sch. paras. 1, 2](#))

Modifications etc. (not altering text)

- C60** S. 43: power to delegate functions conferred (1.4.1996) by [1995 c. 25](#), [s. 114\(2\)\(v\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)
- C61** S. 43 restricted (1.3.2012) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2003 \(S.I. 2003/164\)](#), [regs. 1\(1\)](#), [8\(4\)](#)
- C62** S. 43(1)(a) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), [art. 4\(1\)\(3\)](#), [Sch. 1 para. 5\(5\)](#)

44 Determination of appeals.

- (1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—
- may allow or dismiss the appeal or reverse or vary any part of the decision of the [^{F77}appropriate agency], whether the appeal relates to that part of the decision or not; and
 - may deal with the application as if it had been made to him in the first instance; and for the purposes of this section an appeal by virtue of section 43(1)(b) above shall be taken to be an appeal against a refusal of the application.
- (2) Before determining an appeal under section 43 above, the Secretary of State may, if he thinks fit—
- cause a local inquiry to be held; or
 - afford to the applicant and the [^{F77}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [^{F77}appropriate agency] to be heard with respect to the appeal.
- (3) The Secretary of State, in determining an appeal under section 43 above, shall take into account—
- any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and
 - the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.
- (4) [^{F107}Subject to subsection (4A) below,] in determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—
- the abstraction of water; or

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(b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.

[^{F108}(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]

(5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—

- (a) any reference in those provisions to the [^{F77}appropriate agency], were a reference to the Secretary of State; and
- (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.

(6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the [^{F77}appropriate agency], as the case may be—

- (a) to grant a licence containing such provisions as may be specified in the direction;
- (b) to vary the licence so as to contain such provisions as may be so specified; or
- (c) to revoke the licence.

(7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

Textual Amendments

F77 Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

F107 Words in s. 44(4) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(7)(a)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)

F108 S. 44(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(7)(b)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)

45 Regulations with respect to appeals.

(1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions [^{F109}of the [^{F77}appropriate agency] under section 36A above or] on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.

(2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park ^{F110} . . . authorities)—

- (a) notice of any appeal against the decision on such an application, will be served on any National Park ^{F110} . . . authority who made representations falling within paragraph (b) of section 34(3) above; and

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- (b) the Secretary of State, in determining the appeal, will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.

[^{F111}(2A) Subsection (2) above does not apply in relation to appeals against decisions of the [^{F77}appropriate agency] under section 36A above.]

- (3) Subsections (4) [^{F110} . . . of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(g\)](#) (with Sch. 7)
- F109** Words in s. 45(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 13\(3\)\(a\)](#), 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))
- F110** Words in s. 45 repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, [Sch.](#)
- F111** S. 45(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 13\(3\)\(b\)](#), 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))

Form, contents and effect of licences

46 Form and contents of licences.

- (1) The Secretary of State may by regulations make provision as to the form of licences under this Chapter or of any class of such licences; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter.
- (2) [^{F112}Every full licence under this Chapter shall, and any other licence under this Chapter to abstract water may, make—]
- (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Chapter; and
- (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.

[^{F113}(2A) For the purposes of section 61(4A) below—

- (a) every full licence under this Chapter which is for a term exceeding twelve years shall; and
- (b) any transfer licence under this Chapter which is for a term exceeding twelve years may,

specify a minimum value for the quantity referred to in subsection (2)(a) above.]

- (3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to

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specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.

- [^{F114}(4) Every licence under this Chapter to abstract water shall also specify the purposes for which water abstracted in pursuance of the licence is to be used.
- (5) Every licence under this Chapter to abstract water shall state—
- (a) the date on which it takes effect; and
 - (b) the date on which it expires.
- (5A) Every licence under this Chapter to obstruct or impede any inland waters shall remain in force until revoked.]
- (6) Different provision may be made by the same licence with respect to any one or more of the following matters, that is to say—
- (a) the abstraction of water during different periods;
 - (b) the abstraction of water from the same source of supply but at different points or by different means;
 - (c) the abstraction of water for use for different purposes;
- and any such provision as is mentioned in subsection (2) above may be made separately in relation to each of the matters for which (in accordance with this subsection) different provision is made in the licence.
- (7) Nothing in subsection (6) above shall be construed as preventing two or more licences from being granted to the same person to be held concurrently in respect of the same source of supply, if the licences authorise the abstraction of water at different points [^{F115}, by different means or for different purposes] .

Textual Amendments

- F112** Words in s. 46(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(2)**, 105(3); S.I. 2006/984, [art. 2\(j\)](#) (with [Sch. para. 1](#))
- F113** S. 46(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(3)**, 105(3); S.I. 2006/984, [art. 2\(j\)](#) (with [Sch. para. 1](#))
- F114** S. 46(4)(5)(5A) substituted for s. 46(4)(5) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 19(4)**, 105(3); S.I. 2004/641, [art. 3\(g\)](#) (with [Sch. 3 para. 7](#))
- F115** Words in s. 46(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(5)**, 105(3); S.I. 2006/984, [art. 2\(j\)](#) (with [Sch. para. 1](#))

[^{F116}46A Limited extension of abstraction licence validity

- (1) If the condition in subsection (2) below is met, a full licence or a transfer licence whose term exceeded twelve months but whose expiry date (“the expiry date”) has passed shall be treated for all the purposes of this Act as not expiring until the date mentioned in subsection (4) below.
- (2) The condition is that the [^{F117}appropriate agency] receives, not later than the beginning of the period of three months ending on the expiry date (or such later date before the expiry date as the [^{F117}appropriate agency] agrees), a valid application for a new licence—
 - (a) for abstraction from the same point as the abstraction licensed by the expiring licence;

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- (b) whose holder would be the same as the holder of the expiring licence; and
 - (c) which would take effect immediately after the expiry date.
- (3) For the purposes of subsection (2) above, a “valid” application is one which complies with all the requirements of this Act in relation to the making of applications for licences of the type in question.
- (4) The date referred to in subsection (1) above is whichever is the later of—
- (a) if a new licence is granted (whether or not on the terms applied for), the date on which it takes effect;
 - (b) otherwise—
 - (i) except where the Secretary of State calls in an application under section 41 above, the expiry of the period for appealing under section 43 above, or if an appeal is brought, the date of its withdrawal; or
 - (ii) where the Secretary of State decides (under section 42 or 44 above) that no licence is to be granted, the date on which that decision is notified to the applicant.]

Textual Amendments

- F116** S. 46A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 20, 105(3); S.I. 2004/641, art. 3(g) (with Sch. 3 paras. 2, 7)
- F117** Words in s. 46A(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(h)** (with Sch. 7)

Modifications etc. (not altering text)

- C63** S. 46A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 17

47 Holders of licence.

- (1) Every licence under this Chapter ^{F118}... shall specify the person to whom the licence is granted.
- [^{F119}(2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters is the holder of the licence for the purposes of this Act, subject to sections 59A to 59C and 67 below.]
- ^{F120}(3)

Textual Amendments

- F118** Words in s. 47(1) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 19(6), 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(j) (with Sch. para. 1)
- F119** S. 47(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 23(2)(a), 105(3); S.I. 2006/984, art. 2(m) (with Sch. para. 3)
- F120** S. 47(3) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 23(2)(b), 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m) (with Sch. para. 3)

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48 General effect of licence.

- (1) For the purposes of this Chapter a person who is for the time being the holder of a licence under this Chapter to abstract water shall be taken to have a right to abstract water to the extent authorised by the licence and in accordance with the provisions contained in it.
- (2) In any action brought against a person in respect of the abstraction of water from a source of supply [^{F121}(other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply)], it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—
 - (a) that the water was abstracted in pursuance of a licence under this Chapter; and
 - (b) that the provisions of the licence were complied with.
- (3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—
 - (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
 - (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
 - (c) that the other requirements of the licence (if any) were complied with.
- (4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

Textual Amendments

F121 Words in s. 48(2) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(2), 105(3)** (with s. 24(3)(b)); [S.I. 2004/641, art. 5](#) (with [Sch. 3 paras. 4, 7](#))

Modifications etc. (not altering text)

C64 S. 48(1) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), [art. 4\(1\)\(3\)](#), [Sch. 1 paras. 7\(10\)](#), **8(3)**

^{F122}48A Civil remedies for loss or damage due to water abstraction

- (1) Subject to subsection (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.
- (2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.
- (3) Such a claim shall be treated as one in tort for breach of statutory duty.
- (4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public, or would put public health or safety at risk.
- (5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.

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- (6) Nothing in this section prevents or affects a claim for negligence or breach of contract.
- (7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage—
- (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section);
 - (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59C(6) below) disapplying that duty; or
 - (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence,
- but without prejudice to the application of section 48 above.]

Textual Amendments

F122 S. 48A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(1)**, 105(3) (with s. 24(3)(a)); S.I. 2004/641, art. 5 (with Sch. 3 paras. 4, 7)

Modifications etc. (not altering text)

- C65** S. 48A(1) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(1)**
- C66** S. 48A(1) excluded (21.8.2013) by [The Croxley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(2)**
- C67** S. 48A(1) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(2)** (with Sch. 8 para. 45)
- C68** S. 48A(1) excluded (12.1.2016) by [The London Underground \(Bank Station Capacity Upgrade\) Order 2015 \(S.I. 2015/2044\)](#), arts. 1, **36(2)**
- C69** S. 48A(1) excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 3(1)**
- C70** S. 48A(1) applied (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(5)** (with arts. 55-57, Sch. 8 para. 13)
- C71** S. 48A(1) excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(3)** (with arts. 20(4), 55-57, Sch. 8 para. 13)
- C72** S. 48A(1) excluded (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\)](#), s. 64(1), **Sch. 21 para. 3(1)**
- C73** S. 48A(1) excluded (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\)](#), arts. 1, **15(2)** (with Sch. 8 para. 20)
- C74** S. 48A(1) applied (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\)](#), arts. 1, **15(4)** (with Sch. 8 para. 20)
- C75** S. 48A(1) excluded (25.3.2022) by [The Bridgwater Tidal Barrier Order 2022 \(S.I. 2022/299\)](#), arts. 1, **20(3)** (with arts. 20(4)(5), 55)
- C76** S. 48A(5) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(4)**
- C77** S. 48A(5) excluded (21.8.2013) by [The Croxley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(5)**
- C78** S. 48A(5) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(5)** (with Sch. 8 para. 45)
- C79** S. 48A(5) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 3(4)**
- C80** S. 48A(5) excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(6)** (with arts. 55-57, Sch. 8 para. 13)

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- C81** S. 48A(5) excluded (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\), s. 64\(1\), Sch. 21 para. 3\(4\)](#)
- C82** S. 48A(5) excluded (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\), arts. 1, 15\(5\) \(with Sch. 8 para. 20\)](#)
- C83** S. 48A(5) excluded (25.3.2022) by [The Bridgwater Tidal Barrier Order 2022 \(S.I. 2022/299\), arts. 1, 20\(6\) \(with art. 55\)](#)

Succession to licences

^{F123}49 Succession to licences to abstract where person ceases to occupy the relevant land.

.....

Textual Amendments

- F123** S. 49 repealed (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 23\(4\)\(5\), 105\(3\), Sch. 9 Pt. 1; S.I. 2006/984, art. 2\(m\)\(s\)\(ii\) \(with Sch. para. 3\)](#)

^{F124}50 Succession where person becomes occupier of part of the relevant land.

.....

Textual Amendments

- F124** S. 50 repealed (1.4.2006) by [Water Act 2003 \(c. 37\), s. 23\(4\)\(5\), 105\(3\), Sch. 9 Pt. 1; S.I. 2006/984, art. 2\(m\)\(s\)\(ii\) \(with Sch. para. 3\)](#)

Modification of licences

51 Modification on application of licence holder.

- (1) The holder of a licence under this Chapter [^{F125}to abstract water] may apply to the [^{F126}appropriate agency] to revoke the licence and, on any such application, the [^{F126}appropriate agency] shall revoke the licence accordingly.
- ^{F127}(1A) The holder of a licence under this Chapter to obstruct or impede the flow of inland waters (an “impounding licence”) may apply to the [^{F126}appropriate agency] to revoke the licence and, on any such application, the [^{F126}appropriate agency] may revoke the licence accordingly.
- (1B) The [^{F126}appropriate agency] may require conditions to be met to its satisfaction before revocation of the impounding licence takes effect, and those conditions may in particular include conditions—
- (a) requiring the removal of all or part of the impounding works;
 - (b) as to the restoration of the site of the impounding works to a state which is satisfactory to the [^{F126}appropriate agency];
 - (c) relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.

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- (1C) The person making an application under subsection (1A) above (“the applicant”) may by notice appeal to the Secretary of State if—
- (a) he is dissatisfied with the decision of the [^{F126}appropriate agency] as to—
 - (i) whether his licence may be revoked; or
 - (ii) any conditions imposed by virtue of subsection (1B) above; or
 - (b) the [^{F126}appropriate agency] fails to give notice of its decision to the applicant within the prescribed period or within such extended period as may be agreed in writing between the [^{F126}appropriate agency] and the applicant.
- (1D) The Secretary of State may by regulations make provision with respect to—
- (a) the manner in which notices of appeal under subsection (1C) above shall be served;
 - (b) the period within which such notices shall be served;
 - (c) the procedure on any such appeal.
- (1E) Where an appeal is brought under subsection (1C) above, the Secretary of State may—
- (a) allow or dismiss the appeal or reverse or vary any part of the decision of the [^{F126}appropriate agency], whether the appeal relates to that part of the decision or not; and
 - (b) may deal with the application as if it had been made to him in the first place.
- (1F) The decision of the Secretary of State on any appeal under subsection (1C) above shall be final.
- (1G) Subsections (1C) to (1F) above are subject to section 114 of the 1995 Act (delegation or reference of appeals).]
- (2) The holder of a licence under this Chapter may apply to the [^{F126}appropriate agency] to vary the licence.
- [^{F128}(2A) An application may not be made under subsection (2) above to convert an abstraction licence of one type into an abstraction licence of a different type.]
- (3) Subject to subsection (4) below, the provisions of sections 37 to 44 above shall apply (with the necessary modifications) to applications under subsection (2) above, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Chapter.
- (4) Where the variation proposed in an application under subsection (2) above is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods—
- (a) sections 37 and 38(1) above shall not apply by virtue of subsection (3) above; and
 - (b) sections 43 and 44 above, as applied by that subsection, shall have effect as if subsection (5) of section 43 and paragraph (a) of section 44(3) were omitted.

Textual Amendments

F125 Words in s. 51(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(2)**, 105(3) (with s. 21(5)); S.I. 2006/984, art. 2(k)

F126 Words in s. 51 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

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F127 S. 51(1A)-(1G) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(3)**, 105(3) (with s. 21(5)); S.I. 2006/984, art. 2(k)

F128 S. 51(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 4**; S.I. 2006/984, art. 2(s)(i)

Modifications etc. (not altering text)

C84 S. 51 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **18**

52 Proposals for modification at instance of the [F129 appropriate agency] or Secretary of State.

- (1) Where it appears to the [F129 appropriate agency] that a licence under this Chapter should be revoked or varied, the [F129 appropriate agency] may formulate proposals for revoking or varying the licence.

[F130(1A) In the case of a licence to obstruct or impede any inland waters, a variation may take the form of a requirement that the impounding works be modified in ways specified in the proposed new provision of the licence.]

- (2) Where—

- (a) it appears to the Secretary of State (either in consequence of representations made to the Secretary of State or otherwise) that a licence under this Chapter ought to be reviewed; but
- (b) no proposals for revoking or varying the licence have been formulated by the [F129 appropriate agency] under subsection (1) above,
- the Secretary of State may, as he may consider appropriate in the circumstances, give the [F129 appropriate agency] a direction under subsection (3) below.

- (3) A direction under this subsection may—

- (a) direct the [F129 appropriate agency] to formulate proposals for revoking the licence in question; or
- (b) direct the [F129 appropriate agency] to formulate proposals for varying that licence in such manner as may be specified in the direction.

- (4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence shall—

- (a) be served on the holder of the licence; and
- [F131(b) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.]

- (5) If—

- (a) a licence with respect to which any proposals are formulated under this section relates to any inland waters; and
- (b) the proposals provide for variation of that licence,

a copy of the notice for the purposes of subsection (4) above shall, not later than the date on which it is first published [F132 as mentioned in subsection (4)(b) above], be served on any navigation authority, harbour authority or conservancy authority having functions in relation to those waters at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.

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- [^{F133}(6) A notice for the purposes of subsection (4) above shall—
- (a) include any prescribed matters; and
 - (b) state that, before the end of a period specified in the notice—
 - (i) the holder of the licence may give notice in writing to the [^{F129}appropriate agency] objecting to the proposals; and
 - (ii) any other person may make representations in writing to the [^{F129}appropriate agency] with respect to the proposals.]
- [^{F134}(7) The period referred to in subsection (6)(b) above—
- (a) begins on the date the notice referred to in subsection (4) above is first published as mentioned there; and
 - (b) shall not end before the end of the period of twenty-eight days beginning with that date.]
- [^{F135}(8)

Textual Amendments

- F129** Words in s. 52 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)
- F130** S. 52(1A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(2)**, 105(3); S.I. 2006/984, art. 2(1)
- F131** S. 52(4)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(3)**, 105(3); S.I. 2006/984, art. 2(1)
- F132** Words in s. 52(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(4)**, 105(3); S.I. 2006/984, art. 2(1)
- F133** S. 52(6) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(5)**, 105(3); S.I. 2006/984, art. 2(1)
- F134** S. 52(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(6)**, 105(3); S.I. 2006/984, art. 2(1)
- F135** S. 52(8) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(7)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(1)(s)(ii)

Modifications etc. (not altering text)

- C85** S. 52 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(1)**
- C86** S. 52(4)-(8) applied (with modifications) (1.3.2012) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2003 \(S.I. 2003/164\)](#), regs. 1(1), **14, 15**

53 Modification in pursuance of proposals under section 52.

- (1) Subject to the following provisions of this section, where the [^{F136}appropriate agency] has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—
- (a) if the proposals are for the revocation of the licence, revoke the licence; and
 - (b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.
- (2) The [^{F136}appropriate agency] shall not proceed with any proposals formulated under section 52 above before the end of the period specified, in accordance with subsection (7) of that section, for the purposes in relation to those proposals of subsection (6) of that section.

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- (3) If no notice under subsection (4) below is given to the [F136 appropriate agency] before the end of the period mentioned in subsection (2) above, the [F136 appropriate agency] may proceed with the proposals.
- (4) If the holder of the licence gives notice to the [F136 appropriate agency] objecting to the proposals before the end of the period mentioned in subsection (2) above, the [F136 appropriate agency] shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the [F136 appropriate agency] proceeds with any proposals under subsection (3) above and the proposals are proposals for varying the licence, the provisions of sections 38(3), 39(1) and (2) and 40 above shall apply (with the necessary modifications) to any action of the [F136 appropriate agency] in proceeding with the proposals as they apply to the action of the [F136 appropriate agency] in dealing with an application for a licence.

Textual Amendments

F136 Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

Modifications etc. (not altering text)

C87 S. 53 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(2)**

54 Reference of modification proposals to the Secretary of State.

- (1) Where any proposals of the [F136 appropriate agency] with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—
 - (a) the proposals;
 - (b) the objection of the holder of the licence; and
 - (c) any representations in writing relating to the proposals which were received by the [F136 appropriate agency] before the end of the period mentioned in subsection (2) of that section,
 and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.
- (2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—
 - (a) cause a local inquiry to be held; or
 - (b) afford to the holder of the licence and the [F136 appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
 and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the [F136 appropriate agency] to be heard with respect to the proposals.

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- (3) In determining under this section whether a licence should be varied and, if so, what directions should be given under subsection (5) below, the Secretary of State shall consider whether any such direction would require such a variation of the licence as would so authorise—
- (a) the abstraction of water; or
 - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction is given, are protected rights for the purposes of this Chapter.
- (4) The provisions of sections 39(2) and 40 above shall apply in relation to any proposals referred to the Secretary of State in accordance with section 53(4) above as if in those provisions—
- (a) any reference to the [^{F136}appropriate agency] were a reference to the Secretary of State;
 - (b) any reference to the application were a reference to the proposals; and
 - (c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.
- (5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the [^{F136}appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

Textual Amendments

F136 Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(i\)](#) (with Sch. 7)

Modifications etc. (not altering text)

C88 S. 54 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [19\(3\)](#)

55 Application for modification of licence by owner of fishing rights.

- (1) Subject to the following provisions of this section and to Schedule 7 to this Act, where a licence under this Chapter authorises abstraction from any inland waters in respect of which no minimum acceptable flow has been determined under Chapter I of this Part, any person who is the owner of fishing rights in respect of those inland waters may apply to the Secretary of State for the revocation or variation of the licence.
- (2) No application shall be made under this section in respect of any licence except at a time after the end of the period of one year beginning with the date on which the licence was granted but before a minimum acceptable flow has been determined in relation to the waters in question.
- (3) Any application under this section made by a person as owner of fishing rights in respect of any inland waters shall be made on the grounds that, in his capacity as owner

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of those rights, he has sustained loss or damage which is directly attributable to the abstraction of water in pursuance of the licence in question and either—

- (a) he is not entitled to a protected right for the purposes of this Chapter in respect of those inland waters; or
 - (b) the loss or damage which he has sustained in his capacity as owner of those rights is not attributable to any such breach of statutory duty as is mentioned in subsection (2) or (3) of section 60 below or is in addition to any loss or damage attributable to any such breach.
- (4) Where an application is made under this section in respect of any licence, the applicant shall serve notice in the prescribed form on the [^{F136}appropriate agency] and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the Secretary of State with respect to the application.
- (5) In this section and section 56 below “fishing rights”, in relation to any inland waters, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in those waters, where the right in question—
- (a) constitutes or is included in an interest in land; or
 - (b) is exercisable by virtue of an exclusive licence granted for valuable consideration;
- and any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights.
- (6) In this section any reference to a right included in an interest in land is a reference to a right which is exercisable only by virtue of, and as a right incidental to, the ownership of that interest.

Textual Amendments

F136 Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(i\)](#) (with Sch. 7)

Modifications etc. (not altering text)

C89 S. 55 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [20\(1\)](#)

56 Determination of application under section 55.

- (1) The Secretary of State, in determining any application under section 55 above in respect of any licence, shall take into account any representations in writing received by him, within the period mentioned in subsection (4) of that section, from the [^{F136}appropriate agency] or from the holder of the licence.
- (2) Before determining on an application under section 55 above whether a licence should be revoked or varied the Secretary of State may, if he thinks fit—
 - (a) cause a local inquiry to be held; or
 - (b) afford to the applicant, the holder of the licence and the [^{F136}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

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- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant, the holder of the licence or the [^{F136}appropriate agency] to be heard with respect to the proposals.
- (3) Subject to subsections (4) and (5) below, on an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied unless—
- (a) the grounds of the application, as mentioned in subsection (3) of that section, are established to his satisfaction; and
 - (b) he is satisfied that the extent of the loss or damage which the applicant has sustained, as mentioned in that subsection, is such as to justify the revocation or variation of the licence.
- (4) On an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused the loss or damage which the applicant has sustained, as mentioned in subsection (3) of that section, was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [^{F136}appropriate agency].
- (5) Where the Secretary of State determines, on an application under section 55 above, that a licence shall be varied, the variation shall be limited to that which, in the opinion of the Secretary of State, is requisite having regard to the loss or damage which the applicant has sustained as mentioned in subsection (3) of that section.
- (6) Where the decision of the Secretary of State on an application under section 55 above in respect of any licence is that the licence should be revoked or varied, the decision shall include a direction to the [^{F136}appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (7) A decision of the Secretary of State on an application under section 55 above shall be final.

Textual Amendments

F136 Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(i\)](#) (with Sch. 7)

Modifications etc. (not altering text)

C90 S. 56 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [20\(2\)](#)

57 Emergency variation of licences for spray irrigation purposes.

- (1) This section applies where at any time—
- (a) one or more licences under this Chapter are in force in relation to a source of supply authorising water abstracted in pursuance of the licences to be used for the purpose of spray irrigation, or for that purpose together with other purposes; and

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- (b) by reason of exceptional shortage of rain or other emergency, it appears to the [F136 appropriate agency] that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) Subject to subsections (3) and (4) below, where this section applies the [F136 appropriate agency] may serve a notice on the holder of any of the licences reducing, during such period as may be specified in the notice, the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply for use for the purpose of spray irrigation; and, in relation to that period, the licence shall have effect accordingly subject to that reduction.
- (3) The [F136 appropriate agency] shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the [F136 appropriate agency] that such abstraction is likely to affect the flow, level or volume of any inland waters which are [F137 not discrete waters].
- (4) In the exercise of the power conferred by this section in a case where there are two or more licences under this Chapter in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the [F136 appropriate agency], are not far distant from each other—
- (a) the [F136 appropriate agency] shall not serve a notice under this section on the holder of one of the licences unless a like notice is served on the holders of the other licences in respect of the same period; and
- (b) the reductions imposed by the notices on the holders of the licences shall be so calculated as to represent, as nearly as appears to the [F136 appropriate agency] to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.
- (5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

Textual Amendments

F136 Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

F137 Words in s. 57(3) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 5**; [S.I. 2017/1043](#), art. 2(g)

Modifications etc. (not altering text)

C91 S. 57 modified (18.5.1992) by [S.I. 1992/1096](#), art. 4

C92 S. 57(1)(2)(4) modified (18.5.1992) by [S.I. 1992/1096](#), arts. 3, 4, **Sch.**

F138 58

Textual Amendments

F138 S. 58 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), **Sch. 22 para. 136**, **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3(xxix)

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59 Regulations with respect to modification applications.

- (1) The Secretary of State may by regulations make provision as to the manner in which applications for the revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications.
- (2) Subsection (1) above shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

[^{F139}Transfer and apportionment of licences

Textual Amendments

F139 Ss. 59A-59D and cross-heading inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(1)**, 105(3); [S.I. 2006/984](#), art. 2(m) (with [Sch. para. 3](#))

59A Transfer of licence

- (1) The following licences—
 - (a) a full licence;
 - (b) a transfer licence; or
 - (c) a licence to obstruct or impede the flow of inland waters by means of impounding works,may be transferred by the holder of the licence to another person (“the transferee”) in accordance with the following provisions of this section.
- (2) The holder and the proposed transferee shall give notice (a “transfer notice”) to the [^{F140}appropriate agency] of their agreement that the licence should be transferred.
- (3) The transfer notice shall include—
 - (a) such information as the [^{F140}appropriate agency] reasonably requires; and
 - (b) (in the case of the transfer of a full licence or of a transfer licence) a declaration by the proposed transferee that—
 - (i) he has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction; and
 - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),and may specify the date on which the holder and the transferee wish the transfer to take effect.
- (4) If the holder is a person in whom the licence has vested under section 59B below, a transfer notice shall be of no effect unless the notice required by section 59B(4) has been given.
- (5) Subject to subsection (4) above, if the [^{F140}appropriate agency] receives a transfer notice which complies with the requirements of subsections (2) and (3) above, the [^{F140}appropriate agency] shall amend the licence by substituting the name of the transferee as holder of the licence.

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- (6) The transfer shall take effect—
- (a) from the date on which the [^{F140}appropriate agency] amends the licence; or
 - (b) from the date specified in the transfer notice, if later.
- (7) Nothing in this section shall affect the liability of the holder of the licence for any failure by him, before the transfer took effect, to comply with any condition or requirement of that licence.
- (8) In this section—
- “point of abstraction” means a place where the licence authorises water to be abstracted from inland waters or (as the case may be) a place consisting of or comprising underground strata from which the licence authorises water to be abstracted; and
- “right of access” means, in relation to a point of abstraction, a right of access to land of the kind referred to in subsection (2)(a) or, as the case may be, (3)(a) of section 35 above; and references to a person who will have such a right of access shall be construed in accordance with that section (including subsections (4) to (6)).

Textual Amendments

F140 Words in ss. 59A-59C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(j)** (with Sch. 7)

Modifications etc. (not altering text)

C93 S. 59A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **21**

59B Vesting of licence on death or bankruptcy of holder

- (1) On the death of the holder of a licence under this Chapter, the licence shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representatives.
- (2) If a bankruptcy order is made against the holder of a licence under this Chapter, the licence shall be regarded for the purposes of any of the Second Group of Parts of the Insolvency Act 1986 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt’s estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the trustee in bankruptcy.
- (3) A person in whom a licence vests under this section shall become the holder of the licence, in place of the prior holder, from the date of the vesting.
- (4) Where a licence other than a temporary licence vests in any person under this section, that person shall give notice of that fact to the [^{F140}appropriate agency] not later than the end of the period of fifteen months beginning with the date of the vesting.
- (5) If—
 - (a) a licence vests in any person under this section; but
 - (b) that person fails to give the notice required by subsection (4) above within the period mentioned there,

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the licence shall cease to have effect.

Textual Amendments

F140 Words in ss. 59A-59C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(j\)](#) (with Sch. 7)

59C Apportionment of licence to abstract

- (1) The holder of a full licence or of a transfer licence (the “old licence”) may apply to the [^{F140}appropriate agency] for the division of the holder’s right to abstract water in accordance with the old licence and for the transfer—
 - (a) to another person of part, or to a number of other persons of parts not amounting to the whole; or
 - (b) to a number of other persons of parts amounting in all to the whole, of that right.
- (2) The holder of the old licence and any person proposing to carry on a part of the abstraction authorised by the old licence in place of the holder (a “successor”) shall give notice to the [^{F140}appropriate agency] of their agreement to the division and transfer (an “apportionment notice”).
- (3) The apportionment notice shall, in relation to the abstraction authorised by the old licence—
 - (a) specify, for each proposed successor, what quantity of water he proposes to abstract, and (if the holder of the old licence is to continue the abstraction in part) what quantity of water he proposes to abstract;
 - (b) specify the purpose or purposes for which those persons referred to in paragraph (a) above who would require a new licence granted under subsection (5) below would abstract water (being one or more of the purposes for which abstraction is authorised under the old licence);
 - (c) specify the point (or points) of abstraction from which it is proposed that the persons referred to in paragraph (a) above would abstract water (being one or more of the points from which abstraction is authorised under the old licence);
 - (d) include a declaration by each of those persons who requires a licence under this Chapter in order to carry on the abstraction that—
 - (i) he has, or at the time when the proposed grant to him of a new licence under subsection (5) below is to take effect will have, a right of access in relation to each such point of abstraction; and
 - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner); and
 - (e) include such other information as the [^{F140}appropriate agency] reasonably requires, and may specify the date on which the holder and the successor (or successors) wish the division and transfer (or transfers) to take effect.
- (4) The apportionment notice shall be accompanied by an application on the part of the holder of the old licence for its revocation.

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- (5) Subject to subsection (9) below, if the [F140 appropriate agency] receives an apportionment notice and the application for revocation referred to in subsection (4) above, the [F140 appropriate agency] shall—
- (a) revoke the old licence;
 - (b) if the holder is to continue the abstraction in part and a licence is required under this Chapter for that purpose, grant to the holder of the old licence a licence relating to that part of the abstraction; and
 - (c) grant to each successor who requires a licence under this Chapter in order to carry on his part of the abstraction a licence relating to that part of the abstraction.
- (6) Sections 34 to 45 above shall not apply to the grant of a new licence under subsection (5) above.
- (7) Subject to section 46 above and to any provision of regulations made under section 59D(1) below, each new licence to be granted under subsection (5) above shall be granted subject to provisions which correspond as nearly as practicable to those of the old licence in relation to the part of the abstraction to be authorised by the new licence.
- (8) The revocation of the old licence and the grant of the new licences shall take effect—
- (a) from the date on which the [F140 appropriate agency] revokes the old licence and grants the new ones; or
 - (b) from the date specified in the apportionment notice, if later.
- (9) The [F140 appropriate agency] shall not grant a new licence to the holder of the old licence or to a successor if, by virtue of an exemption, the restriction on abstraction would not apply to that part of the abstraction proposed in relation to him in the apportionment notice.
- (10) For the purposes of this Chapter, a person (whether the holder of the old licence or a successor) who proposes to carry on a part of the abstraction in the circumstances mentioned in subsection (9) above shall, if the old licence was a full licence, be taken to have the right to do so in relation to that part, subject to subsection (11) below.
- (11) For the purposes of this Chapter, a person shall cease to be taken to have a right, by virtue of subsection (10) above, to carry on an abstraction if—
- (a) during a period mentioned in subsection (12) below that person does not carry out any such abstraction; or
 - (b) following an order under section 27A(1) above or regulations under section 33A above, that person is granted a full licence in respect of abstraction from the same point.
- (12) The period referred to in subsection (11)(a) above is—
- (a) four years; or
 - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the [F140 appropriate agency] may determine on the application of the person in question.
- (13) For the purposes of section 39A above, a new licence granted under subsection (5) above shall be treated—
- (a) as if it had been granted at the time the old licence was granted; and

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(b) as if it and any other new licence granted by virtue of the relevant apportionment notice had been granted in place of the old licence.

(14) In this section—

“exemption” means the disapplication of the restriction on abstraction under or by virtue of section 27 or 33A above; and

“point of abstraction” and “right of access” have the same meanings as in section 59A above.

Textual Amendments

F140 Words in ss. 59A-59C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(j)** (with Sch. 7)

Modifications etc. (not altering text)

C94 S. 59C applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **22**

59D Apportionment of licence to abstract: supplementary

- (1) The Secretary of State may make regulations about the provisions to be contained in licences granted under section 59C above.
- (2) Nothing in section 59C above shall affect the liability of the holder of the old licence for any failure by him, before the revocation of that licence took effect, to comply with any condition or requirement of that licence.
- (3) If the holder of the old licence is a person in whom the old licence has vested under section 59B above, an apportionment notice shall be of no effect unless the notice required by section 59B(4) has been given.
- (4) In this section, “apportionment notice” and “old licence” have the same meanings as in section 59C above.]

Remedies and compensation in respect of infringement of protected rights etc.

60 Liability of the [F141 appropriate agency] for derogation from protected right.

- (1) A breach of the duty imposed by subsection (1) of section 39 above (including that duty as applied by section 51(3) or 53(5) above) shall neither invalidate the grant or variation of a licence nor be enforceable by any criminal proceedings, by prohibition or injunction or by action against any person other than the [F141 appropriate agency].
- (2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the [F141 appropriate agency] for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the [F141 appropriate agency] is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—
 - (a) the grant or variation of the licence shall, as between the [F141 appropriate agency] and the person entitled to those rights, have effect as a breach on

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the part of the [F141appropriate agency] of a statutory duty not to authorise derogation from those rights; and

- (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.

- (4) Subsection (3) above shall be without prejudice to the duty of the [F141appropriate agency], to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.

- (5) In any action brought against the [F141appropriate agency] in pursuance of this section it shall be a defence for the [F141appropriate agency] to show that the fact, as the case may be—

- (a) that the abstraction of water authorised by the licence, as granted or varied by the [F141appropriate agency], derogated from the plaintiff's protected right; or
- (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff's protected right,

was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [F141appropriate agency].

- (6) This section has effect subject to the provision made by Schedule 7 to this Act.

- (7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—

- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,

as to derogate from rights which, at the time of the authorisation, are protected rights for the purposes of this Chapter.

Textual Amendments

F141 Words in s. 60 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)

Modifications etc. (not altering text)

C95 S. 60 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **23**

61 Compensation where licence modified on direction of the Secretary of State.

- (1) Where a licence [F142held by a person other than a water undertaker or sewerage undertaker] is revoked or varied in pursuance of a direction under section 54 or [F14356] above and it is shown that the holder of the licence—

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or variation; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or variation,

the [F144appropriate agency] shall pay him compensation in respect of that expenditure, loss or damage.

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- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to any work, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) above and to Schedule 7 to this Act, no compensation shall be paid under this section—
 - (a) in respect of any work carried out before the grant of the licence which is revoked or varied; or
 - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (4) No compensation shall be payable under this section in respect of a licence to abstract water, if it is shown that no water was abstracted in pursuance of the licence during the period of [^{F145}four] years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.
- [^{F146}(4A) No compensation shall be payable under this section in respect of the variation of a full licence, or of a transfer licence which specifies a minimum value under section 46(2A) above, so as to reduce the quantity of water which the holder of the licence is authorised by the licence to abstract from the source of supply to which the licence relates if—
 - (a) the ground for varying the licence is that the Secretary of State is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the licence relates;
 - (b) the variation does not reduce the quantity of water which the holder of the licence is authorised by the licence to abstract to less than the minimum value specified in the licence under section 46(2A) above for the purposes of this subsection; and
 - (c) the conditions set out in subsection (4B) below are satisfied.
- (4B) Those conditions are that—
 - (a) the licence was granted after the coming into force of section 19 of the Water Act 2003;
 - (b) the variation is made no sooner than the end of the period of six years beginning with the date on which the licence took effect; and
 - (c) the variation takes effect no sooner than the end of the period of six years beginning with the date of the variation.]
 - (5) Any question of disputed compensation under this section shall be referred to and determined by the [^{F147}Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [^{F148}section] 4 of the ^{M10}Land Compensation Act 1961 shall apply, subject to any necessary modifications.
 - (6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
 - (7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with subsection (6) above, is subject to a mortgage—
 - (a) the compensation shall be assessed as if the interest were not subject to the mortgage;

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- (b) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);
- (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

Textual Amendments

- F142** Words in s. 61(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 58(2)**, 94(2)(l)
- F143** Word in s. 61(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 6**; S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)
- F144** Words in s. 61 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)
- F145** Word in s. 61(4) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 25(2)**, 105(3) (with s. 25(4)); S.I. 2004/641, art. 3(h) (with Sch. 3 para. 7)
- F146** S. 61(4A)(4B) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 25(3)**, 105(3); S.I. 2006/984, art. 2(n)
- F147** Words in s. 61(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 228(a)** (with Sch. 5)
- F148** Word in s. 61(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 228(b)** (with Sch. 5)

Modifications etc. (not altering text)

- C96** S. 61 modified (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 27(2)**, 105(3); S.I. 2004/641, art. 3(i) (with Sch. 3 para. 7)
- C97** S. 61 excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **24**

Marginal Citations

- M10** 1961 c. 33.

[^{F149}61ZA] **No compensation where modification to protect environment: England**

- (1) This section applies where—
 - (a) a relevant licence is revoked or varied on or after 1 January 2028 in pursuance of a direction under section 54 or 56, and
 - (b) the ground for revoking or varying the licence is that the Secretary of State is satisfied the revocation or variation is necessary—
 - (i) having regard to a relevant environmental objective, or
 - (ii) to otherwise protect the water environment from damage.
- (2) A “relevant licence” is a licence to abstract water that—
 - (a) is to abstract water in England only, and
 - (b) is to remain in force until revoked.
- (3) Where this section applies, no compensation is payable under section 61 in respect of the revocation or variation of the licence.

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- (4) In this section the “water environment” means—
- (a) any inland waters (including, in relation to a lake, pond, river or watercourse that is for the time being dry, its bottom, channel or bed),
 - (b) any water contained in underground strata,
 - (c) any underground strata themselves,
- or any flora or fauna dependent on any of them.
- (5) In this section “relevant environmental objective” means an environmental objective within the meaning of whichever of the following is applicable—
- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407);
 - (b) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);
 - (c) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245).

Textual Amendments

F149 Ss. 61ZA, 61ZB inserted (9.1.2022) by [Environment Act 2021 \(c. 30\)](#), ss. 88(1), 147(2)(k) (with s. 144)

61ZB No compensation where variation to remove excess headroom: England

- (1) This section applies if a relevant licence is varied in pursuance of a direction under section 54 on or after 1 January 2028 so as to reduce the quantity of water the holder is authorised to abstract.
- (2) A “relevant licence” is a licence to abstract water that—
- (a) is to abstract water in England only, and
 - (b) is to remain in force until revoked.
- (3) No compensation is payable under section 61 if—
- (a) in each year during the 12 year period ending with the relevant date, the quantity of water abstracted in pursuance of the licence did not exceed 75% of the quantity of water the holder was authorised to abstract in that year, and
 - (b) the ground for varying the licence is that the Secretary of State is satisfied the variation does not reduce the quantity of water the holder is authorised to abstract to a level below that which the holder reasonably requires.
- (4) In subsection (3) the “relevant date” is the date on which the notice of the proposals for varying the licence was served on the holder of the licence.]

Textual Amendments

F149 Ss. 61ZA, 61ZB inserted (9.1.2022) by [Environment Act 2021 \(c. 30\)](#), ss. 88(1), 147(2)(k) (with s. 144)

^{F150}61A Recovery of compensation from new licence-holder

.....

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Textual Amendments

F150 S. 61A repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), ss. **58(3)**, 94(2)(l)

62 Compensation for owner of fishing rights applying under section 55.

- (1) Where a licence is revoked or varied on an application under section 55 above, the applicant shall be entitled to compensation from the [^{F151}appropriate agency] in respect of the loss or damage which he has sustained as mentioned in subsection (3) of that section.
- (2) Where, on an application under section 55 above for the revocation or variation of a licence, the Secretary of State determines—
 - (a) that the grounds of the application (as mentioned in subsection (3) of that section) have been established to his satisfaction; but
 - (b) that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly for the purposes of the following provisions of this section.
- (3) Unless within the period of six months from the date on which a certificate under subsection (2) above is granted either—
 - (a) notice to treat for the acquisition of the fishing rights of the applicant, or of an interest in land which includes those rights, has been served by the [^{F151}appropriate agency]; or
 - (b) an offer has been made by the [^{F151}appropriate agency] to the owner of those rights to acquire them on compulsory purchase terms or, where the rights subsist only as rights included in an interest in land, to acquire that interest on such terms,
 the owner of the fishing rights shall be entitled to compensation from the [^{F151}appropriate agency].
- (4) The amount of the compensation payable under subsection (3) above in respect of any fishing rights shall be the amount by which—
 - (a) the value of those rights; or
 - (b) where they subsist only as rights included in an interest in land, the value of that interest,
 is depreciated by the operation of section 48(2) above in relation to the licence to which the application related.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the [^{F152}Upper Tribunal] ; and in relation to the determination of any such compensation the provisions of [^{F153}section] 4 of the ^{M11}Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purposes of this section a right or interest is acquired on compulsory purchase terms if it is acquired on terms that the price payable shall be equal to and shall, in default of agreement, be determined in like manner as the compensation which would be payable in respect thereof if the right or interest were acquired compulsorily by the [^{F151}appropriate agency].
- (7) Where—

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- (a) the Secretary of State, on an application under section 55 above, determines that the licence to which the application relates shall not be revoked or varied and grants a certificate under subsection (2) above; and
- (b) notice to treat for the acquisition of the fishing rights to which the application related, or of an interest in land in which those rights are included, has been served by the [F151 appropriate agency] within the period of six months from the date on which that certificate is granted,

then, for the purpose of assessing compensation in respect of any compulsory acquisition in pursuance of that notice to treat, no account shall be taken of any depreciation of the value of the fishing rights, or of the interest in question, which is applicable to the operation, in relation to that licence, of section 48(2) above.

- (8) Subsections (5) and (6) of section 55 above shall apply for construing references in this section to fishing rights or to rights included in an interest in land as they have effect for construing such references in that section.

Textual Amendments

F151 Words in s. 62 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)

F152 Words in s. 62(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 229(a)** (with Sch. 5)

F153 Word in s. 62(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 229(b)** (with Sch. 5)

Marginal Citations

M11 1961 c. 33.

63 Secretary of State to indemnify [F154 appropriate agency] in certain cases.

(1) Where—

- (a) the [F154 appropriate agency] is liable under section 60 above to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Secretary of State; and
- (b) the [F154 appropriate agency] pay to that person any sum in satisfaction of that liability,

then, whether an action for recovery of those damages has been brought or not, the Secretary of State may, if he thinks fit, pay to the [F154 appropriate agency] the whole or such part as he considers appropriate of the relevant amount.

(2) If—

- (a) proposals for revoking or varying the licence, in a case falling within subsection (1) above, are formulated by the [F154 appropriate agency], or an application with respect to any licence is made under section 55 above;
- (b) in consequence of those proposals or that application, the licence is revoked or varied; and
- (c) compensation in respect of the revocation or variation is payable by the [F154 appropriate agency] under section 61 above,

the Secretary of State may, if he thinks fit, pay to the [F154 appropriate agency] the whole or such part as he considers appropriate of the relevant amount.

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(3) Where—

- (a) the Secretary of State determines under section 55 above—
- (i) that a licence granted in compliance with a direction given by the Secretary of State shall be revoked or varied; or
 - (ii) that a licence shall not be revoked or varied;

and

- (b) in consequence of that determination, compensation is payable by the [F154 appropriate agency] under section 62 above,

the Secretary of State may, if he thinks fit, pay to the [F154 appropriate agency] the whole or such part as he considers appropriate of the relevant amount.

(4) In this section “the relevant amount” means—

- (a) for the purposes of subsection (1) above, the amount of the sum paid by the [F154 appropriate agency] and, if an action has been brought against the [F154 appropriate agency] in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the [F154 appropriate agency] in connection with the action (including any costs of the plaintiff which the [F154 appropriate agency] was required to pay); and
- (b) for the purposes of subsections (2) and (3) above, the amount of the compensation and, if any question relating to that compensation is referred to the [F155 Upper Tribunal], the amount of any costs reasonably incurred by the [F154 appropriate agency] in connection with that reference (including any costs of the claimant which the [F154 appropriate agency] is required to pay).

Textual Amendments

F154 Words in s. 63 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)

F155 Words in s. 63(4)(b) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 230** (with Sch. 5)

Supplemental provisions of Chapter II

64 Abstracting and impounding by the [F156 appropriate agency].

(1) The provisions of this Chapter shall have effect—

- (a) in relation to the abstraction of water by the [F156 appropriate agency] from sources of supply; and

[F157(b) in relation to—

- (i) the construction or alteration by the [F156 appropriate agency] of impounding works; and
- (ii) the obstruction or impeding by the [F156 appropriate agency] of the flow of inland waters by means of impounding works.]

subject to such exceptions and modifications as may be prescribed.

(2) Regulations under this section may, in particular, provide for securing—

- (a) that any licence required by the [F156 appropriate agency] in relation to the matters mentioned in subsection (1) above shall be granted (or be deemed to

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- be granted) by the Secretary of State, and not be granted by the [^{F156}appropriate agency];
- (b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the [^{F156}appropriate agency] shall be deemed to be granted by the Secretary of State unless the Secretary of State requires an application for the licence to be made to him by the [^{F156}appropriate agency]; and
- (c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the [^{F156}appropriate agency] shall give such notice of that fact as may be prescribed.
- (3) Without prejudice to the preceding provisions of this section, section 52 above shall not apply in relation to any licence which by virtue of any regulations under this section is granted or deemed to have been granted by the Secretary of State, except in accordance with regulations under this section.

Textual Amendments

F156 Words in s. 64 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)

F157 S. 64(1)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(7), 105(3)** (with s. 2(10)); [S.I. 2006/984](#), art. 2(b) (with Sch. para. 2)

65 Licences of right.

Schedule 7 to this Act shall have effect for the purposes of giving effect to provisions conferring an entitlement to licences under this Chapter and with respect to licences granted in pursuance of that entitlement or the entitlement conferred by section 33 of the ^{M12}Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the ^{M13}Water Act 1989.

Marginal Citations

M12 1963 c. 38.

M13 1989 c. 15.

66 Inland waters owned or managed by [^{F158}Canal & River Trust].

- (1) This section applies to all inland waters owned or managed by [^{F159}Canal & River Trust], except any such inland waters to which the Secretary of State may by order made by statutory instrument direct that this section shall not apply.
- (2) In respect of abstraction from any inland waters to which this section applies—
- ^{F160}(a)
- (b) no person other than [^{F161}Canal & River Trust] shall be entitled to apply for a licence under this Chapter;
- (c) in relation to any application by [^{F162}Canal & River Trust] for a licence under this Chapter—
- (i) section 35 above shall not apply; and

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- (ii) section 37 above shall apply as if ^{F163}paragraphs (b) and (c), and the succeeding words, of subsection (3) of that section were omitted.]
- (3) Before making an order under subsection (1) above, the Secretary of State shall consult ^{F164}Canal & River Trust] and the ^{F165}appropriate agency].

Textual Amendments

- F158** Words in s. 66 heading substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 11(2)** (with arts. 4-6)
- F159** Words in s. 66(1) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 11(3)(a)** (with arts. 4-6)
- F160** S. 66(2)(a) repealed (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), Sch. 7 para. 7, **Sch. 9 Pt. 3**; S.I. 2006/984, art. 2(s)(i)
- F161** Words in s. 66(2)(b) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 11(3)(b)** (with arts. 4-6)
- F162** Words in s. 66(2)(c) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 11(3)(b)** (with arts. 4-6)
- F163** Words in s. 66(2)(c)(ii) substituted (1.4.2006) by Water Act 2003 (c. 37), **ss. 14(3)(d)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)
- F164** Words in s. 66(3) substituted (2.7.2012) by The British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659), art. 1(2), **Sch. 3 para. 11(3)(b)** (with arts. 4-6)
- F165** Words in s. 66(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 270(l)** (with Sch. 7)

67 Ecclesiastical property.

- (1) Where the relevant land ^{F166}is vested in the incumbent of a benefice] ^{F167}or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land]—
- (a) an application for a licence under this Chapter may be made by the ^{F168}Diocesan Board of Finance for the diocese in which the land is situated] if the benefice is for the time being vacant; and
- (b) any reference in this Chapter to the applicant for a licence shall be construed—
- (i) in relation to any time when the benefice in question is vacant, as a reference to the ^{F168}Diocesan Board of Finance for the diocese in which the land is situated]; and
- (ii) in relation to any time when there is an incumbent of the benefice, as a reference to that incumbent.
- (2) Where the relevant land ^{F169}is vested in the incumbent of a benefice] ^{F167}or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land], any licence under this Chapter shall provide that (notwithstanding anything in the preceding provisions of this Chapter) whoever is for the time being the incumbent of the benefice shall be the holder of the licence.
- (3) Where a licence under this Chapter provides as mentioned in subsection (2) above—
- (a) the licence shall not be required to specify the person to whom the licence is granted; and
- (b) the licence shall be deemed to be held by the ^{F170}Diocesan Board of Finance for the diocese in which the land is situated] at any time when the benefice in question is vacant.

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- (4) So much of any compensation falling to be paid under this Chapter as is payable—
- (a) in respect of damage to land which is ecclesiastical property and to the owner of the fee simple in the land; or
 - (b) in respect of depreciation of the value of the fee simple in land which is ecclesiastical property,
- shall be paid (where the fee simple is vested in any person other than the ^{F171}Diocesan Board of Finance for the diocese in which the land is situated) to ^{F172}it], instead of to the person in whom the fee simple is vested.
- (5) Any sums paid under subsection (4) above to the ^{F173}Diocesan Board of Finance] with reference to any land shall—
- (a) if the land is not consecrated, be applied by ^{F173}it] for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; and
 - (b) if the land is consecrated, be applied by ^{F173}it]^{F173} as if the land had been sold under the Pastoral Measure 1983].
- (6) Where—
- (a) ^{F174}a Diocesan Board of Finance is] required, by virtue of subsection (3)(b) above, to pay any fee or other charge in respect of a licence under this Chapter; and
 - (b) any moneys are then payable by the ^{F175}Board] to the incumbent of the benefice in question or subsequently become so payable,
- the ^{F175}Board] shall be entitled to retain out of those moneys an amount not exceeding the amount of that fee or other charge.
- (7) Where under any provision of this Chapter a document is required to be served on an owner of land and the land is ecclesiastical property, a copy of the document shall be served on the ^{F176}Diocesan Board of Finance for the diocese in which the land is situated].
- (8) In this section —
- “benefice” means an ecclesiastical benefice of the Church of England;
 - “ecclesiastical property” means land which—
- (a) belongs to a benefice;
 - (b) is or forms part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject; or
 - (c) is or forms part of a burial ground so subject;
- and
- “the relevant land”, in relation to a licence under this Chapter or an application for such a licence, means—
- (a) ^{F177}the land to which an applicant for a licence to abstract water is required by section 35 above to have a right of access; or]
 - (b) in the case of a licence for the purposes of section 25 above or an application for such a licence—
- (i) the land on which any part of the impounding works ^{F178}is, or] is to be, or is proposed to be, constructed; or

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- (ii) in relation to an alteration of impounding works, the land on which any part of those works is situated or is to be, or is proposed to be, situated.

Textual Amendments

- F166** Words in s. 67(1) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F167** Words in s. 67(1)(2) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 8\(2\)](#); S.I. 2006/984, art. 2(s)(i)
- F168** Words in s. 67(1) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F169** Words in s. 67(2) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F170** Words in s. 67(3) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F171** Words in s. 67(4) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F172** Word in s. 67(4) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(c\)](#); 2006 No. 2, Instrument made by Archbishops
- F173** Words in s. 67(5) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(d\)](#); 2006 No. 2, Instrument made by Archbishops
- F174** Words in s. 67(6)(a) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(e\)](#); 2006 No. 2, Instrument made by Archbishops
- F175** Words in s. 67(6) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(f\)](#); 2006 No. 2, Instrument made by Archbishops
- F176** Words in s. 67(7) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), [Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F177** Words in s. 67(8) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 8\(3\)](#); S.I. 2006/984, art. 2(s)(i)
- F178** Words in s. 67(8) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 2\(8\)](#), 105(3) (with s. 2(10)); S.I. 2006/984, art. 2(b) (with [Sch. para. 2](#))

F179 68

Textual Amendments

- F179** S. 68 repealed (21.9.1995) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 138](#), [Sch. 24](#) (with [ss. 7\(6\)](#), 115, 117); S.I. 1995/1983, [art. 3](#)

69 Validity of decisions of Secretary of State and related proceedings.

- (1) Except as provided by the following provisions of this section, the validity of a decision of the Secretary of State on—
- (a) any appeal to the Secretary of State under this Chapter; or
 - (b) any reference to the Secretary of State in pursuance of a direction under section 41 above or in pursuance of section 53(4) above,
- shall not be questioned in any legal proceedings whatsoever.

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- (2) If, in the case of any such appeal or reference, the [^{F180}appropriate agency] or the other party desires to question the validity of the decision of the Secretary of State on the grounds—
- (a) that the decision is not within the powers of this Act; or
 - (b) that any of the requirements of, or of any regulations made under, this Chapter which are applicable to the appeal or reference have not been complied with, the [^{F180}appropriate agency] or, as the case may be, the other party may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this section.
- (3) On any application under this section, the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.
- (4) If the High Court is satisfied, on an application under this section—
- (a) that the decision to which the application relates is not within the powers of this Act; or
 - (b) that the interests of the person making the application under this section have been substantially prejudiced by a failure to comply with any of the requirements mentioned in subsection (2)(b) above,
- the High Court may quash the decision.
- ^{F181}(5)
- (6) In this section—
- “decision” includes a direction; and
 - “other party” —
- (a) in relation to an appeal, means the appellant;
 - (b) in relation to a reference in pursuance of a direction under section 41 above, means the applicant for the licence or, where that section applies by virtue of section 51(3) above, for the revocation or variation; and
 - (c) in relation to a reference in pursuance of section 53(4) above, means (subject, without prejudice to their application to the other provisions of this Chapter, to subsections (6) and (7) of section 25 above) the holder of the licence.

Textual Amendments

F180 Words in s. 69(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(m)** (with Sch. 7)

F181 S. 69(5) repealed (21.9.1995) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 138](#), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3

70 Civil liability under Chapter II.

Except in so far as this Act otherwise expressly provides and subject to the provisions of section 18 of the ^{M14}Interpretation Act 1978 (which relates to offences under two or more laws), the restrictions imposed by sections [^{F182}24 and 25] above shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of those restrictions;

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- (b) affecting any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act; or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

Textual Amendments

F182 Words in s. 70 substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(4)**, 105(3); S.I. 2006/984, art. 2(e) (with [Sch. paras. 4, 5](#))

Marginal Citations

M14 1978 c. 30.

71 Modification of local enactments.

- (1) If it appears to the Secretary of State by whom an order is made under a provision of this Chapter to which this section applies that any local enactment passed or made before the relevant date—
 - (a) is inconsistent with any of the provisions of that order; or
 - (b) requires to be amended or adapted, having regard to any of the provisions of that order,

the Secretary of State may by order repeal, amend or adapt that enactment to such extent, or in such manner, as he may consider appropriate.
- (2) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient.
- (3) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section applies to the following provisions of this Chapter, that is to say, sections ^{F183}... 66, 68 and 72(5).
- (5) In this section—

“local enactment” means—

 - (a) a local or private Act;
 - (b) a public general Act relating to London;
 - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
 - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme;

“relevant date” means the date which was the second appointed day for the purposes of section 133 of the ^{M15}Water Resources Act 1963.
- (6) The provisions of this section shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

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Textual Amendments

F183 Word in s. 71(4) repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), Sch. 7 para. 9, [Sch. 9 Pt. 3](#); [S.I. 2017/1043](#), art. 2(g)

Marginal Citations

M15 [1963 c. 38](#).

72 Interpretation of Chapter II.

(1) In this Chapter—

“derogate”, in relation to a protected right, shall be construed in accordance with section 39(4) above;

“flow” shall be construed subject to section 23(3) above;

[^{F184}“full licence” has the meaning given in section 24A above;]

“impounding works” has the meaning given by section 25(8) above;

“licence”, in relation to the variation or revocation of a licence, shall be construed subject to section 25(6) and (7) above;

“protected right” shall be construed in accordance with [^{F185}section 39A] above;

“the restriction on abstraction” means the restriction imposed by section 24(1) above;

“the restriction on impounding works” means the restriction imposed by section [^{F186}25(1)(a) and (b)] above;

“spray irrigation” means (subject to subsection (5) below) the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray; and

“statutory provision” means a provision (whether of a general or special nature) which is contained in, or in any document made or issued under, any Act (whether of a general or special nature).

[^{F184}“temporary licence” and “transfer licence” have the meanings given in section 24A above.]

(2) References in this Chapter to a watercourse shall not include references—

(a) to any sewer or part of a sewer vested in—

(i) a sewerage undertaker;

(ii) a local authority or joint planning board;

(iii) the [^{F187}new towns residuary body] or a development corporation for a new town;

(iv) a harbour board within the meaning of the ^{M16}Railway and Canal Traffic Act 1888;

or

(b) to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

[^{F188}(2A) In subsection (2)(a)(iii) “new towns residuary body” means—

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- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008 [^{F189}or the Greater London Authority so far as exercising its new towns and urban development functions]; and
 - (b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.]
- (3) Any reference in this Chapter to the doing of anything in pursuance of a licence under this Chapter is a reference to its being done—
- (a) by the holder of such a licence; or
 - (b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,
- at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by this Chapter.
- (4) For the purposes of this Chapter land shall be taken to be contiguous to any inland waters notwithstanding that it is separated from those waters by a towpath or by any other land used, or acquired for use, in connection with the navigation of the inland waters, unless that other land comprises any building or works other than a lock, pier, wharf, landing-stage or similar works.
- (5) The Ministers may by order direct that references to spray irrigation in this Chapter, and in any other enactments in which “spray irrigation” is given the same meaning as in this Chapter, or such of those references as may be specified in the order—
- (a) shall be construed as not including spray irrigation if carried out by such methods or in such circumstances or for such purposes as may be specified in the order; and
 - (b) without prejudice to the exercise of the power conferred by virtue of paragraph (a) above, shall be construed as including references to the carrying out, by such methods or in such circumstances or for such purposes as may be specified in the order, of irrigation of any such description, other than spray irrigation, as may be so specified.
- (6) The power of the Ministers 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.

Textual Amendments

- F184** Words in s. 72(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 1(2)**, 105(3); S.I. 2006/984, art. 2(a) (with [Sch. paras. 1, 2](#))
- F185** Words in s. 72(1) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(2)**, 105(3); S.I. 2005/968, art. 2(d) (with [Sch. 1 para. 2](#))
- F186** Words in s. 72(1) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(9)**, 105(3) (with s. 2(10)); S.I. 2006/984, art. 2(b) (with [Sch. para. 2](#))
- F187** Words in s. 72(2)(a)(iii) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 60(2)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)
- F188** S. 72(2A) inserted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 60(3)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)

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F189 Words in s. 72(2A) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 19 para. 30](#); [S.I. 2012/628, art. 6\(i\)](#) (with arts. 9, 11, 14, 15, 17)

Modifications etc. (not altering text)

C98 S. 72(2)(a) applied (with modifications) (4.6.1996) by [S.I. 1996/1243, art. 18, Sch. 5 Pt. II para. 6\(2\)](#) (a)

Marginal Citations

M16 [1888 c. 25](#).

CHAPTER III

DROUGHT

73 Power to make ordinary and emergency drought orders.

[^{F190}(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

- (a) a serious deficiency of supplies of water in any area, or
- (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then,], subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “ordinary drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(2) If the Secretary of State—

- (a) is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened; and
- (b) is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area,

then, subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “emergency drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(3) Subject to section 76(3) below, the power to make a drought order in relation to any area shall not be exercisable [^{F191}unless] an application is made to the Secretary of State—

- (a) by the [^{F192}appropriate agency]; or
- (b) [^{F193}except in the case of an ordinary drought order by virtue of subsection (1) (b) above,] by a water undertaker which supplies water to premises in that area.

(4) The power to make a drought order shall be exercisable by statutory instrument; and Schedule 8 to this Act shall have effect with respect to the procedure on an application for such an order.

Textual Amendments

F190 Words in s. 73(1) substituted (21.9.1995) by [1995 c. 25, s. 120\(1\), Sch. 22 para. 139\(2\)](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983, art. 3](#)

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- F191** Words in s. 73 substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(a)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F192** Words in ss. 73-75 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2), Sch. 2 para. 270(n)** (with Sch. 7)
- F193** Words in s. 73 inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(b)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

74 Provisions and duration of ordinary drought order.

- (1) An ordinary drought order made on the application of the [F192appropriate agency] may contain any of the following provisions, that is to say—
- (a) provision authorising the [F192appropriate agency] (or persons authorised to do so by the [F192appropriate agency]) to take water from any source specified in the order subject to any conditions or restrictions so specified;
 - (b) provision authorising the [F192appropriate agency] (or persons authorised to do so by the [F192appropriate agency]) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
 - (c) provision authorising the [F192appropriate agency] to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the [F192appropriate agency] is satisfied that the taking of water from that source seriously affects the supplies available to the [F192appropriate agency], any water undertaker or any other person;
 - (d) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the [F192appropriate agency], any water undertaker or sewerage undertaker or any other person is subject as respects—
 - (i) the taking of water from any source;
 - (ii) the discharge of water;
 - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
 - (iv) the filtration or other treatment of water;
 - (e) provision authorising the [F192appropriate agency] to suspend or vary, or attach conditions to, any [F194environmental permit] specified in the order for the discharge of any effluent by any person, including any sewerage undertaker or water undertaker.
- (2) An ordinary drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to take water from any source specified in the order subject to any conditions or restrictions so specified;
 - (b) provision authorising the water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Secretary of State to water undertakers generally as a purpose which may be specified by virtue of this paragraph in any ordinary drought order;
 - (c) provision authorising the water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
 - (d) provision authorising the [F192appropriate agency] to prohibit or limit the taking by any person of water from a source specified in the order if the

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- [^{F192}appropriate agency] is satisfied that the taking of water from that source seriously affects the supplies available to the water undertaker;
- (e) provision prohibiting or limiting the taking by the [^{F192}appropriate agency] of water from a source specified in the order if the taking of water from that source is determined, in accordance with provision made by the order, seriously to affect the supplies available to the water undertaker;
- (f) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the water undertaker or any sewerage undertaker or other person is subject as respects—
- (i) the taking of water from any source;
 - (ii) the discharge of water;
 - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
 - (iv) the filtration or other treatment of water;
- (g) provision authorising the [^{F192}appropriate agency] to suspend or vary, or attach conditions to, any [^{F195}environmental permit] specified in the order for the discharge of any effluent by any person, including the company which applied for the order (whether in the capacity in which it made the application, in its capacity as a sewerage undertaker or in any other capacity).
- (3) The period for which—
- (a) an authorisation given by or under an ordinary drought order;
 - (b) a prohibition or limitation imposed by or under any such order; or
 - (c) a suspension or modification effected by or under any such order,
- has effect shall expire before the end of the period of six months beginning with the day on which the order comes into force, unless that period of six months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an ordinary drought order shall not be exercised so as to extend the period of six months mentioned in subsection (3) above beyond the end of the period of one year beginning with the day on which that order came into force.
- (5) Without prejudice to the following provisions of this Chapter, an ordinary drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

Textual Amendments

F192 Words in ss. 73-75 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(n)** (with Sch. 7)

F194 Words in s. 74(1)(e) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(a)** (with reg. 1(2), Sch. 4)

F195 Words in s. 74(2)(g) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(a)** (with reg. 1(2), Sch. 4)

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75 Provisions and duration of emergency drought order.

- (1) An emergency drought order made on the application of the [^{F192}appropriate agency] may contain any of the provisions which could be included, by virtue of section 74(1) above, in an ordinary drought order made on the application of the [^{F192}appropriate agency].
- (2) An emergency drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
 - (a) any provision which could be included, by virtue of subsection (2) of section 74 above, in an ordinary drought order made on the application of a water undertaker, except provision authorised by paragraph (b) of that subsection;
 - (b) provision authorising the water undertaker to prohibit or limit the use of water for such purposes as the water undertaker thinks fit;
 - (c) provision authorising the water undertaker—
 - (i) to supply water in its area, or in any place within its area, by means of stand-pipes or water tanks; and
 - (ii) to erect or set up and maintain stand-pipes or water tanks in any street in that area.
- (3) The period for which—
 - (a) an authorisation given by or under an emergency drought order;
 - (b) a prohibition or limitation imposed by or under any such order; or
 - (c) a suspension or modification effected by or under any such order,
 has effect shall expire before the end of the period of three months beginning with the day on which the order comes into force unless that period of three months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an emergency drought order shall not be exercised so as to extend the period of three months mentioned in subsection (3) above beyond the end of the period of five months beginning with the day on which that order came into force.
- (5) Where powers have been conferred by an emergency drought order on any person—
 - (a) the Secretary of State may give to that person such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
 - (b) it shall be the duty of that person to comply with any such direction; and
 - (c) where that person is a water undertaker or sewerage undertaker, the duty to comply with any such direction shall be enforceable under section 18 of the ^{M17}Water Industry Act 1991 by the Secretary of State.
- (6) The giving of a direction under subsection (5) above in relation to any power shall not affect—
 - (a) the validity of anything done in the exercise of that power before the giving of the direction; or
 - (b) any obligation or liability incurred before the giving of the direction.
- (7) Without prejudice to the following provisions of this Chapter, an emergency drought order may—

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- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

Textual Amendments

F192 Words in ss. 73-75 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(n)** (with Sch. 7)

Marginal Citations

M17 1991 c. 56.

76 Provisions of drought order restricting use of water.

- (1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—
 - (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
 - (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
 - (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
 - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
 - (c) the prohibition or limitation shall not come into operation until the end of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.
- (2) The Secretary of State may revoke or vary any direction given by him for the purposes of section 74(2)(b) above by a further direction for those purposes.
- (3) Where any purpose set out in a direction given for the purposes of section 74(2)(b) above will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in an ordinary drought order, the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.
- (4) The revocation or variation of a direction under subsection (3) above shall not affect either—
 - (a) the validity of anything done in pursuance of an order before the giving of the further direction; or
 - (b) any obligation or liability accrued or incurred before the giving of the further direction.

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77 Provisions of drought order with respect to abstractions and discharges.

(1) Any drought order which-

- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
- (b) suspends or modifies—
 - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
 - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.

(2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.

(3) Where a drought order made on the application of a water undertaker confers power on the [F196appropriate agency]—

- (a) to prohibit or limit the taking of water from any source; or
- (b) to suspend or vary, or attach conditions to, any [F197environmental permit] for the discharge of any effluent,

the [F196appropriate agency] shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

^{F198}(4)

(5) Where—

- (a) any drought order confers power on the [F196appropriate agency] to suspend or vary, or attach conditions to, any [F199environmental permit] for the discharge of any effluent; and
- (b) the [F196appropriate agency] exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,

the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.

(6) In this section—

“compensation water” means water which a water undertaker or the [F196appropriate agency] is under an obligation to discharge—

- (a) in accordance with the provisions of a licence under Chapter II of this Part into a source of supply; or
- (b) under any local statutory provision, into any river, stream, brook or other running water or into a canal;

and

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“inland navigation” includes any canal or navigable river.

Textual Amendments

- F196** Words in ss. 77-79 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(o)** (with Sch. 7)
- F197** Words in s. 77(3)(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. 8(3)(b)** (with reg. 1(2), Sch. 4)
- F198** S. 77(4) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 64(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 3(o)(z)
- F199** Words in s. 77(5)(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. 8(3)(b)** (with reg. 1(2), Sch. 4)

78 Works under drought orders.

- (1) A drought order may authorise the [^{F196}appropriate agency] or a water undertaker, subject to any conditions and restrictions specified in the order, to carry out any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order.
- (2) A drought order authorising the [^{F196}appropriate agency] or a water undertaker to carry out any works—
 - (a) may authorise the [^{F196}appropriate agency] or that undertaker for that purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the carrying out and maintenance of the works; and
 - (b) may apply in relation to the carrying out of the works such of the provisions of Part VII of this Act or Part VI of the ^{M18}Water Industry Act 1991 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.
- (3) The Secretary of State shall include in any drought order authorising the [^{F196}appropriate agency] or a water undertaker to enter any land provisions requiring the [^{F196}appropriate agency] or that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry.
- (4) Subject to subsection (3) above, a drought order may make any such provision in relation to provisions of the order authorising any person to enter any land as corresponds to provision having effect by virtue of section 173 below or to provision contained in Part II of Schedule 6 to the Water Industry Act 1991.
- (5) Any works to be carried out under the authority of an emergency drought order shall be included in the definition of emergency works in section 52 of the New Roads and Street Works Act 1991.
- (6) Until the coming into force of section 52 of the ^{M19}New Roads and Street Works Act 1991, subsection (5) above shall have effect as if the reference to that section were a reference to section 39(1) of the ^{M20}Public Utilities Street Works Act 1950; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this section).

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Textual Amendments

F196 Words in ss. 77-79 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(o)** (with Sch. 7)

Marginal Citations

M18 1991 c. 56.

M19 1991 c. 22.

M20 1950 c. 39.

79 Compensation and charges where drought order made.

- (1) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.
- (2) Except as provided by Schedule 9 to this Act, neither the [^{F196}appropriate agency] nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.
- (3) Nothing in any drought order shall affect the right of the [^{F196}appropriate agency], a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by the [^{F196}appropriate agency] or that undertaker if there had been no such interruption or diminution.
- [^{F200}(4) Where a water undertaker makes an application for a drought order, the [^{F196}appropriate agency] may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature)—
 - (a) in connection with any local inquiry held in respect of the application;
 - (b) in the exercise of the [^{F196}appropriate agency's] functions so far as their exercise is attributable to the application and (if the order is made) to the order, in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.
- (5) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (4) above.]

Textual Amendments

F196 Words in ss. 77-79 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(o)** (with Sch. 7)

F200 S. 79(4)(5) added (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 64(2)**, 105(3); S.I. 2004/641, art. 3(o) (with Sch. 3 para. 7)

[^{F201}79A Drought permits.

- (1) If the [^{F202}appropriate agency] is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section, it may, upon the application of a water undertaker which supplies water to premises in that area, issue to that undertaker

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- a drought permit making such provision authorised by this section as appears to the [F202 appropriate agency] to be expedient with a view to meeting the deficiency.
- (2) A drought permit may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to which it is issued to take water from any source specified in the permit subject to any conditions or restrictions so specified;
 - (b) provision suspending or modifying, subject to any conditions specified in the permit, any restriction or obligation to which that undertaker is subject as respects the taking of water from any source.
- (3) A drought permit shall specify—
- (a) the day on which it comes into force; and
 - (b) the period for which, subject to subsections (4) and (5) below, any authorisation given, or suspension or modification effected, by the permit is to have effect.
- (4) Subject to subsection (5) below, the period for which—
- (a) an authorisation given by a drought permit, or
 - (b) a suspension or modification effected by such a permit,
- has effect shall expire before the end of the period of six months beginning with the day on which the permit comes into force.
- (5) At any time before the expiration of the period for which such an authorisation, suspension or modification has effect, the [F202 appropriate agency] may, by giving notice to the water undertaker to which the permit in question was issued, extend that period, but not so as to extend it beyond the end of the period of one year beginning with the day on which the permit came into force.
- (6) A drought permit which—
- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
 - (b) suspends or modifies—
 - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
 - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,
- shall not be issued without the consent of every navigation authority exercising functions over any or all of the parts of the canal or inland navigation in question which are affected by the permit.
- (7) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought permit as it has effect with respect to the procedure on an application for a drought order, but with the following modifications, that is to say—
- (a) with the substitution for any reference to a drought order of a reference to a drought permit;
 - (b) with the substitution for any reference to the Secretary of State of a reference to the [F202 appropriate agency];
 - F203 (c)

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- (d) with the insertion, in paragraph 1(3)(c), of a requirement that the notice in question shall specify the address at which any objections are to be made to the [^{F202}appropriate agency]; and
- (e) with the omission—
 - (i) of paragraph 2(1)(a) and the word “either” immediately preceding it, and
 - (ii) of paragraph 2(6).

^{F204}(8)

^{F205}(8A) [^{F202}appropriate agency] may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature) in the exercise of its functions so far as their exercise is attributable to—

- (a) the application;
- (b) (if the permit is issued) the permit,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(8B) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (8A) above.]

(9) Section 79 above and Schedule 9 to this Act shall apply in relation to drought permits and their issue as they apply in relation to ordinary drought orders and their making.

(10) A drought permit may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provisions as the [^{F202}appropriate agency] considers appropriate.

(11) In this section—

- “compensation water” has the same meaning as in section 77 above;
- “drought permit” means a drought permit under this section;
- “inland navigation” has the same meaning as in section 77 above.]

Textual Amendments

- F201** S. 79A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 140** (with 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F202** Words in s. 79A substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 271(2)** (with Sch. 7)
- F203** S. 79A(7)(c) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 271(3)** (with Sch. 7)
- F204** S. 79A(8) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 64(3)(a), 105(3)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(o)(z)**
- F205** S. 79A(8A)(8B) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 64(3)(b), 105(3)**; S.I. 2004/641, **art. 3(o)** (with Sch. 3 para. 7)

80 Offences against drought order.

- (1) If any person—

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- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction [^{F206}imposed by or under any drought order or by any drought permit]; or
 - (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,
- he shall be guilty of an offence under this section.
- (2) If any person—
- (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order [^{F207}or drought permit]; or
 - (b) fails to allow some person authorised for the purpose by or under any such order [^{F208}or by virtue of any such permit] to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,
- he shall be guilty of an offence under this section.
- (3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Textual Amendments

F206 Words in s. 80(1)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F207 Words in s. 80(2)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F208 Words in s. 80(2)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

81 Interpretation of Chapter III.

In this Chapter—

- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

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PART III

CONTROL OF POLLUTION OF WATER RESOURCES

Modifications etc. (not altering text)

- C99** Pt. III (ss. 82-104) modified (subject to other provisions of the amending Act) (1.2.1996) by 1995 c. 25, s. 5(5)(g) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2
- C100** Pt. III (ss. 82-104): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(ii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- C101** Pt. III: definition of “controlled waters” applied (1.12.1991) by water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), Sch. 1 para. 1

CHAPTER I

QUALITY OBJECTIVES

82 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.

Modifications etc. (not altering text)

- C102** S. 82 modified (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2
- C103** S. 82 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), Sch. 3 Pt. I para.9 (with s. 46).
- C104** S. 82 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)
- C105** S. 82 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

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83 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 the [^{F209}appropriate agency] specifying—
 - (a) one or more of the classifications for the time being prescribed under section 82 above; and
 - (b) in relation to each specified classification, a date, establish the water quality objectives for any waters 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—
 - (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 [^{F209}appropriate agency], after consultation with such water undertakers and other 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 he shall—
 - (a) give notice 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 or objections with respect to the proposal may be made; and
 - (b) consider any representations or objections which are duly made and not withdrawn;and, if he decides, after considering any such representations or objections, 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 [^{F209}appropriate agency].
- (6) If, on a review under this section or in consequence of any representations or objections 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 should remain unchanged, he shall serve notice of that decision on the [^{F209}appropriate agency].

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Textual Amendments

F209 Words in s. 83 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 272** (with Sch. 7)

Modifications etc. (not altering text)

- C106** S. 83 amended (20.3.1992) by [S.I. 1992/337](#), **reg. 4**
- C107** S. 83 applied (with modifications) (6.1.1997) by [S.I. 1996/3001](#), **reg. 7(1)**
 S. 83 applied (with modifications) (26.11.1997) by [S.I. 1997/2560](#), **reg. 5**
- C108** S. 83 modified (12.6.1997) by [S.I. 1997/1331](#), **reg. 6(1)**
 S. 83 modified (12.6.1997) by [S.I. 1997/1332](#), **reg. 6(1)**
 S. 83 modified (25.3.1998) by [S.I. 1998/389](#), **reg. 5**

84 General duties to achieve and maintain objectives etc.

- (1) It shall be the duty of the Secretary of State and of the [^{F210}appropriate agency] to exercise the powers conferred on him or it by or under the water pollution provisions of this Act (other than the preceding provisions of this Chapter and sections 104 and 192 below) [^{F211}and by the Environmental Permitting Regulations] 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) a notice under section 83 above; or
 - (b) a notice under section 30C of the ^{M21}Control of Pollution Act 1974 (which makes corresponding provision for Scotland),
- are achieved at all times.
- (2) It shall be the duty of the [^{F212}appropriate agency], for the purposes of the carrying out of its functions under the water pollution provisions of this Act [^{F213}or under the Environmental Permitting Regulations] —
- (a) to monitor the extent of pollution in controlled waters; ^{F214}...
- [^{F215}(aa) in the case of the NRBW, to consult, in such cases as it may consider appropriate, with the Agency; and]
- (b) [^{F216}in the case of the Agency,] to consult, in such cases as it may consider appropriate, with [^{F217}the Scottish Environment Protection Agency][^{F218}or with the NRBW].

Textual Amendments

- F210** Words in s. 84(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(2)** (with Sch. 7)
- F211** Words in s. 84(1) inserted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(4)(a)** (with reg. 1(2), Sch. 4)
- F212** Words in s. 84(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(a)** (with Sch. 7)
- F213** Words in s. 84(2) inserted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(4)(b)** (with reg. 1(2), Sch. 4)
- F214** Word in s. 84(2)(a) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(b)** (with Sch. 7)
- F215** S. 84(2)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(c)** (with Sch. 7)

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- F216** Words in s. 84(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(d)(i)** (with Sch. 7)
- F217** Words in s. 84(2)(b) substituted (S.) (1.4.1996) by S.I. 1996/973, reg. 2, **Sch. para. 11**
- F218** Words in s. 84(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(d)(ii)** (with Sch. 7)

Modifications etc. (not altering text)

- C109** S. 84 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C110** S. 84 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**)
- C111** S. 84 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

- M21** 1974 c. 40.

CHAPTER II

POLLUTION OFFENCES

Modifications etc. (not altering text)

- C112** Pt. III Chapter II (ss. 85-91) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 11**

Principal offences

F219 **85 Offences of polluting controlled waters.**

Textual Amendments

- F219** S. 85 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(a), **Sch. 28** (with reg. 1(2), Sch. 4)

F220 **86 Prohibition of certain discharges by notice or regulations.**

Textual Amendments

- F220** S. 86 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(b), **Sch. 28** (with reg. 1(2), Sch. 4)

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F221 87 Discharges into and from public sewers etc.

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Textual Amendments

F221 S. 87 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(c), **Sch. 28** (with reg. 1(2), Sch. 4)

F222 88 Defence to principal offences in respect of authorised discharges.

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Textual Amendments

F222 S. 88 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(d), **Sch. 28** (with regs. 1(2), 109(3), Sch. 4)

F223 89 Other defences to principal offences.

.....

Textual Amendments

F223 S. 89 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(e), **Sch. 28** (with reg. 1(2), Sch. 4)

Offences in connection with deposits and vegetation in rivers

F224 90 Offences in connection with deposits and vegetation in rivers.

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Textual Amendments

F224 S. 90 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(f), **Sch. 28** (with reg. 1(2), Sch. 4)

Consents for the purposes of sections 88 to 90

F225 90A Applications for consent under section 89 or 90.

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Textual Amendments

F225 S. 90A repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(g), **Sch. 28** (with reg. 1(2), Sch. 4)

F226 **90B Enforcement notices.**

.....

Textual Amendments

F226 S. 90B repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(h), **Sch. 28** (with reg. 1(2), Sch. 4)

Appeals in respect of consents under Chapter II

F227 **91 Appeals in respect of consents under Chapter II.**

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Textual Amendments

F227 S. 91 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(i), **Sch. 28** (with reg. 1(2), Sch. 4)

[F228] CHAPTER IIA

ABANDONED MINES

Textual Amendments

F228 Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by [1995 c. 25, s. 58](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983, art. 3](#) (with art. 4); [S.I. 1998/604, art. 3](#)

F229 **91A Introductory.**

- (1) For the purposes of this Chapter, “abandonment”, in relation to a mine,—
- (a) subject to paragraph (b) below, includes—
 - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
 - (ii) the cessation of working of any relevant seam, vein or vein-system;
 - (iii) the cessation of use of any shaft or outlet of the mine;
 - (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine)—

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- (A) the discontinuance of some or all of those other activities in the mine; and
 - (B) any substantial change in the operations for the removal of water from the mine; but
- (b) does not include—
- (i) any disclaimer under section 178 or 315 of the ^{M22}Insolvency Act 1986 (power of liquidator, or trustee of a bankrupt’s estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity; or
 - (ii) the abandonment of any rights, interests or liabilities by the Accountant in Bankruptcy acting as [^{F230}trustee] or interim trustee in a sequestration (within the meaning of the ^{M23}Bankruptcy (Scotland) Act [^{F231}2016]);

and cognate expressions shall be construed accordingly.

- (2) In this Chapter, except where the context otherwise requires—
- “the 1954 Act” means the ^{M24}Mines and Quarries Act 1954;
 - “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
 - (a) liquidator of a company;
 - (b) receiver or manager of a bankrupt’s estate, pursuant to section 287 of the ^{M25}Insolvency Act 1986;
 - (c) trustee of a bankrupt’s estate;
 - (d) liquidator of an insolvent partnership;
 - (e) trustee of an insolvent partnership;
 - (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;
 - “mine” has the same meaning as in the 1954 Act;
 - “the official receiver” has the same meaning as it has in the ^{M26}Insolvency Act 1986 by virtue of section 399(1) of that Act;
 - “prescribed” means prescribed in regulations;
 - “regulations” means regulations made by the Secretary of State;
 - “relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

Textual Amendments

- F229** Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by 1995 c. 25, s. 58 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3 (with art. 4); S.I. 1998/604, art. 3
- F230** Word in s. 91A(1)(b)(ii) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 8(2)(a)
- F231** Word in s. 91A(1)(b)(ii) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 8(2)(b)

Marginal Citations

- M22** 1986 c. 45.
M23 1985 c. 66.
M24 1954 c. 70.

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M25 1986 c. 45.

M26 1986 c. 45.

91B Mine operators to give the [^{F232}appropriate agency] six months' notice of any proposed abandonment.

- (1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the [^{F232}appropriate agency] at least six months before the abandonment takes effect.
- (2) A notice under subsection (1) above shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment.
- (3) A person who fails to give the notice required by 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.
- (4) A person shall not be guilty of an offence under subsection (3) above if—
 - (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
 - (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.
- (5) Where the operator of a mine is—
 - (a) the official receiver acting in a compulsory capacity, or
 - (b) the Accountant in Bankruptcy acting as [^{F233}trustee] or interim trustee in a sequestration (within the meaning of the ^{M27}Bankruptcy (Scotland) Act [^{F234}2016]),he shall not be guilty of an offence under subsection (3) above by reason of any failure to give the notice required by subsection (1) above if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the [^{F232}appropriate agency] notice of the abandonment or proposed abandonment, containing such information as may be prescribed.
- (6) Where a person gives notice under subsection (1), (4)(b) or (5) above, he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.
- (7) Where the [^{F232}appropriate agency]—
 - (a) receives notice under this section or otherwise learns of an abandonment or proposed abandonment in the case of any mine, and
 - (b) considers that, in consequence of the abandonment or proposed abandonment taking effect, any land has or is likely to become contaminated land, within the meaning of Part IIA of the ^{M28}Environmental Protection Act 1990,it shall be the duty of the [^{F232}appropriate agency] to inform the local authority in whose area that land is situated of the abandonment or proposed abandonment.
- (8) In this section—

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“the initial period” means the period of six months beginning with the day on which subsection (1) above comes into force;

“local authority” means—

- (a) any unitary authority;
- (b) any district council, so far as it is not a unitary authority;
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.]

Textual Amendments

- F232** Words in s. 91B and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)
- F233** Word in s. 91B(5)(b) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 8(3)(a)**
- F234** Word in s. 91B(5)(b) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 8(3)(b)**

Marginal Citations

- M27** 1985 c. 66.
M28 1990 c. 43.

CHAPTER III

POWERS TO PREVENT AND CONTROL POLLUTION

92 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 or controlling the entry of the matter into any 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—
- (a) confer power on the [^{F235}appropriate agency]—

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- (i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or to 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 the [^{F235}appropriate agency] 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 maximum penalties for which shall not exceed the penalties specified in [^{F236}regulation 39(1) of the Environmental Permitting Regulations].

[^{F237}(3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

Textual Amendments

- F235** Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 274\(a\)](#) (with [Sch. 7](#))
- F236** Words in s. 92(2)(c) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [reg. 1\(1\)\(b\)](#), [Sch. 26 para. 8\(5\)](#) (with [reg. 1\(2\)](#), [Sch. 4](#))
- F237** S. 92(3) added (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 144](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186, art. 3](#) (with [art. 4](#))

Modifications etc. (not altering text)

- C113** S. 92 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\)](#), [Sch. 3 Pt. 1 para. 9](#) (with [s. 46](#)).
- C114** S. 92: power to delegate functions conferred (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186, art. 3](#) (with [art. 4](#))
- C115** S. 92 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](#))
- C116** S. 92 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), [reg. 1\(1\)](#), [Sch. 23 Pt. 7 paras. 1\(3\), 2](#) (with [regs. 1\(3\)](#), [77-79](#), [Sch. 4](#))

93 Water protection zones.

[^{F238}(1) Where the appropriate national authority considers that either or both of subsections (2) and (2A) is satisfied in relation to any area, it may by order make provision—

- (a) designating that area as a water protection zone; and
- (b) regulating the carrying on in that zone of such activities as may be specified or described in the order.]

[^{F239}(1A) An order under this section may regulate activities carried on in a water protection zone by—

- (a) prohibiting or restricting the carrying on of those activities in the zone; or
- (b) imposing requirements on persons who carry on those activities in the zone to take such steps as may be specified or described in the order.

(1B) The power under subsection (1A)(b) is exercisable only for the purpose of [^{F240}achievement of] any applicable environmental objectives.]

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- (2) For the purposes of subsection (1) above this subsection is satisfied in relation to any area if ^{F241}... it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which the [^{F242}appropriate national authority] considers are likely to result in the pollution of any such waters.
- ^{F243}(2A) For the purposes of subsection (1) this subsection is satisfied in relation to any area if it is appropriate, with a view to preventing or limiting any harm that is being or is likely to be caused to controlled waters, to regulate the carrying on in that area of activities which the appropriate national authority considers are likely to result in such harm.
- (2B) In subsection (2A) “harm” means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of any environmental objectives applicable to those waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into controlled waters of any poisonous, noxious or polluting matter.
- ^{F244}(2C)
- ^{F245}(3)
- (4) Without prejudice to the generality of the power conferred by virtue of subsection (1) above, an order under this section may—
 - ^{F246}(a) confer power on the [^{F235}appropriate agency] to determine for the purposes of the order—
 - (i) the circumstances in which the carrying on of any activities is prohibited or restricted;
 - (ii) the circumstances in which any requirement to take steps is imposed on persons who carry on activities;
 - (iii) the activities to which any such prohibition or restriction or any such requirement (as the case may be) applies.]
 - (b) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the [^{F235}appropriate agency] or in contravention of any conditions subject to which any such consent is given;
 - ^{F247}(c) provide that a contravention of a prohibition or restriction contained in the order or of a condition of a consent given for the purposes of any such prohibition or restriction or a failure to comply with a requirement to take steps contained in the order shall be an offence;]
 - (d) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by the [^{F235}appropriate agency] 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;
 - (e) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (f) contain such supplemental, consequential and transitional provision as the [^{F248}appropriate national authority] considers appropriate.
- ^{F249}(4A) The maximum penalties for an offence created by subsection 4(c) shall not exceed—
 - (a) on summary conviction, a term of imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum (or both); and

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- (b) on conviction on indictment, imprisonment for a term not exceeding two years or a fine (or both).]

[^{F250}(5) In this section, “appropriate national authority” means—

- (a) in relation to England, the Secretary of State; and
(b) in relation to Wales, the Welsh Ministers.

(6) The power to make an order under this section shall be exercisable by statutory instrument subject—

- (a) in the case of an order made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and
(b) in the case of an order made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales,

but neither the Secretary of State nor the Welsh Ministers shall make such an order except on an application made by the [^{F235}appropriate agency] in accordance with Schedule 11 to this Act and otherwise in accordance with that Schedule.

(7) In this section—

“England” includes the territorial sea adjacent to England not forming any part of Wales and “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006;

[^{F251}“environmental objectives”—

- (a) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);
(b) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245);
(c) in relation to any other river basin district, within the meaning of the WFD Regulations, has the same meaning as in those regulations;

“hydromorphological quality element” has the same meaning as in the Water Framework Directive;

“the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407).]

“the Water Framework Directive” means Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy [^{F252}, as last amended by Commission [Directive 2014/101/EU](#)].]

Textual Amendments

F235 Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)

F238 S. 93(1) substituted (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), **3(2)** (with reg. 7)

F239 S. 93(1A) inserted (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), **3(3)** (with reg. 7)

F240 Words in s. 93(1B) substituted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F241** Words in s. 93(2) repealed (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(4)(a)** (with reg. 7)
- F242** Words in s. 93(2) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(4)(b)** (with reg. 7)
- F243** S. 93(2A)-(2C) inserted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(5)** (with reg. 7)
- F244** S. 93(2C) omitted (31.12.2020) by virtue of The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F245** S. 93(3) repealed (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(6)** (with reg. 7)
- F246** S. 93(4)(a) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(7)** (with reg. 7)
- F247** S. 93(4)(c) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(8)** (with reg. 7)
- F248** Words in s. 93(4)(f) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(9)** (with reg. 7)
- F249** S. 93(4A) inserted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(10)** (with reg. 7)
- F250** S. 93(5)-(7) substituted for s. 93(5) (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(11)** (with reg. 7)
- F251** Words in s. 93(7) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F252** Words in s. 93(7) inserted (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **29**

Modifications etc. (not altering text)

- C117** S. 93 extended (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(3)**.
- C118** S. 93 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C119** S. 93 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**)
- C120** S. 93 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

F253 94 Nitrate sensitive areas.

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Textual Amendments

- F253** S. 94 repealed (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **4** (with reg. 7)

F254 95 Agreements in nitrate sensitive areas.

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Textual Amendments

F254 S. 95 repealed (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 4 (with reg. 7)

96 Regulations with respect to consents required by virtue of section 93 or 94.

- (1) The Secretary of State may, for the purposes of any orders under section 93 above which require the consent of the [^{F235}appropriate agency] to the carrying on of any activities, 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) appeals against determinations on any such application;
 - (e) the exercise by the Secretary of State of any power conferred on the [^{F235}appropriate agency] by the orders;
 - (f) the imposition of charges where such an application has been made, such a consent has been given or anything has been done in pursuance of any such consent; and
 - (g) the registration of any such application or consent.

^{F255}(2)

^{F256}(3)

[^{F257}(4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

Textual Amendments

F235 Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)

F255 S. 96(2) repealed (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 4 (with reg. 7)

F256 S. 96(3) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(j), **Sch. 28** (with reg. 1(2), Sch. 4)

F257 S. 96(4) added (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 145** (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#) (with art. 4)

Modifications etc. (not altering text)

C121 S. 96: power to delegate functions conferred (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#) (with art. 4)

97 Codes of good agricultural practice.

- (1) The Ministers may by order made by statutory instrument approve any code of practice issued (whether by either or both of the Ministers 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

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- (b) promoting what appear to them 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 their 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 the [^{F235}appropriate agency] shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise—
- [^{F258}(a) its relevant functions, in relation to water discharge activities, under the Environmental Permitting Regulations;]
- (b) any powers conferred on the [^{F235}appropriate agency] by regulations under section 92 above.
- (3) The Ministers shall not make an order under this section unless they have first consulted the [^{F235}appropriate agency].

Textual Amendments

- F235** Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)
- F258** S. 97(2)(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. 8(6)** (with reg. 1(2), Sch. 4)

CHAPTER IV

SUPPLEMENTAL PROVISIONS WITH RESPECT TO WATER POLLUTIONS

98 Radioactive substances.

- (1) Except as provided by regulations made by the Secretary of State under this section, nothing in this Part shall apply in relation to radioactive waste within the meaning of [^{F259}the Environmental Permitting Regulations].
- (2) The Secretary of State may by regulations—
- (a) provide for prescribed provisions of this Part to have effect with such modifications as he considers appropriate for dealing with such waste;
- (b) make such modifications of [^{F260}the Environmental Permitting Regulations] or, in relation to such waste, of any other enactment as he considers appropriate in consequence of the provisions of this Part and of any regulations made by virtue of paragraph (a) above.

Textual Amendments

- F259** Words in s. 98(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(7)(a)** (with reg. 1(2), Sch. 4)
- F260** Words in s. 98(2) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(7)(b)** (with reg. 1(2), Sch. 4)

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F261⁹⁹ Consents required by the Agency.

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Textual Amendments

F261 S. 99 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(k), [Sch. 28](#) (with reg. 1(2), Sch. 4)

100 Civil liability in respect of pollution and savings.

Except in so far as this Part expressly otherwise provides and subject to the provisions of section 18 of the ^{M29}Interpretation Act 1978 (which relates to offences under two or more laws), nothing in this Part—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or
- (c) affects any restriction imposed by or under any other enactment, whether public, local or private.

Marginal Citations

M29 1978 c. 30.

101 Limitation for summary offences under Part III.

Notwithstanding anything in section 127 of the ^{M30}Magistrates' Courts Act 1980 (time limit for summary proceedings), a magistrates' court may try any summary offence under this Part, or under any subordinate legislation made under this Part, if the information is laid not more than twelve months after the commission of the offence.

Marginal Citations

M30 1980 c. 43.

102 Power to give effect to international obligations [^{F262}etc.]

The Secretary of State shall have power by regulations to provide that the water pollution provisions of this Act shall have effect with such modifications as may be prescribed for the purpose of ^{F263}...—

- [^{F264}(a) giving effect to any [^{F265}assimilated] obligations, or]
- (b) [^{F266}enabling Her Majesty's Government in the United Kingdom to give effect] to any international agreement to which the United Kingdom is for the time being a party.

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Textual Amendments

- F262** Word in s. 102 heading inserted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F263** Words in s. 102 omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F264** S. 102(a) substituted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F265** Word in s. 102(a) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 31(2)(a)**
- F266** Words in s. 102(b) inserted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

^{F267}103 Transitional pollution provisions.

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Textual Amendments

- F267** S. 103 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(l), **Sch. 28** (with reg. 1(2), Sch. 4)

104 Meaning of “controlled waters” etc. in Part III.

- (1) References in this Part to controlled waters are references to waters of any of the following classes—
- (a) relevant territorial waters, that is to say, subject to subsection (4) below, the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to England and Wales 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—
 - (a) the limit of the highest tide; or
 - (b) in the case of the waters of any relevant river or watercourse, the fresh-water limit of the river or watercourse,
 together with the waters of any enclosed dock which adjoins waters within that area;
 - (c) inland freshwaters, that is to say, the waters of any relevant lake 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;
- and, accordingly, in this Part “coastal waters”, “controlled waters”, “ground waters”, “inland freshwaters” and “relevant territorial waters” have the meanings given by this subsection.
- (2) In this Part any reference to the waters of any lake or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any lake, pond, river or, as the case may be, watercourse which is for the time being dry.
- (3) In this section—

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“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 section 192 below;

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

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

“relevant lake or pond” means (subject to subsection (4) below) any lake or pond which (whether it is natural or artificial or above or below ground) discharges into a relevant river or watercourse or into another lake or pond which is itself a relevant lake or pond;

“relevant river or watercourse” means (subject to subsection (4) below) 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.

- (4) The Secretary of State may by order provide—
- (a) that any area of the territorial sea adjacent to England and Wales is to be treated as if it were an area of relevant territorial waters for the purposes of this Part and of any other enactment in which any expression is defined by reference to the meanings given by this section;
 - (b) that any lake or pond which does not discharge into a relevant river or watercourse or into a relevant lake or pond is to be treated for those purposes as a relevant lake or pond;
 - (c) that a lake or pond which does so discharge and is of a description specified in the order is to be treated for those purposes as if it were not a relevant lake or pond;
 - (d) that a watercourse of a description so specified is to be treated for those purposes as if it were not a relevant river or watercourse.
- (5) An order under this section 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.
- (6) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C122 S. 104 definition of "controlled waters" applied by [London Docklands Railway Act 1991 \(c. xxiii\)](#), s. 7(2)(a)

C123 S. 104(1) modified (12.6.1997) by [S.I. 1997/1331](#), [reg. 6\(2\)](#)

S. 104(1) modified (12.6.1997) by [S.I. 1997/1332](#), [reg. 6\(2\)](#)

C124 S. 104(1) modified (1.6.2003 for E.) by [Bathing Waters \(Classification\) \(England\) Regulations 2003 \(S.I. 2003/1238\)](#), [regs. 1, 2\(1\)](#)

C125 S. 104(1)(c) applied (with modifications) (6.1.1997) by [S.I. 1996/3001](#), [reg. 7\(2\)](#)

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PART IV

FLOOD DEFENCE

Modifications etc. (not altering text)

C126 Pt. IV (ss. 105-113): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(iii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

General

105 General functions with respect to flood defence.

^{F268}(1)

- (2) For the purpose of carrying out its flood defence functions the [^{F269}appropriate agency] shall from time to time carry out surveys of the areas in relation to which it carries out those functions.
- (3) In the exercise of the powers conferred by the following provisions of this Part and the other flood defence provisions of this Act due regard shall be had to the interests of fisheries, including sea fisheries.
- (4) Nothing in the following provisions of this Part or the other flood defence provisions of this Act shall prejudice or affect the provisions of Part V of this Act or the ^{M31}Salmon and Freshwater Fisheries Act 1975 or any right, power or duty conferred or imposed by that Part or that Act.

Textual Amendments

F268 S. 105(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 146, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

F269 Words in ss. 105-107 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 274(b) (with Sch. 7)

Modifications etc. (not altering text)

C127 S. 105 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), Sch. 5 Pt. II para. 13(2), Sch. 23 Pt. II para. 23 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

Marginal Citations

M31 1975 c. 51.

^{F270}106 Obligation to carry out flood defence functions through committees.

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Textual Amendments

F270 S. 106 repealed (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), Sch. 2 para. 41 (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)

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Modifications etc. (not altering text)

C128 S. 106 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), Sch. 5 Pt. II para. 13(2), **Sch. 23 Pt. II para. 23** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Main river functions

107 Main river functions under the Land Drainage Act 1991.

- (1) This section has effect for conferring functions in relation to main rivers on the [F269 appropriate agency] which are functions of drainage boards in relation to other watercourses.
- (2) Notwithstanding subsection (3) of section 21 of the Land Drainage Act 1991 (power to secure compliance with drainage obligations), the powers of the [F269 appropriate agency] in relation to a main river shall, by virtue of this section, include the powers which under that section are exercisable otherwise than in relation to a main river by the drainage board concerned; and the provisions of that section shall have effect accordingly.
- (3) The powers of the [F269 appropriate agency] in relation to a main river shall, by virtue of this section, include the powers which under section 25 of the Land Drainage Act 1991 (powers for securing the maintenance of flow of watercourses) are exercisable in relation to an ordinary watercourse by the drainage board concerned; and the provisions of that section and section 27 of that Act shall have effect accordingly.
- (4) Sections 33 and 34 of the Land Drainage Act 1991 (commutation of obligations) shall have effect where—
 - (a) any person is under an obligation imposed on him by reason of tenure, custom, prescription or otherwise to do any work in connection with the drainage of land (whether by way of repairing banks or walls, maintaining watercourses or otherwise); and
 - (b) that work is in connection with a main river,
 as they have effect in relation to an obligation to do work otherwise than in connection with a main river but as if the [F269 appropriate agency] were under a duty to take steps to commute the obligation and the references in those sections to the drainage board for the internal drainage district where the works fall to be done were omitted.
- (5) In this section—
 - (a) references to the exercise of a power in relation to a main river shall include a reference to its exercise in connection with a main river or in relation to the banks of such a river or any drainage works in connection with such a river; and
 - (b) expressions used both in this section and in a provision applied by this section have the same meanings in this section as in that provision.
- (6) The functions of the [F269 appropriate agency] by virtue of this section are in addition to the functions of the [F269 appropriate agency] which by virtue of the provisions of the ^{M32}Land Drainage Act 1991 are exercisable by the [F269 appropriate agency] concurrently with an internal drainage board.

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Textual Amendments

F269 Words in ss. 105-107 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(b)** (with Sch. 7)

Marginal Citations

M32 1991 c. 59.

108 Schemes for transfer to the ^{F271}appropriate agency] of functions in relation to main river.

- (1) The ^{F271}appropriate agency] may at any time prepare and submit to either of the Ministers for confirmation a scheme making provision for the transfer to the ^{F271}appropriate agency] from any drainage body of—
 - (a) all rights, powers, duties, obligations and liabilities (including liabilities incurred in connection with works) over or in connection with a main river; and
 - (b) any property held by the drainage body for the purpose of, or in connection with, any functions so transferred;
 and the ^{F271}appropriate agency] shall prepare such a scheme and submit it to one of the Ministers if it is directed to do so by that Minister.
- (2) A scheme prepared and submitted under subsection (1) above may make provisions for any matter supplemental to or consequential on the transfers for which the scheme provides.
- (3) The Minister to whom a scheme is submitted under this section may by order made by statutory instrument confirm that scheme; and Schedule 14 to this Act shall have effect with respect to the procedure to be followed in connection with the making of such an order and with respect to challenges to such orders.
- (4) An order under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the Ministers or other persons in connection with the making or confirmation of the order, or with the making of the scheme confirmed by the order, are to be borne.
- (5) Where, under a scheme made by the ^{F271}appropriate agency] under this section, liabilities incurred in connection with drainage works are transferred to the ^{F271}appropriate agency] from a local authority, the ^{F271}appropriate agency] may require the local authority to make contributions to the ^{F271}appropriate agency] towards the discharge of the liabilities.
- (6) If the amount to be paid by a local authority by way of contributions required under subsection (5) above is not agreed between the ^{F271}appropriate agency] and the local authority, it shall be referred to the arbitration of a single arbitrator appointed—
 - (a) by agreement between them; or
 - (b) in default of agreement, by the Ministers.
- (7) The relevant Minister shall by regulations provide for the payment, subject to such exceptions or conditions as may be specified in the regulations, of compensation by the ^{F271}appropriate agency] to any officer or other employee of a drainage body who

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suffers loss of employment or loss or diminution of emoluments which is attributable to a scheme under this section or anything done in pursuance of such a scheme.

- (8) Regulations under subsection (7) above may include provision—
- (a) as to the manner in which and the persons to whom any claim for compensation by virtue of the regulations is to be made; and
 - (b) for the determination of all questions arising under the regulations.
- (9) In this section—
- “drainage body” means an internal drainage board or any other body having power to make or maintain works for the drainage of land;
 - “the relevant Minister”—
- (a) in relation to employees of a drainage body wholly in Wales, means the Secretary of State;
 - (b) in relation to employees of a drainage body partly in Wales, means the Ministers; and
 - (c) in any other case, means the Minister.

Textual Amendments

F271 Words in s. 108 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(b)** (with Sch. 7)

F272 **109 Structures in, over or under a main river.**

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Textual Amendments

F272 **S. 109** repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-33)

F273 **110 Applications for consents and approvals under section 109.**

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Textual Amendments

F273 **S. 110** repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-34)

Arrangements with certain authorities

111 Arrangements with navigation and conservancy authorities.

- (1) Subject to subsection (2) below, the [^{F274}appropriate agency], with a view to improving the drainage of any land, may enter into an arrangement with a navigation authority or conservancy authority for any of the following purposes, that is to say—
- (a) the transfer to the [^{F274}appropriate agency] of—

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- (i) the whole or any part of the undertaking of the navigation authority or conservancy authority or of any of the rights, powers, duties, liabilities and obligations of that authority; or
 - (ii) any property vested in that authority as such;
 - (b) the alteration or improvement by the [^{F274}appropriate agency] of any of the works of the navigation authority or conservancy authority;
 - (c) the making of payments by the [^{F274}appropriate agency] to the navigation authority or conservancy authority or by that authority to the [^{F274}appropriate agency] in respect of any matter for which provision is made by the arrangement.
- (2) The exercise by the [^{F274}appropriate agency] of its power to enter into an arrangement under this section shall require the approval of the Ministers.
- (3) Where the [^{F274}appropriate agency] is intending to enter into an arrangement under this section it shall publish a notice of its intention in such manner as may be directed by either of the Ministers.
- (4) Where an arrangement has been made under this section, the [^{F274}appropriate agency] shall cause a notice under subsection (5) below to be published in the London Gazette in such form as may be prescribed by regulations made by one of the Ministers.
- (5) A notice under this subsection is a notice—
- (a) stating that the arrangement has been made; and
 - (b) specifying the place at which a copy of the arrangement may be inspected by persons interested.

Textual Amendments

F274 Words in ss. 109-111 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(b)** (with Sch. 7)

Supplemental

112 Flood defence regulations.

The Ministers shall each have power by regulations to make provision generally for the purpose of carrying into effect the provisions of this Part and the other flood defence provisions of this Act.

113 Interpretation of Part IV.

(1) In this Part—

“banks” means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land and water between the bank and low-watermark;

“drainage” includes—

- (a) defence against water, including sea water;
- (b) irrigation other than spray irrigation; ^{F275} . . .
- (c) warping; [^{F276}and

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- (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;]

“flood defence” means the drainage of land and the provision of flood warning systems;

“main river” (subject to section 137(4) below) means a watercourse shown as such on ^{F277}the main river map for England or the main river map for Wales] and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which—

- (a) is a structure or appliance situated in the channel or in any part of the banks of the channel; and
- (b) is not a structure or appliance vested in or controlled by an internal drainage board;

“watercourse” shall be construed as if for the words from “except” onwards in the definition in section 221(1) below there were substituted the words “except a public sewer”.

- (2) If any question arises under this Part—
- (a) whether any work is a drainage work in connection with a main river; or
- (b) whether any proposed work will, if constructed, be such a drainage work,
- the question shall be referred to one of the Ministers for decision or, if either of the parties so requires, to arbitration.
- (3) Where any question is required under subsection (2) above to be referred to arbitration it shall be referred to the arbitration of a single arbitrator appointed—
- (a) by agreement between the parties; or
- (b) in default of agreement, by the President of the Institution of Civil Engineers, on the application of either party.
- (4) Nothing in this Part shall affect the powers exercisable by the ^{F278}appropriate agency] under any local Act, as they existed immediately before the coming into force of this Act.

Textual Amendments

F275 Word in definition in s. 113(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F276 Words in definition in s. 113(1) added (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, **s. 100(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

F277 Words in s. 113(1) substituted (1.10.2014) by Water Act 2014 (c. 21), **ss. 59(3), 94**; S.I. 2014/1823, **art. 3**

F278 Words in s. 113(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2), Sch. 2 para. 274(c)** (with Sch. 7)

Modifications etc. (not altering text)

C129 S. 113 definitions of “main river” and “banks” applied by London Docklands Railway Act 1991 (c. xxiii), **s. 7(2)(b)**

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PART V

GENERAL CONTROL OF FISHERIES

Modifications etc. (not altering text)

C130 Pt. V (ss. 114-116): certain functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(v) (with ss. 115, 117); S.I. 1996/186, art. 3 (with art. 4)

^{F279} 114

Textual Amendments

F279 S. 114 repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1) (3), Sch. 22 para. 148, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

115 Fisheries orders.

- (1) Subject to the following provisions of this section, each of the Ministers shall have power, on an application made to him by the [^{F280}appropriate agency], by order made by statutory instrument to make provision in relation to an area defined by the order for the modification, in relation to the fisheries in that area—
 - (a) of any provisions of the ^{M33}Salmon and Freshwater Fisheries Act 1975 [^{F281}(as amended by the Marine and Coastal Access Act 2009)] relating to the regulation of fisheries;
 - [^{F282}(b) of section 142 or 156 below or paragraph 6 or 7 of Schedule 25 to this Act [^{F283}(as so amended)]; or]
 - (c) of any provisions of a local Act relating to any fishery in that area.
- (2) An order under this section—
 - (a) may contain such supplemental, consequential and transitional provision, including provision for the payment of compensation to persons injuriously affected by the order, as may appear to be necessary or expedient in connection with the other provisions of the order; but
 - (b) shall not apply to any waters in respect of which either of the Ministers has granted a licence under section 29 of the Salmon and Freshwater Fisheries Act 1975 (fish rearing licences).
- (3) Before either of the Ministers makes an order under this section he shall—
 - (a) send to the [^{F280}appropriate agency] a copy of the draft order; and
 - (b) notify the [^{F280}appropriate agency] of the time within which, and the manner in which, objections to the draft order may be made to him.
- (4) Neither of the Ministers shall make an order under this section unless the [^{F280}appropriate agency] has caused notice of—
 - (a) that Minister’s intention to make the order;
 - (b) the place where copies of the draft order may be inspected and obtained; and
 - (c) the matters notified under subsection (3)(b) above,

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to be published in the London Gazette and, if it is directed to do so by one of the Ministers, in such other manner as that Minister thinks best adapted for informing persons affected.

- (5) Before either of the Ministers makes an order under this section he—
- (a) shall consider any objection which may be duly made to the draft order; and
 - (b) may cause a public local inquiry to be held with respect to any such objections.
- (6) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament; and, where a statutory instrument is laid before Parliament for the purposes of this paragraph, a copy of the report of any local inquiry held with respect to objections considered in connection with the making of the order contained in that instrument shall be so laid at the same time.
- (7) Where—
- (a) any fishery, land or foreshore proposed to be comprised in an order under this section [^{F284}making provision, by virtue of subsection (1)(b) above, for the modification of section 156 below in relation to fisheries in an area]; or
 - (b) any fishery proposed to be affected by any such order; or
 - (c) any land over which it is proposed to acquire an easement under any such order,
- belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or the Duchy of Cornwall or belongs to, or is under the management of, any government department, the order may be made by one of the Ministers only if he has previously obtained the consent of the appropriate authority.
- (8) In subsection (7) above “the appropriate authority”—
- (a) in the case of any foreshore under the management of the Crown Estate Commissioners or of any fishery or land belonging to Her Majesty in right of the Crown, means those Commissioners;
 - (b) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Lancaster, means the Chancellor of the Duchy;
 - (c) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Cornwall, means the Duke of Cornwall or the persons for the time being empowered to dispose for any purpose of the land of the Duchy;
 - (d) in the case of any foreshore, fishery or land which belongs to or is under the management of a government department, means that government department.
- (9) In this section “foreshore” includes the shore and bed of the sea and of every channel, creek, bay, estuary and navigable river as far as the tide flows.

Textual Amendments

- F280** Words in s. 115 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 274\(d\)](#) (with [Sch. 7](#))
- F281** Words in s. 115(1)(a) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 16 para. 21\(a\)](#); [S.I. 2009/3345](#), art. 2, [Sch. para. 15\(i\)](#)
- F282** S. 115(1)(b) substituted (subject to other provisions of the amending Act) (21.9.1995) by [1995 c. 25](#), s. 105, [Sch. 15 para. 25](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1995/1983](#), [art. 3](#) (with [art. 4](#))

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F283 Words in s. 115(1)(b) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 21(b)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)

F284 Words in s. 115(7)(a) inserted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 116, **Sch. 21 Pt. 1 para. 2(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

Modifications etc. (not altering text)

C131 S. 115 excluded by S.I. 1999/1746, **arts. 1(1), 4(1)** (with **art. 2**) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, **art. 3**))

Marginal Citations

M33 1975 c. 51.

116 Power to give effect to international obligations [F285 etc.]

[F286(1)] Each of the Ministers shall have power by regulations to provide that the provisions of this Part or of any other enactment relating to the carrying out by the [F287 appropriate agency] of such of its functions as relate to fisheries shall have effect with such modifications as may be prescribed by the regulations for the purpose of F288 ...—

[F289(a) giving effect to any [F290 assimilated] obligations, or]

(b) [F291 enabling Her Majesty's Government in the United Kingdom to give effect] to any international agreement to which the United Kingdom is for the time being a party.

(2) In subsection (1), the reference to functions includes any functions conferred on the [F287 appropriate agency] by virtue of the Marine and Coastal Access Act 2009.

Textual Amendments

F285 Word in s. 116 heading inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F286 S. 116(1): s. 116 renumbered as s. 116(1) (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 22(a)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)

F287 Words in s. 116 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 274(d)** (with Sch. 7)

F288 Words in s. 116(1) omitted (31.12.2020) by virtue of The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(4)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F289 S. 116(1)(a) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(4)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F290 Word in s. 116(1)(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 31(2)(b)**

F291 Words in s. 116(1)(b) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **4(4)(b)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C132 S. 116 excluded by S.I. 1999/1746, **arts. 1(1), 4(1)** (with **art. 2**) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, **art. 3**))

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PART VI

FINANCIAL PROVISIONS IN RELATION TO THE [F292 APPROPRIATE AGENCY]

Textual Amendments

F292 Words in Pt. 6 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 274\(e\)](#) (with [Sch. 7](#))

CHAPTER I

GENERAL FINANCIAL PROVISIONS

F293 117

Textual Amendments

F293 S. 117 repealed (1.4.1996) by [1995 c. 25, s. 120\(1\)\(3\)](#), [Sch. 22 para. 149](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)

118 Special duties with respect to flood defence revenue.

- (1) Revenue raised by the [F294 appropriate agency] as mentioned in subsection (2) below—
 - (a) shall, except for any amount falling within subsection (3) below, be spent only in the carrying out of the [F295 appropriate agency's] [F296 flood and coastal erosion risk management functions, within the meaning of Part 1 of the Flood and Water Management Act 2010,] in or for the benefit of the [F297 flood risk management region] in which it is raised; F298 ...
 - (b) [F299 where the appropriate agency is the Agency,] shall be disregarded in determining the amount of any surplus for the purposes of section 44(4) of the 1995 Act [F300, and]
 - [F301(c) where the appropriate agency is the NRBW, shall be disregarded in determining the amount of any surplus for the purposes of article 13 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903).]
- (2) The revenue referred to in subsection (1) above is revenue raised by the [F302 appropriate agency] in a [F303 flood risk management region]—
 - (a) by virtue of any regulations under section 74 of the M34 Local Government Finance Act 1988 (power to issue levies);
 - (b) by general drainage charges under sections 134 [F304 and 135] below;
 - (c) by special drainage charges under sections 137 and 138 below; or
 - (d) by contributions required under section 139(1) below.
- (3) An amount falls within this subsection if it is an amount which the [F305 appropriate agency] considers it appropriate—
 - (a) to set aside towards research or related activities or towards meeting the [F305 appropriate agency's] administrative expenses; F306 ...

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^{F306}(b)

(4) Any amount specified in a resolution under section 58(1)(b) of the ^{M35}Land Drainage Act 1991 in relation to any [^{F307}flood risk management region] (allocation of revenue in lieu of contributions) shall be treated for the purposes of this section as if it were revenue actually raised by contributions required under section 139(1) below.

(5) For the purposes of this section, the following sums, that is to say—

(a) any sums held by the [^{F308}appropriate agency] by virtue of any transfer of property, rights or liabilities from a water agency in accordance with a scheme under Schedule 2 to the ^{M36}Water Act 1989, in so far as those sums represent amounts which the water agency was required by virtue of paragraph 31 of Schedule 3 to the ^{M37}Water Act 1973 to spend only in the discharge of their land drainage functions in or for the benefit of a particular local land drainage district; and

(b) any sums raised by the [^{F308}appropriate agency] in a [^{F309}flood risk management region] by virtue of a precept issued under section 46 of the ^{M38}Land Drainage Act 1976,

shall be treated as revenue raised by the [^{F308}appropriate agency] as mentioned in subsection (2) above in the corresponding [^{F310}flood risk management region] or, as the case may be, in that local flood defence district.

^{F311}(6)

[^{F312}(7) In this section “flood risk management region”][^{F313}—

(a) in relation to the Agency,] means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010 [^{F314}, and

(b) in relation to the NRBW, means Wales, within the meaning of section 158 of the Government of Wales Act 2006].

Textual Amendments

F294 Words in s. 118(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(2)(a)** (with Sch. 7)

F295 Words in s. 118(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(2)(b)** (with Sch. 7)

F296 Words in s. 118(1) substituted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 43(2)(a)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)

F297 Words in s. 118(1) substituted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 43(2)(b)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)

F298 Word in s. 118(1)(a) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(2)(c)** (with Sch. 7)

F299 Words in s. 118(1)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(2)(d)(i)** (with Sch. 7)

F300 Word in s. 118(1)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(2)(d)(ii)** (with Sch. 7)

F301 S. 118(1)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(2)(e)** (with Sch. 7)

F302 Words in s. 118(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 275(3)** (with Sch. 7)

F303 Words in s. 118(2) substituted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 43(3)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)

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- F304** Words in s. 118(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 150(3) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F305** Words in s. 118(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(3)** (with Sch. 7)
- F306** S. 118(3)(b) and word omitted (1.4.2011) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(4)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F307** Words in s. 118(4) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(5)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F308** Words in s. 118(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(3)** (with Sch. 7)
- F309** Words in s. 118(5) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(6)(a)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F310** Words in s. 118(5) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(6)(b)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F311** S. 118(6) omitted (1.4.2011) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(7)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F312** S. 118(7) added (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(8)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F313** Words in s. 118(7) inserted (14.7.2017) by Environment (Wales) Act 2016 (anaw 3), s. 88(3)(c), **Sch. 2 para. 20(2)(a)**; S.I. 2017/714, art. 2
- F314** Words in s. 118(7) inserted (14.7.2017) by Environment (Wales) Act 2016 (anaw 3), s. 88(3)(c), **Sch. 2 para. 20(2)(b)**; S.I. 2017/714, art. 2

Modifications etc. (not altering text)

- C133** S. 118 restricted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), **ss. 23(4)**, 49(3) (with s. 49(1)(6)); S.I. 2011/694, art. 3(c)

Marginal Citations

- M34** 1988 c. 41.
M35 1991 c. 59.
M36 1989 c. 15.
M37 1973 c. 37.
M38 1976 c. 70.

^{F315}119 Duties with respect to certain funds raised under local enactments.

(1) Where the Agency holds any funds, or any interest in any funds, which immediately before the transfer date the National Rivers Authority, by virtue of this subsection as originally enacted, was not permitted to use except for particular purposes, those funds or that interest shall not be used except for the purposes for which they could be used by virtue of this subsection as originally enacted.

(1A) For the purposes of subsection (1) above, “the transfer date” has the same meaning as in Part I of the 1995 Act.]

(2) Any funds to which subsection (1) above applies shall be disregarded in determining the amount of any surplus under [^{F316}section 44(3) of the 1995 Act].

Textual Amendments

- F315** S. 119 (1)(1A) substituted (1.4.1996) for s. 119(1) by 1995 c. 25, s. 120(1), **Sch. 22 para. 151(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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F316 Words in s. 119(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 151(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

120 Contributions between the [F317 appropriate agency] and certain other authorities.

- (1) Where, on the application of a navigation authority, harbour authority or conservancy authority, it appears to the [F317 appropriate agency] that any works constructed or maintained by the applicants have made, or will make, a beneficial contribution towards the fulfilment of the purposes of the [F317 appropriate agency's] water resources functions, the [F317 appropriate agency] shall contribute towards the expenditure incurred or to be incurred by the applicants in constructing or maintaining those works.
- (2) Where, on the application of the [F317 appropriate agency], it appears to a navigation authority, harbour authority or conservancy authority that any works constructed or maintained by the [F317 appropriate agency] in the carrying out of its water resources functions have made, or will make, a beneficial contribution towards the carrying out of the functions of the authority to whom the application is made, that authority shall contribute to the [F317 appropriate agency] towards the expenditure incurred or to be incurred by the [F317 appropriate agency] in constructing or maintaining those works.
- (3) Subject to the following provisions of this section, the sums to be paid by way of contribution and the terms and conditions on which they are to be paid shall be such as the [F317 appropriate agency] and the other authority concerned may agree to be appropriate.
- (4) If on any application under this section—
 - (a) the [F317 appropriate agency] or, as the case may be, the other authority to whom the application is made refuses to make a contribution; or
 - (b) the [F317 appropriate agency] and the other authority concerned are unable to agree as to the sums to be contributed or the terms and conditions on which they are to be contributed,
 the [F317 appropriate agency] or the other authority concerned may refer the matter in dispute to the Secretary of State.
- (5) On a reference under subsection (4) above the Secretary of State may either—
 - (a) determine that matter himself; or
 - (b) refer it for determination to an arbitrator appointed by him for the purpose;
 and where any decision has been made by the Secretary of State or an arbitrator under this subsection, the decision shall be final and a contribution shall be made in accordance with the decision as if the sums, terms or conditions determined under this subsection had been agreed to be appropriate as mentioned in subsection (3) above.
- (6) Any expenditure incurred by a navigation authority, harbour authority or conservancy authority in paying any contribution under this section shall be defrayed in the like manner as any corresponding expenditure of that authority; and that authority shall have the same powers for the purpose of raising money required for paying any such contribution as they would have for the purpose of raising money required for defraying any corresponding expenditure of that authority.
- (7) In subsection (6) above the references to corresponding expenditure of a navigation authority, harbour authority or conservancy authority, in relation to the payment of a contribution in respect of any works, are references to expenditure incurred by

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the authority in performing the functions in respect of which it is claimed by the [F317 appropriate agency] that the works have made, or will make, such a beneficial contribution as is mentioned in subsection (2) above.

- (8) References in this section to the water resources functions of the [F317 appropriate agency] are references to the functions of the [F317 appropriate agency] under Part II of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter II of that Part.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

Modifications etc. (not altering text)

C134 S. 120 applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 33(3)(a)**, 105(3); S.I. 2006/984, art. 2(p)

F318 **121**

Textual Amendments

F318 Ss. 121-124 repealed (1.4.1996) by [1995 c. 25, s. 120\(1\)\(3\)](#), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F319 **122**

Textual Amendments

F319 Ss. 121-124 repealed (1.4.1996) by [1995 c. 25, s. 120\(1\)\(3\)](#), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER II

REVENUE PROVISIONS

Water resources charges

F320 **123**

Textual Amendments

F320 Ss. 121-124 repealed (1.4.1996) by [1995 c. 25, s.120\(1\)\(3\)](#), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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^{F321}124

Textual Amendments
F321 Ss. 121-124 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

125 Specific exemptions from water resources charges.

- (1) No charges, other than those for the purpose of recovering administrative expenses attributable to the exercise by the [^{F317}appropriate agency] of its functions in relation to the application for the licence, shall be levied in respect of water authorised by a licence to be abstracted for use in the production of electricity or any other form of power by any generating station or apparatus of a capacity of not more than five megawatts.

^{F322}(2)

Textual Amendments
F317 Words in ss. 120-143 substituted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 276** (with Sch. 7)
F322 S. 125(2) repealed (1.4.2006) by **Water Act 2003 (c. 37), s. 105(3), Sch. 7 para. 10, Sch. 9 Pt. 3; S.I. 2006/984, art. 2(s)**

126 Agreements containing exemptions from charges.

- (1) The [^{F317}appropriate agency] may, on the application of any person who is liable to pay charges to the [^{F317}appropriate agency] for the abstraction of water under a licence under Chapter II of Part II of this Act, make an agreement with him either exempting him from the payment of charges or providing for charges to be levied on him at reduced rates specified in the agreement.
- (2) In the exercise of its powers under subsection (1) above in relation to any person, the [^{F317}appropriate agency] shall have regard to—
 - (a) the extent to which any works constructed at any time by that person or any works to be constructed by him have made, or will make, a beneficial contribution towards the fulfilment of the purposes of the functions of the [^{F317}appropriate agency] under any enactment;
 - (b) any financial assistance which that person has rendered, or has agreed to render, towards the carrying out of works by the [^{F317}appropriate agency] in the performance of those functions; and
 - (c) any other material considerations.
- (3) The Secretary of State may give directions as to the exercise by the [^{F317}appropriate agency] of its powers under subsection (1) above.
- (4) Without prejudice to the exercise of the power conferred by subsection (3) above, if on any application under this section—
 - (a) the [^{F317}appropriate agency] refuses to make an agreement with the applicant as mentioned in subsection (1) above; or

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- (b) the applicant objects to the terms of such an agreement as proposed by the [^{F317}appropriate agency] and that objection is not withdrawn, the applicant or the [^{F317}appropriate agency] may refer the question in dispute to the Secretary of State.
- (5) On a reference under subsection (4) above—
 - (a) the Secretary of State shall determine the question in dispute, having regard to the matters to which, in accordance with subsection (2) above, the [^{F317}appropriate agency] was required to have regard in relation to the applicant; and
 - (b) may give directions to the [^{F317}appropriate agency] requiring it to make an agreement with the applicant in accordance with his decision.
- ^{F323}(6)
- (7) Any decision of the Secretary of State on a reference under subsection (4) above shall be final; and section 69 above shall apply in relation to the decision on a reference under this section as it applies in relation to a decision on a reference such as is mentioned in subsection (1)(b) of that section, but as if references to the other party were references to the applicant.

Textual Amendments

- F317** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F323** S. 126(6) repealed (21.9.1995) by [1995 c. 25](#), s. 120(1)(3), Sch. 22 para. 153, **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), **art. 3**

127 Special charges in respect of spray irrigation.

- (1) Where a person (“the applicant”) is for the time being the holder of a licence under Chapter II of Part II of this Act to abstract water (“the applicant’s licence”), and in accordance with the provisions of that licence—
 - (a) the water is to be used on land of which the applicant is the occupier; and
 - (b) the purposes for which water abstracted in pursuance of the licence is to be used consist of or include spray irrigation,the applicant may apply to the [^{F317}appropriate agency] to make an agreement with him under this section and, subject to the following provisions of this section and sections 128 and 129 below, the [^{F317}appropriate agency] may make such an agreement accordingly.
- (2) During any period for which an agreement under this section is in force, the following charges shall be payable by the applicant to the [^{F317}appropriate agency] in respect of the applicant’s licence, in so far as it relates to water authorised to be abstracted and used on the relevant land, that is to say—
 - (a) basic charges calculated, in accordance with the agreement, by reference to the quantity of water authorised to be so abstracted and used from time to time in pursuance of the licence; and
 - (b) supplementary charges calculated, in accordance with the agreement, by reference to the quantity of water which is measured or assessed as being

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abstracted from time to time by or on behalf of the applicant from the source of supply to which the applicant's licence relates for use on the relevant land.

- (3) In determining—
- (a) whether to make an agreement with the applicant under this section; and
 - (b) the charges to be leviable under such an agreement,
- the [F317 appropriate agency] shall have regard to the extent to which, in any year within the period proposed to be specified in the agreement as the period for which it is made, the quantity of water referred to in paragraph (a) of subsection (2) above is likely to exceed the quantity referred to in paragraph (b) of that subsection.
- (4) Where the applicant's licence authorises water abstracted in pursuance of the licence to be used on the relevant land for purposes which include spray irrigation and other purposes—
- (a) any agreement made under this section shall provide for apportioning, as between those purposes respectively, the quantity referred to in paragraph (a) of subsection (2) above and the quantity referred to in paragraph (b) of that subsection;
 - (b) subsection (2) above shall have effect as if in each of those paragraphs the reference to the quantity of water mentioned in that paragraph were a reference to so much of that quantity as in accordance with the agreement is apportioned to the purpose of spray irrigation; and
 - (c) in subsection (3) above any reference to either of those paragraphs shall be construed as a reference to that paragraph as modified by paragraph (b) of this subsection.
- (5) An application under subsection (1) above may be made by a person who has applied for, but is not yet the holder of, a licence under Chapter II of Part II of this Act to abstract water; and, in relation to an application so made or to an agreement made on such an application—
- (a) the reference in that subsection to the provisions of the applicant's licence shall be construed as a reference to the proposals contained in the application for a licence; and
 - (b) any other reference in this section or in section 128 or 129 below to the applicant's licence shall be construed as a reference to any licence granted to the applicant in pursuance of the application mentioned in paragraph (a) above or in pursuance of an appeal consequential upon the application so mentioned.
- (6) In this section and sections 128 and 129 below—
- “the applicant” and “the applicant's licence” shall be construed, subject to subsection (5) above, in accordance with subsection (1) above;
- “the relevant land” means the land on which the applicant's licence, as for the time being in force, authorises water abstracted in pursuance of the licence to be used for purposes which consist of or include spray irrigation; and
- “year” means a period of twelve months beginning—
- (a) with the date on which an agreement under this section comes into force or is proposed to come into force; or
 - (b) with an anniversary of that date.

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Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

Modifications etc. (not altering text)

C135 S. 127(1)(4) modified (18.5.1992) by [S.I. 1992/1096](#), arts. 3, 4, **Sch.**

128 Duration of agreement under section 127.

- (1) The period specified in an agreement under section 127 above as the period for which it is made shall not be less than five years.
- (2) An agreement under section 127 above shall remain in force until the occurrence of whichever of the following events first occurs, that is to say—
 - (a) the period specified in the agreement, as mentioned in subsection (1) above, comes to an end;
 - (b) the applicant's licence expires or is revoked;
 - (c) the applicant ceases to be the occupier of the relevant land or, if he has previously ceased to be the occupier of a part or parts of that land, ceases to be the occupier of the remainder of it;
 - (d) the agreement is terminated under subsection (4) below.
- (3) At any time while an agreement under section 127 above is in force, the applicant may apply to the [^{F317}appropriate agency] to terminate the agreement.
- (4) If, on an application for the termination of an agreement under section 127 above, the [^{F317}appropriate agency] is satisfied that, by reason of any change of circumstances since the agreement was made, it ought to be terminated, it may terminate the agreement, either unconditionally or subject to such conditions (whether as to any payment to be made by the applicant or otherwise) as the [^{F317}appropriate agency] and the applicant may agree.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

129 Directions and appeals with respect to exercise of powers under sections 127 and 128.

- (1) The Secretary of State may give directions as to the exercise by the [^{F317}appropriate agency] of its powers under sections 127 and 128 above.
- (2) Without prejudice to the exercise of the power conferred by subsection (1) above, if on any application under section 127 or 128 above—
 - (a) the [^{F317}appropriate agency] refuses to make or terminate an agreement under section 127 above; or
 - (b) the applicant objects to the proposals of the [^{F317}appropriate agency] —
 - (i) as to the terms of such an agreement; or

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- (ii) as to the conditions subject to which such an agreement is to be terminated,
 and that objection is not withdrawn,
 the applicant or the [F317 appropriate agency] may refer the question in dispute to the Secretary of State.
- (3) On a reference under subsection (2) above—
 - (a) the Secretary of State shall determine the question in dispute, having regard to the matters to which, in accordance with subsection (3) of section 127 above, the [F317 appropriate agency] would be required to have regard in relation to the applicant on an application under that section; and
 - (b) may give directions to the [F317 appropriate agency] requiring it to make an agreement with the applicant in accordance with his decision.
- F324 (4)
- (5) Any decision of the Secretary of State on a reference under subsection (2) above shall be final; and section 69 above shall apply in relation to the decision on a reference under this section as it applies in relation to a decision on a reference such as is mentioned in subsection (1)(b) of that section, but as if references to the other party were references to the applicant.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

F324 S. 129(4) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 153** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

130 Charges in respect of abstraction from waters of [F325 Canal & River Trust].

- (1) Where [F326 Canal & River Trust] are the holders of a licence under Chapter II of Part II of this Act authorising abstraction from any inland waters to which section 66 above applies, then, the charges which, apart from this subsection, would be payable in respect of that licence either—
 - (a) shall be reduced to such extent, and as so reduced shall be payable subject to such conditions; or
 - (b) shall not be payable,
 as [F326 Canal & River Trust] and the [F317 appropriate agency] may agree or, in default of such agreement, the Secretary of State may determine.
- (2) Where—
 - (a) a person other than [F327 Canal & River Trust] is the holder of a licence under Chapter II of Part II of this Act authorising abstraction from any inland waters to which section 66 above applies; and
 - (b) any charges in respect of that licence are payable,
 the [F317 appropriate agency] shall pay to [F327 Canal & River Trust] such proportion of those charges, subject to such conditions, as [F327 Canal & River Trust] and the [F317 appropriate agency] may agree, or, in default of such agreement, the Secretary of State may determine.

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Textual Amendments

- F317** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F325** Words in s. 130 heading substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(4)** (with arts. 4-6)
- F326** Words in s. 130(1) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(5)** (with arts. 4-6)
- F327** Words in s. 130(2) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(5)** (with arts. 4-6)

Charges in connection with control of pollution

^{F328}**131**

Textual Amendments

- F328** Ss. 131, 132 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), Sch. 22 para. 154, **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

^{F329}**132**

Textual Amendments

- F329** Ss. 131, 132 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), Sch. 22 para. 154, **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

Levies by the [^{F330}Agency] on local authorities

Textual Amendments

- F330** Word in cross-heading to s. 133 substituted (subject to other provisions of amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

^{F332}**133** **Power to authorise the [^{F331}Agency] to issue levies.**
.....

Textual Amendments

- F331** Words in s. 133 and the sidenote substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F332** S. 133 repealed (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 44** (with s. 49(1)(6)); [S.I. 2011/694](#), art. 3(g) (with art. 5(1))

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General drainage charges

134 Raising of general drainage charges.

- (1) Subject to subsection (2) below, the [^{F317}appropriate agency] may raise at an amount per hectare of chargeable land in [^{F333}a flood risk management region] a charge to be known as a general drainage charge and to be levied in accordance with sections 135 and 136 below.
- (2) The [^{F334}Agency] shall not levy a general drainage charge in respect of [^{F335}any flood risk management region] unless [^{F336}the Regional Flood and Coastal Committee for that region] have recommended that such a charge should be raised.

^{F337}(3)

Textual Amendments

- F317** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F333** Words in s. 134(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(2)**
- F334** Word in s. 134(2) substituted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(3)**; S.I. 2017/714, art. 2
- F335** Words in s. 134(2) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(3)(a)**
- F336** Words in s. 134(2) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(3)(b)**
- F337** S. 134(3) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(4)**

Modifications etc. (not altering text)

- C136** S. 134 restricted (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60\)](#), SIF 130, ss. 2(2), 4(2), **Sch. 2 Pt. I para. 2(2)**

135 Amount, assessment etc. of general drainage charge.

- (1) A general drainage charge raised by the [^{F317}appropriate agency] for [^{F338}a flood risk management region] for any year shall be at a uniform amount per hectare of chargeable land in [^{F339}that region].
- (2) The uniform amount referred to in subsection (1) above shall be ascertained, subject to subsection (3) below, by multiplying the relevant quotient ^{F340}. . . by one penny and by such number as may be specified by either of the Ministers by order made for the purposes of this subsection.
- (3) The number specified in an order under this section for the purposes of subsection (2) above shall (apart from any adjustment made to it to take account of rough grazing land) be such as the Minister making the order considers will secure, so far as reasonably practicable, that the amount specified in paragraph (a) below will be equal to the amount specified in paragraph (b) below, that is to say—
 - (a) the aggregate amount produced by any charge levied by reference to a relevant quotient ^{F341}. . . ; and
 - (b) the aggregate amount which, if the chargeable land in [^{F342}the flood risk management region] had been liable to be rated for the financial year beginning in 1989, would have been produced by a rate levied on the land at

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an amount in the pound (of rateable value) equal to that quotient multiplied by one penny.

- (4) An order under this section may be made so as to apply either—
- (a) to all general drainage charges; or
 - (b) to the general drainage charges proposed to be raised in any [^{F343}one or more flood risk management regions] specified in the order;
- and any such order applying to [^{F344}more than one flood risk management region] may make different provision as respects the different [^{F345}flood risk management regions] to which it applies.
- (5) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of general drainage charges.
- (6) The power of each of the Ministers to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

^{F346}[(7) In this section “relevant quotient” means a quotient determined for the year concerned in accordance with rules contained in regulations made by either of the Ministers.]

Textual Amendments

- F317** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F338** Words in s. 135(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(2)(a)**
- F339** Words in s. 135(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(2)(b)**
- F340** Words in s. 135(2) repealed (1.8.1992 subject to savings in [S.I. 1992/1755](#), art. 2(2)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1)(2), Sch. 13 para. 96(1), **Sch. 14** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), art. 2(1)
- F341** Words in s. 135(3)(a) repealed (1.8.1992 subject to savings in [S.I. 1992/1755](#), art. 2(2)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1)(2), Sch. 13 para. 96(2), **Sch. 14** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), art. 2(1)
- F342** Words in s. 135(3)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(3)**
- F343** Words in s. 135(4)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(4)(a)**
- F344** Words in s. 135(4) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(4)(b)(i)**
- F345** Words in s. 135(4) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(4)(b)(ii)**
- F346** S. 135(7) added (1.8.1992 subject to savings in [S.I. 1992/1755](#), art. 2(2)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1), **Sch. 13 para. 96(3)** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), art. 2(1)

Modifications etc. (not altering text)

- C137** S. 135 restricted (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60\)](#), SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. 1 para. 2(2)**.

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Textual Amendments

F347 S. 136 repealed (1.8.1992 subject to savings in S.I. 1992/1755, **art. 2(2)**) by **Local Government Finance Act 1992 (c. 14)**, s. 117(1)(2), Sch. 13 para. 97, **Sch.14** (with s. 118(1)(2)(4)); S.I. 1992/1755, **art. 2(1)**

Special drainage charges

137 Special drainage charges in interests of agriculture.

- (1) Where it appears to the [^{F317}appropriate agency] that the interests of agriculture require the carrying out, improvement or maintenance of drainage works in connection with any watercourses in [^{F348}any flood risk management region], the [^{F317}appropriate agency] may submit to either of the Ministers for confirmation a scheme under this section with respect to those watercourses.
- (2) A scheme under this section with respect to any watercourses is a scheme—
 - (a) designating those watercourses, and any watercourses connected with them, for the purposes of this section; and
 - (b) making provision for the raising, in accordance with section 138 below, of a charge (known as a “special drainage charge”) for the purpose of meeting the expenses of drainage works in connection with the designated watercourses and any expenses arising from such works.
- (3) A scheme under this section shall designate for the purposes of the special drainage charge so much of [^{F349}the flood risk management region] as consists of land which, in the opinion of the [^{F317}appropriate agency], is agricultural land that would benefit from drainage works in connection with the designated watercourses.
- (4) The watercourses designated in any scheme under this section shall, if the scheme is confirmed, be treated for the purposes of this Act and the ^{M39}Land Drainage Act 1991 as part of a main river.
- (5) A scheme under this section-
 - (a) may make provision for any of the matters referred to in subsections (1) and (2) of section 108 above; and
 - (b) may provide for the revocation or amendment of, and for the retransfer of property, rights, powers, duties, obligations and liabilities transferred by, any previous scheme under this section.
- (6) Schedule 16 to this Act shall have effect with respect to the making and confirmation of schemes under this section.
- (7) For the purposes of this section—
 - (a) the reference to expenses of drainage works is a reference to expenses incurred in the construction, improvement or maintenance of drainage works;
 - (b) the expenses of any drainage works which may be necessary in consequence of other drainage works, and so much of any contribution made under section 57 of the ^{M40}Land Drainage Act 1991 as is fairly attributable to such expenses, shall be deemed to be expenses arising from those other drainage works; and

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- (c) the expenses of any drainage works shall be taken (without prejudice to section 221(5) below) to include a proper proportion of the cost of the officers and buildings and establishment of the authority carrying them out.
- (8) In this section and Schedule 16 to this Act “watercourse” has the same meaning as in Part IV of this Act.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

F348 Words in s. 137(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 8(2)**

F349 Words in s. 137(3) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 8(3)**

Marginal Citations

M39 1991 c. 59.

M40 1991 c. 59.

138 Levying and amount of special drainage charge.

- (1) A special drainage charge shall be levied by the [^{F317}appropriate agency] in respect of chargeable land included in the area designated for the purposes of the charge by the scheme authorising it (“the relevant chargeable land”).
- (2) The special drainage charge raised for any year shall be at a uniform amount per hectare of the relevant chargeable land.
- (3) The uniform amount referred to in subsection (2) above shall be determined by [^{F350}the Regional Flood and Coastal Committee for the flood risk management region within which is the area] which includes the relevant chargeable land [^{F351}(where that land is in England) or by the NRBW (where the relevant chargeable land is in Wales)] but shall exceed neither—
- an amount to be specified in the scheme as the maximum amount of the charge or such greater amount as may be authorised for the purposes of the scheme by an order made by one of the Ministers on the application of the [^{F317}appropriate agency]; nor
 - twenty-five pence or such other amount as may be substituted for twenty-five pence by an order made by one of the Ministers and approved by a resolution of the House of Commons.
- (4) Before either of the Ministers makes an order under subsection (3)(a) above he shall—
- consult with such of the associations and persons concerned as he considers appropriate;
 - cause a notice of his intention to make the order, and of the time (which shall not be less than thirty days) within which objections to the proposed order may be made to him, to be published in such manner as he thinks best adapted for informing persons affected;
 - if he considers it necessary, afford such persons an opportunity of appearing before and being heard by a person appointed by him for the purpose; and
 - consider the report of the person so appointed and any objections duly made.
- (5) An order under subsection (3)(b) above may be made so as to apply—

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- (a) to special drainage charges in general; or
- (b) to the special drainage charges proposed to be raised in respect of [^{F352}areas within such flood risk management regions] as may be specified in the order; or
- (c) to special drainage charges proposed to be raised in pursuance of one or more schemes made under section 137 above and so specified;

and any such order applying to the charges proposed to be raised in respect of [^{F353}areas within more than one flood risk management region], or authorised by more than one such scheme, may make different provision for the charges in respect of [^{F354}different flood risk management regions] or, as the case may be, the charges authorised by the different schemes.

- (6) The power of each of the Ministers to make an order under subsection (3)(b) above shall be exercisable by statutory instrument; and section 14 of the ^{M41}Interpretation Act 1978 (power to revoke or amend orders made by statutory instrument) shall apply to the power to make orders under subsection (3)(a) above as it applies, by virtue of this subsection, to the power to make orders under subsection (3)(b) above.
- (7) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of special drainage charges.

Textual Amendments

- F317** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F350** Words in s. 138(3) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(2)**
- F351** Words in s. 138(3) inserted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(4)**; S.I. 2017/714, art. 2
- F352** Words in s. 138(5)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(3)(a)**
- F353** Words in s. 138(5) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(3)(b)(i)**
- F354** Words in s. 138(5) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(3)(b)(ii)**

Marginal Citations

- M41** 1978 c. 30.

Revenue from internal drainage boards

139 Contributions from internal drainage boards.

- (1) Subject to subsections (2) and (3) below, the [^{F317}appropriate agency] shall by resolution require every internal drainage board to make towards the expenses of the [^{F317}appropriate agency] such contribution as the [^{F317}appropriate agency] may consider to be fair.
- (2) Subject to subsection (3) below, where an internal drainage district (“the main internal drainage district”) comprises two or more other internal districts (“minor internal drainage districts”), the [^{F317}appropriate agency] shall not require the drainage board for that district to make any contribution towards the expenses of the [^{F317}appropriate

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agency] except in respect of such part, if any, of that district as is not situated within any minor internal drainage district.

- (3) Notwithstanding subsection (2) above, the [F317appropriate agency], after determining what contribution should be made by the drainage board for each of the minor internal drainage districts, may, if it thinks fit, require the drainage board for the main internal drainage district to pay direct to the [F317appropriate agency] an amount equal to the aggregate of those contributions.
- (4) If the [F317appropriate agency] make a requisition under subsection (3) above, the drainage board of the main internal drainage district shall raise the amount paid by them under that subsection to the [F317appropriate agency] by means of drainage rates levied by them within, or special levies issued in respect of, the main internal drainage district or, as the case may be, such part of that district as is situated within a minor internal drainage district.
- (5) Without prejudice to subsection (3) of section 140 below, a resolution under this section may be acted upon by the [F317appropriate agency] forthwith, notwithstanding that the time for bringing an appeal under that section has not expired or that an appeal so brought is pending.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 276](#) (with Sch. 7)

140 Appeals in respect of resolutions under section 139.

- (1) If—
 - (a) an internal drainage board is aggrieved by a resolution of the [F317appropriate agency] under section 139 above determining the amount of any contribution; or
 - (b) the council of any county [F355, county borough] or London borough is aggrieved by any such resolution on the ground that the amount of the contribution required to be made by an internal drainage board is inadequate, the board or council may, within six weeks after the date on which notice of the resolution is given by the [F317appropriate agency] to the internal drainage board in question, appeal to the relevant Minister against the resolution.
- (2) On an appeal under this section the relevant Minister may, after—
 - (a) considering any objections made to him; and
 - (b) if he thinks fit, holding a local public inquiry,
 make such an order in the matter as he thinks just.
- (3) Where the [F317appropriate agency] has acted on a resolution by virtue of section 139(5) above and an appeal is brought in respect of the resolution, the relevant Minister shall by his order direct such adjustment to be made in respect of any sums recovered or paid in pursuance of the resolution as may be necessary for giving effect to his decision.
- (4) Where the relevant Minister makes an order under this section, he shall lay before Parliament particulars of the matter in respect of which the appeal was made and of the reasons for his order.

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- (5) Compliance with any order made by the relevant Minister under this section may be enforced by mandamus.
- (6) In this section “the relevant Minister”—
- (a) in relation to an internal drainage district wholly in Wales or the drainage board for such a district, means the Secretary of State;
 - (b) in relation to an internal drainage district partly in Wales or the drainage board for such a district, means the Ministers; and
 - (c) in any other case, means the Minister.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

F355 Words in s. 140(1)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(3)** (with ss. 54(4)(7), 55(5)) Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Modifications etc. (not altering text)

C138 S. 140 extended (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), ss. 58(7), 76(2).

141 Precepts for recovery of contributions from internal drainage boards.

- (1) The [^{F317}appropriate agency] may issue precepts to internal drainage boards requiring payment of any amount required to be contributed by those boards under section 139 above.
- (2) An internal drainage board shall pay, in accordance with any precept issued to them under this section, the amount thereby demanded.
- (3) It shall be the duty of the [^{F317}appropriate agency] to prepare, in such form as the relevant Minister may direct, a statement of—
 - (a) the purposes to which the amount demanded by any precept issued by the [^{F317}appropriate agency] under this section is intended to be applied; and
 - (b) the basis on which it is calculated;
 and an internal drainage board shall not be liable to pay the amount demanded by any such precept until they have received such a statement.
- (4) Compliance with any precept issued by the [^{F317}appropriate agency] in accordance with this section may be enforced by mandamus.
- (5) In this section “the relevant Minister” has the same meaning as in section 140 above.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

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Fisheries contributions

142 Fisheries contributions.

- (1) Each of the Ministers shall have power, on an application made to him by the [^{F317}appropriate agency], by order made by statutory instrument to make provision in relation to an area defined by the order—
 - (a) for the imposition on the owners and occupiers of fisheries in that area of requirements to pay contributions to the [^{F317}appropriate agency], of such amounts as may be determined under the order, in respect of the expenses of the carrying out in relation to that area of the [^{F317}appropriate agency's] functions with respect to fisheries;
 - (b) for such contributions to be paid or recovered in such manner, and to be refundable, in such circumstances as may be specified in or determined under the order.
- (2) Subsections [^{F356}(2) to (6)] of section 115 above shall have effect in relation to the power conferred by subsection (1) above as they have effect in relation to the power conferred by subsection (1) of that section.
- (3) The reference in this section to the owners and occupiers of fisheries shall have the same meaning as any such reference in the ^{M42}Salmon and Freshwater Fisheries Act 1975.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 276](#) (with Sch. 7)

F356 Words in s. 142(2) substituted (21.9.1995) by [1995 c. 25](#), s. 116, [Sch. 21 para. 2\(3\)](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), [art. 3](#)

Modifications etc. (not altering text)

C139 S. 142 excluded (1.7.1999) by [S.I. 1999/1746](#), [arts. 1\(1\)](#), 4(1); [S.I. 1998/3178](#), [art. 3](#)

Marginal Citations

M42 [1975 c. 51](#).

Navigation tolls

143 Power of [^{F317}appropriate agency] to levy navigation tolls.

- (1) Where any navigable waters—
 - (a) in England and Wales; or
 - (b) in so much of the territorial sea adjacent to England and Wales as is included in [^{F357}a flood risk management region],are not subject to the control of any navigation authority, harbour authority or conservancy authority, the [^{F317}appropriate agency] may apply to the Secretary of State for an order imposing tolls in respect of the navigation of vessels in those waters.
- (2) An order under this section shall not be made unless the Secretary of State is satisfied that the cost of the maintenance or works in connection with the waters to which the

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order relates has been or will be increased as a result of the use of those waters for purposes of navigation.

- (3) Schedule 17 to this Act shall have effect with respect to the making of orders under this section.
- (4) Any tolls payable under this section in respect of the navigation of a vessel in any water referred to in subsection (1) above—
- (a) may be demanded from the person in charge of the vessel by any person authorised for that purpose by the [^{F317}appropriate agency]; and
 - (b) if not paid on demand, may be recovered from either the person in charge of the vessel or the owner of the vessel.

Textual Amendments

F317 Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

F357 Words in s. 143(1)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 10**

Modifications etc. (not altering text)

C140 S. 143 modified (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 56(1)**, 76(2).

C141 S. 143(4) modified (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 56(2)**, 76(2).

Incidental power of the Authority to impose charges

Interpretation of Chapter II

145 Interpretation of Chapter II.

In this Chapter—

“agricultural buildings” has the meaning provided by section 26(4) of the ^{M43}General Rate Act 1967 as amended by the ^{M44}Rating Act 1971;

“agricultural land” means—

- (a) land used as arable, meadow or pasture ground only;
- (b) land used for a plantation or a wood or for the growth of saleable underwood; and
- (c) land exceeding one tenth of a hectare used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the ^{M45}Allotments Act 1922,

but does not include land occupied together with a house as a park, gardens (other than as aforesaid) or pleasure grounds, land kept or preserved mainly or exclusively for purposes of sport or recreation or land used as a racecourse;

“chargeable land” means the agricultural land and agricultural buildings in so much of [^{F358}a flood risk management region] as does not fall within an internal drainage district, excluding rough grazing land and woodlands other than commercial woodlands;

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“commercial woodlands” means woodlands managed on a commercial basis with a view to the realisation of profits;

“drainage” has the same meaning as in Part IV above;

“drainage charge” means general drainage charge or special drainage charge;

[^{F359}“flood risk management region” [^{F360}—

(a) in relation to the Agency,] means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010 [^{F361}, and

(b) in relation to the NRBW, means Wales, within the meaning of section 158 of the Government of Wales Act 2006].

“rough grazing land” means land of either of the following descriptions, that is to say—

(a) land used as pasture ground on which the vegetation consists solely or mainly of one or more of the following, that is to say, bracken, gorse, heather, rushes and sedge; and

(b) land so used which is unsuitable for mowing by machine and on which the vegetation consists solely or mainly of grass of poor feeding value; and

“spray irrigation” has the same meaning as in Chapter II of Part II of this Act.]

Textual Amendments

F358 Words in s. 145 substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 11(2)**

F359 Words in s. 145 inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 11(3)**

F360 Words in s. 145 inserted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(5)(a)**; S.I. 2017/714, art. 2

F361 Words in s. 145 inserted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(5)(b)**; S.I. 2017/714, art. 2

Marginal Citations

M43 1967 c. 9.

M44 1971 c. 39.

M45 1922 c. 51.

CHAPTER III

GRANTS AND LOANS

Grants to the [^{F362} Agency]

Textual Amendments

F362 Word in s. 146 cross-heading substituted (subject to other provisions of amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

^{F363}146

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Textual Amendments

F363 S. 146 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 155, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F364 **147 Grants for drainage works.**

.....

Textual Amendments

F364 Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

F364 **148 Grants towards cost of flood warning systems.**

.....

Textual Amendments

F364 Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

F364 **149 Other grants in respect of exercise of powers under Part VII for drainage purposes.**

.....

Textual Amendments

F364 Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

F365 **150**

Textual Amendments

F365 Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 156, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Borrowing by the Authority

F366 **151**

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Textual Amendments

F366 Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F367 **152**

Textual Amendments

F367 Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F368 **153**

Textual Amendments

F368 Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

PART VII

LAND AND WORKS POWERS

Modifications etc. (not altering text)

C142 Pt. VII (ss. 154-186): Transfer of functions (1.4.1996) to the Agency by 1995 c. 25, s. **2(1)(a)(iv)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER I

POWERS OF THE [F369 APPROPRIATE AGENCY]

Textual Amendments

F369 Words in Pt. 7 Ch. 1 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 277** (with Sch. 7)

Provisions in relation to land

154 Compulsory purchase etc.

(1) The Agency [F370 or the NRBW] may be authorised by [F371 the relevant Minister] to purchase compulsorily any land anywhere in England and Wales which is required by

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- the Agency [^{F370}or the NRBW] for the purposes of, or in connection with, the carrying out of its functions.
- (2) The power of [^{F372}the relevant Minister] under subsection (1) above shall include power—
- (a) to authorise the acquisition of interests in, and rights over, land by the creation of new interests and rights; and
 - (b) by authorising the acquisition by the Agency [^{F373}or, as the case may be, by the NRBW,] of any rights over land which is to be or has been acquired by the Agency [^{F374}or the NRBW], to provide for the extinguishment of those rights.
- (3) Without prejudice to the generality of subsection (1) above, the land which the Agency [^{F375}or the NRBW] may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the ^{M46}Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.
- (4) Subject to section 182 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the Agency [^{F376}or the NRBW]; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.
- (5) Schedule 18 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the ^{M47}Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.
- (6) The provisions of Part I of the ^{M48}Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred, by virtue of any provision of this Act or otherwise (including section 37 of the 1995 Act (incidental general powers of the Agency) [^{F377}or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)]), on the Agency [^{F378}or the NRBW] as if—
- (a) any reference in those provisions to the acquiring authority were a reference to the Agency [^{F379}or, as the case may be, the NRBW]; and
 - (b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.
- ^{F380}(7) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.
- (8) In subsections (1) and (2), “the relevant Minister” means—
- (a) in relation to land in England, the Secretary of State; and
 - (b) in relation to land in Wales, the Welsh Ministers.]

Textual Amendments

F370 Words in s. 154(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(2)(a)** (with Sch. 7)

F371 Words in s. 154(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(2)(b)** (with Sch. 7)

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- F372** Words in s. 154(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(3)(a)** (with Sch. 7)
- F373** Words in s. 154(2)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(3)(b)(i)** (with Sch. 7)
- F374** Words in s. 154(2)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(3)(b)(ii)** (with Sch. 7)
- F375** Words in s. 154(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(4)** (with Sch. 7)
- F376** Words in s. 154(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(4)** (with Sch. 7)
- F377** Words in s. 154(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(a)** (with Sch. 7)
- F378** Words in s. 154(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(b)** (with Sch. 7)
- F379** Words in s. 154(6)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(c)** (with Sch. 7)
- F380** S. 154(7)(8) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(6)** (with Sch. 7)

Modifications etc. (not altering text)

- C143** S. 154 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **4(1)**
- C144** S. 154 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **3(1)**
- C145** S. 154 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **4**
- C146** S. 154 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **3(1)** (with art. 3(3)(4))

Marginal Citations

- M46** 1981 c. 67.
M47 1965 c. 56.
M48 1965 c. 56.

155 Accretions of land resulting from drainage works.

- (1) If the relevant Minister certifies that, as the result of—
- any drainage works carried out or improved, or proposed to be carried out or improved, by the Agency [^{F381}or the NRBW] in connection with the tidal waters of a main river; or
 - any drainage works transferred from a drainage body to the Agency [^{F381}or the NRBW] in pursuance of this Act or the ^{M49}Land Drainage Act 1991,
- there has been or is likely to be any accretion of land, the powers of the Agency [^{F382}and the NRBW] by virtue of this Act, for the purpose of carrying out its functions [^{F383}or, as the case may be, its relevant transferred functions], to acquire land or any interest in or right over land by agreement or compulsorily shall include power so to acquire the land mentioned in subsection (2) below.
- (2) The land mentioned in subsection (1) above is—
- the accretion of land or the land to which the accretion will, if it takes place, be added, together with any right to reclaim or embank the accretion; and

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- (b) such other land as is reasonably required for the purpose of reclamation of the accretion or for the enjoyment of it when reclaimed.
- (3) An agreement or order with respect to the acquisition of any land or rights by virtue of this section may provide for the transfer to the Agency [^{F384}or, as the case may be, the NRBW] of any liability for the upkeep, maintenance and repair of any bank or drainage work or of any other like liability.
- (4) Where the value of any land or right is increased by the carrying out or proposed carrying out of drainage works by the Agency [^{F385}or, as the case may be, the NRBW] the amount of the increase shall not be taken into account in assessing the compensation in respect of the compulsory acquisition of it.
- (5) Where, by reason of a certificate having been given by the relevant Minister under this section in relation to any drainage works, the Agency [^{F386}or, as the case may be, the NRBW] has acquired any land or right and a grant has been made out of public moneys for defraying the cost or part of the cost of the carrying out of the works, the Agency [^{F386}or, as the case may be, the NRBW] shall—
- (a) on being so required by the Crown Estate Commissioners; and
 - (b) on payment by the Commissioners to the Agency [^{F387}or the NRBW] of the sum paid by the Agency [^{F387}or the NRBW] in respect of the acquisition of the land or right, together with the amount of any costs incurred by the [^{F388}Agency][^{F387}or the NRBW] in connection with the acquisition,
- transfer the land or right to the Commissioners or to any person nominated by them.
- (6) If the Agency [^{F389}or, as the case may be, the NRBW], on being so required by the Crown Estate Commissioners in pursuance of subsection (5) above, fail to transfer to the Commissioners any land or right, the relevant Minister may by a vesting order transfer the land or right to the Commissioners or to a person nominated by them; and, for the purposes of this subsection, the relevant Minister shall be deemed to be a competent authority within the meaning of section 9 of the ^{M50}Law of Property Act 1925.
- (7) In this section—
- “banks” has the same meaning as in Part IV of this Act;
 - “drainage body” has the same meaning as in section 108 above;
 - “the relevant Minister”—
- (a) in relation to England, means the Minister; and
 - (b) in relation to Wales, means the Secretary of State.

Textual Amendments

- F381** Words in s. 155(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(2)(a)** (with Sch. 7)
- F382** Words in s. 155(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(2)(b)** (with Sch. 7)
- F383** Words in s. 155(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(2)(c)** (with Sch. 7)
- F384** Words in s. 155(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(3)** (with Sch. 7)
- F385** Words in s. 155(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(3)** (with Sch. 7)

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- F386** Words in s. 155(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(4)(a)** (with Sch. 7)
- F387** Words in s. 155(5)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(4)(b)** (with Sch. 7)
- F388** Word in s. 155 substituted (subject to the other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- F389** Words in s. 155(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(5)** (with Sch. 7)

Marginal Citations

- M49** 1991 c. 59.
M50 1925 c. 20.

156 Acquisition of land etc. for fisheries purposes.

- (1) [^{F390}Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)] [^{F391}or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)], the powers conferred on the Agency [^{F392}or, as the case may be, the NRBW,] by [^{F393}those provisions] and section 154 above include power to purchase or take on lease (either by agreement or, if so authorised, compulsorily)—
- (a) any dam, fishing weir, fishing mill dam, fixed engine or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction;
 - (b) so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass for the purposes of section 10 of the ^{M51}Salmon and Freshwater Fisheries Act 1975; and
 - (c) for the purpose of erecting and working a fixed engine, any fishery land or foreshore together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired.
- (2) [^{F390}Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)] [^{F394}or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)], the Agency [^{F395}or, as the case may be, the NRBW,] may—
- (a) either alter or remove an obstruction acquired in the exercise of the powers mentioned in subsection (1) above; or
 - (b) by itself or its lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right by any fishery so acquired,
- subject, in the case of an obstruction or fishery acquired by way of lease, to the terms of the lease.
- (3) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

Textual Amendments

- F390** Words in s. 156(1)(2) substituted (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 158](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- F391** Words in s. 156(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(2)(a)** (with Sch. 7)

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- F392** Words in s. 156(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(2)(b)** (with Sch. 7)
- F393** Words in s. 156(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(2)(c)** (with Sch. 7)
- F394** Words in s. 156(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(3)(a)** (with Sch. 7)
- F395** Words in s. 156(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(3)(b)** (with Sch. 7)

Marginal Citations

M51 1975 c. 51.

157 Restriction on disposals of compulsorily acquired land.

- (1) The Agency [^{F396}and the NRBW] shall not dispose of any of its compulsorily acquired land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, one of the Ministers.
- (2) A consent or authorisation for the purposes of this section—
 - (a) shall be set out in a notice served on the Agency [^{F397}or, as the case may be, the NRBW] by the Minister who is giving the consent or authorisation; and
 - (b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 156 of the ^{M52}Water Industry Act 1991 (restrictions on disposals of land by a water or sewerage undertaker).
- (3) A consent or authorisation for the purposes of this section may be given on such conditions as the Minister who is giving it considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above, the conditions of a consent or authorisation for the purposes of this section may include a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available to such person as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- (5) A requirement under subsection (4) above may require the opportunity to be made available in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- ^{F398}(6) In this section “compulsorily acquired land”, in relation to the Agency, means any land of the Agency which—
 - (a) was acquired by the Agency compulsorily under the provisions of section 154 above or of an order under section 168 below;
 - (b) was acquired by the Agency at a time when it was authorised under those provisions to acquire the land compulsorily;
 - (c) being land which has been transferred to the Agency from the Authority by section 3 of the 1995 Act, was acquired by the Authority—
 - (i) compulsorily, under the provisions of section 154 above or of an order under section 168 below or under the provisions of section 151 of the ^{M53}Water Act 1989 or of an order under section 155 of that Act; or
 - (ii) at a time when it was authorised under those provisions to acquire the land compulsorily;

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- (d) being land—
 - (i) which has been so transferred, and
 - (ii) which was transferred to the Authority in accordance with a scheme under Schedule 2 to the ^{M54}Water Act 1989, was acquired by a predecessor of the Authority compulsorily under so much of any enactment in force at any time before 1st September 1989 as conferred powers of compulsory acquisition; or
- (e) being land transferred as mentioned in sub-paragraphs (i) and (ii) of paragraph (d) above, was acquired by such a predecessor at a time when it was authorised to acquire the land by virtue of any such powers as are mentioned in that paragraph.]

[^{F399}(7) In this section “compulsorily acquired land”, in relation to the NRBW, means any land of the NRBW which—

- (a) was acquired by the NRBW compulsorily under the provisions of section 154 above or of an order under section 168 below;
- (b) was acquired by the NRBW at a time when it was authorised under those provisions to acquire the land compulsorily; or
- (c) being land which has been transferred to the NRBW from the Agency in accordance with a scheme made under section 23 of the Public Bodies Act 2011, was compulsorily acquired land of the Agency within the meaning of subsection (6).]

Textual Amendments

- F396** Words in s. 157(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 281(2)** (with Sch. 7)
- F397** Words in s. 157(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 281(3)** (with Sch. 7)
- F398** S. 157(6) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 159** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F399** S. 157(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 281(4)** (with Sch. 7)

Modifications etc. (not altering text)

- C147** S. 157 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **3(2)**
- C148** S. 157 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **4(2)**
- C149** S. 157 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **3(2)**
- C150** S. 157 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **4(2)**

Marginal Citations

- M52** 1991 c. 56.
- M53** 1989 c. 15.
- M54** 1989 c. 29.

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Works agreements for water resources purposes

158 Works agreements for water resources purposes.

- (1) Without prejudice to the generality of the powers of the [^{F400}Agency] by virtue of section 37 of the 1995 Act (incidental general powers of the Agency)[^{F401}, or (as the case may be) of the NRW by virtue of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),] but subject to subsection (2) below, those powers shall include power to enter into an agreement with any water undertaker, with any sewerage undertaker, with any local authority or joint planning board, or with the owner or occupier of any land, with respect to any one or more of the following matters, that is to say—
 - (a) the carrying out by any party to the agreement of works which the [^{F402}appropriate agency] considers necessary or expedient in connection with the carrying out of any of the [^{F402}appropriate agency's] functions by virtue of Part II of this Act;
 - (b) the maintenance by any party to the agreement of works carried out in pursuance of the agreement;
 - (c) provision for the [^{F403}appropriate agency] to use, or have access to, any land for any purpose connected with the carrying out of any of those functions;
 - (d) the manner in which any reservoir is to be operated.
- (2) The Secretary of State may by a direction to the [^{F404}appropriate agency] direct that, in such cases or classes of cases as are specified in the direction, the [^{F404}appropriate agency] shall not enter into any such agreement as is mentioned in subsection (1) above except with his consent.
- (3) An agreement such as is mentioned in subsection (1) above may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the [^{F405}appropriate agency] necessary or expedient for the purposes of the agreement.
- (4) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land, other than registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
 - (a) the agreement may be registered as a land charge under the ^{M55}Land Charges Act 1972 as if it were a charge affecting land falling within paragraph (iii) of Class D;
 - (b) the provisions of section 4 of that Act (which relates to the effect of non-registration) shall apply as if the agreement were such a land charge; and
 - (c) subject to the provisions of section 4 of that Act, the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.
- (5) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land which is registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
 - ^{F406}(a) the agreement may be the subject of a notice in the register of title under the Land Registration Act 2002 as if it were an interest affecting the registered land;

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- (b) the provisions of sections 28 to 30 of that Act (effect of dispositions of registered land on priority of adverse interests) shall apply as if the agreement were such an interest;]
- (c) [^{F407}subject to the provisions of those sections,] the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.
- (6) In this section—
- “registered land” has the same meaning as in the [^{F408}Land Registration Act 2002]; and
- “successor”, in relation to an agreement with the owner of any land, means a person deriving title or otherwise claiming under that owner, otherwise than in right of an interest or charge to which the interest of the owner was subject immediately before the following time, that is to say—
- (a) where the land is not registered land, the time when the agreement was made; and
- (b) where the land is registered land, the time when the notice of the agreement was registered.

Textual Amendments

- F400** Word in s. 158 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F401** Words in s. 158(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(2)(a)** (with Sch. 7)
- F402** Words in s. 158(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(2)(b)** (with Sch. 7)
- F403** Words in s. 158(1)(c) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(2)(c)** (with Sch. 7)
- F404** Words in s. 158(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(3)** (with Sch. 7)
- F405** Words in s. 158(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(4)** (with Sch. 7)
- F406** S. 158(5)(a)(b) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(a)** (with s. 129); S.I. 2003/1725, **art. 2(1)**
- F407** Words in s. 158(5)(c) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(b)** (with s. 129); S.I. 2003/1725, **art. 2(1)**
- F408** Words in s. 158(6) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(3)** (with s. 129); S.I. 2003/1725, **art. 2(1)**

Modifications etc. (not altering text)

- C151** S. 158 applied (1.4.2006) by Water Act 2003 (c. 37), **ss. 33(3)(b)**, 105(3); S.I. 2006/984, **art. 2(p)**
- C152** S. 158 applied (25.3.2022) by The Bridgwater Tidal Barrier Order 2022 (S.I. 2022/299), **arts. 1, 66(3)** (with **art. 55**)
- C153** S. 158(1) applied (with modifications) (4.6.1996) by S.I. 1996/1243, **art. 18**, **Sch. 5 para. 6(2)(b)**

Marginal Citations

- M55** 1972 c. 61.

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General pipe-laying powers

159 Powers to lay pipes in streets.

- (1) Subject to the following provisions of this Part, the [F409 appropriate agency] shall, for the purpose of carrying out its functions, have power—
- (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;
 - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
 - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials.
- [F410(1A) The [F409 appropriate agency] may carry out work within subsection (1)(a) to (c) if—
- (a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
 - (b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.]
- (2) Without prejudice to the generality of subsection (1)(c) above, the [F409 appropriate agency] shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.
- (3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.
- (4) Until the coming into force of its repeal by the M56 New Roads and Street Works Act 1991 section 20 of the M57 Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any pipe which is conferred by this section.
- (5) In this section references to a relevant pipe are references to a resource main or discharge pipe and references to laying such a pipe shall include references—
- (a) to the laying of any drain or sewer for any of the purposes specified in subsection (6) below; and
 - (b) to the construction of a watercourse for any of those purposes.
- (6) The purposes mentioned in subsection (5) above are—
- (a) intercepting, treating or disposing of any foul water arising or flowing upon any land; or
 - (b) otherwise preventing the pollution—
 - (i) of any waters, whether on the surface or underground, which belong to the [F409 appropriate agency] or any water undertaker or from which

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- the [F409 appropriate agency] or any water undertaker is authorised to take water;
- (ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by the [F409 appropriate agency] or any water undertaker or which the [F409 appropriate agency] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or
- (iii) of any underground strata from which the [F409 appropriate agency] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of this Act.
- (7) References in this section to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe as the pipe replaced.

Textual Amendments

- F409** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 283](#) (with Sch. 7)
- F410** S. 159(1A) inserted (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 2 para. 45](#) (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2) (d)

Marginal Citations

- M56** 1991 c. 22.
M57 1980 c. 66.

160 Power to lay pipes in other land.

- (1) Subject to the following provisions of this Part, the [F409 appropriate agency] shall, for the purpose of carrying out its functions, have power—
- (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.
- [F411(1A) The [F409 appropriate agency] may carry out work within subsection (1)(a) to (c) if—
- (a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
- (b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.]
- (2) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.
- (3) Subject to subsection (4) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period

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that is capable of constituting reasonable notice for the purposes of subsection (2) above shall be deemed—

- (a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and
 - (b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.
- (4) In this section references to a relevant pipe are references to a resource main or discharge pipe; and subsection (7) of section 159 above shall apply for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

- F409** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F411** S. 160(1A) inserted (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 46** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2) (d)

[^{F412}Restoration and improvement works for controlled waters

Textual Amendments

- F412** Ss. 161-161AB substituted for s. 161 (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), **5** (with reg. 7)

161. Anti-pollution works and operations

- (1) This section applies where it appears to the [^{F409}appropriate agency] that any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters.
- (2) In a case where the matter appears to be or to have been present in the controlled waters, the [^{F409}appropriate agency] shall be entitled to carry out works and operations for any of the following purposes—
 - (a) removing or disposing of the matter;
 - (b) remedying or mitigating any pollution caused by its presence in the waters; or
 - (c) restoring (so far as it is reasonably practicable to do so) the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.
- (3) In a case where the matter appears to be likely to enter the controlled waters, the [^{F409}appropriate agency] shall be entitled to carry out works and operations for the purpose of preventing it from doing so.
- (4) The [^{F409}appropriate agency] shall be entitled to carry out investigations for the purpose of establishing any of the following—
 - (a) the nature of the matter,
 - (b) the source of the matter;

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- (c) the nature and effects of any pollution caused or likely to be caused by the presence of the matter; and
 - (d) the identity of any responsible persons.
- (5) Without prejudice to the power of the [F409 appropriate agency] to carry out those investigations, the powers conferred by subsection (2) or (3) shall only be exercisable in a case where—
- (a) the [F409 appropriate agency] considers it necessary to carry out forthwith any works or operations falling within that subsection; or
 - (b) it appears to the [F409 appropriate agency] , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.
- (6) In this section “responsible person” means a person who has caused or knowingly permitted the matter—
- (a) to be present in the controlled waters; or
 - (b) to be at a place from which it was likely, in the opinion of the [F409 appropriate agency], to enter the controlled waters.

Textual Amendments

F409 Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

161ZA. Other works and operations in respect of harm to controlled waters

- (1) This section applies where it appears to the [F409 appropriate agency] that any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (and it is immaterial whether the source of potential harm has been identified).
- (2) In this section “harm” means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of the environmental objectives applicable to the controlled waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into or presence in those waters of any poisonous, noxious or polluting matter or waste matter.

^{F413}(3)

- (4) The [F409 appropriate agency] shall be entitled to carry out works and operations for any of the following purposes (so far as it is reasonably practicable to achieve them)—
 - (a) removing the source of potential harm;
 - (b) preventing any harm or further harm being caused to the controlled waters;
 - (c) in a case where the controlled waters are being or have been harmed—
 - (i) remedying or mitigating the effects of the harm;

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- (ii) restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before any harm was caused.
- (5) The [^{F409}appropriate agency] shall be entitled to carry out investigations for the purpose of establishing any of the following—
 - (a) the source of any harm or potential harm to the controlled waters;
 - (b) the nature and effects of any harm caused or likely to be caused to those waters; and
 - (c) the identity of any responsible persons.
- (6) Without prejudice to the power of the [^{F409}appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable in a case where—
 - (a) the [^{F409}appropriate agency] considers it necessary to carry out forthwith any works or operations falling within that subsection; or
 - (b) it appears to the [^{F409}appropriate agency] , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.
- (7) In this section “responsible person” means a person who has caused or knowingly permitted—
 - (a) any harm to be caused to the controlled waters; or
 - (b) a source of potential harm to exist that is likely, in the opinion of the [^{F409}appropriate agency], to cause harm to the controlled waters.

Textual Amendments

F409 Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F413 S. 161ZA(3) omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161ZB. Works and operations for improving controlled waters

- (1) This section applies where it appears to the [^{F409}appropriate agency] that—
 - (a) the condition of any hydromorphological quality element affecting any controlled waters is unsatisfactory; and
 - (b) it is possible to improve the hydromorphological quality element by carrying out works or operations.
- (2) For the purposes of this section the condition of a hydromorphological quality element affecting the controlled waters is unsatisfactory if (whether by itself or in combination with other factors) if it is likely to prevent the waters from achieving the applicable environmental objectives.

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^{F414}(3)

- (4) The [^{F409}appropriate agency] shall be entitled to carry out works and operations for the purpose of improving the condition of the hydromorphological quality element in question with a view to achieving (or contributing to the achievement of) the applicable environmental objectives.
- (5) The [^{F409}appropriate agency] shall be entitled to carry out investigations for the purpose of establishing why the condition of the hydromorphological quality element in question is unsatisfactory.
- (6) Without prejudice to the power of the [^{F409}appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable if it appears to the [^{F409}appropriate agency] that it is unable to secure that the necessary works or operations are carried out by exercising its powers under section 161 or 161ZA or by serving a works notice on any responsible person.

Textual Amendments

F409 Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F414 [S. 161ZB\(3\)](#) omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

161ZC. Sections 161 to 161ZB: supplementary

- (1) Nothing in sections 161 to 161ZB shall entitle the [^{F409}appropriate agency] to impede or prevent the making of any discharge in pursuance of [^{F415}an environmental permit].
- (2) Where the [^{F409}appropriate agency] carries out any works, operations or investigations under any of the powers conferred by section 161 or 161ZA it shall, subject to subsection (3), be entitled to recover the expenses reasonably incurred in doing so from any responsible person (within the meaning of the section conferring the powers in question).
- (3) No expenses are recoverable from a person for any works, operations or investigations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [^{F409}appropriate agency], to enter any controlled waters.
- (4) Subsection (3) does not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

^{F416}(5)

- (6) Nothing in sections 161, 161ZA and 161ZB—

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- (a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under any of those sections; or
 - (b) affects any restriction imposed by or under any other enactment, whether public local or private.
- (7) In this section—
- “expenses” includes costs;
 - “mine” has the same meaning as in the Mines and Quarries Act 1954;
 - “works notice” means a notice under section 161A.
- (8) In sections 161, 161ZA and 161ZB and this section “controlled waters” has the same meaning as in Part 3 of this Act ^{F417}...
- [^{F418}(9) In sections 161ZA and 161ZB, “environmental objectives”, “hydromorphological quality element” and “Water Framework Directive” have the meanings given by section 93(7) of this Act.]

Textual Amendments

- F409** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F415** Words in s. 161ZC(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(8)(a)** (with reg. 1(2), Sch. 4)
- F416** S. 161ZC(5) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(m), **Sch. 28** (with reg. 1(2), Sch. 4)
- F417** Words in s. 161ZC(8) omitted (31.12.2020) by virtue of [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F418** S. 161ZC(9) inserted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C154** Ss. 161-161D 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**)
- C155** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

161A. Notices requiring persons to carry out works and operations

- (1) Where it appears to the [^{F409}appropriate agency] that—
- (a) any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters (so that section 161 applies), or
 - (b) any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (so that section 161ZA applies),
- the [^{F409}appropriate agency] shall be entitled to serve a works notice on any responsible person.
- (2) In this section “responsible person” has the same meaning as in section 161 or 161ZA) (as the case may be).

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- (3) For the purposes of this section a works notice is a notice requiring the person on whom it is served to carry out such works or operations as may be specified in the notice.
- (4) The works or operations that may be so specified are works or operations which may be carried out under section 161(2) or (3) or section 161ZA(4) (as the case may be).
- (5) Where the [^{F409}appropriate agency] has carried out any such investigations as are mentioned in sections 161(4) or 161ZA(5) and serves a works notice on a responsible person in connection with the matters to which the investigations relate it shall (unless the notice is quashed or withdrawn) be entitled to recover from that person the costs or expenses reasonably incurred in carrying out those investigations.
- (6) The appropriate national authority may, if it thinks fit in relation to any person, give directions to the [^{F409}appropriate agency] as to whether or how it should exercise its powers under this section or section 161AA.
- (7) In this section and sections 161AA and 161AB “controlled waters” has the same meaning as in Part 3 of this Act.

Textual Amendments

F409 Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

161AA. Works notices: form etc

- (1) A works notice—
 - (a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and
 - (b) is without prejudice to the powers of the [^{F409}appropriate agency] to carry out any works or operations under section 161(5)(a) or 161ZA(6)(a).
- (2) Before serving a works notice on any person, the [^{F409}appropriate agency] shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.
- (3) The appropriate national authority may by regulations make provision for or in connection with—
 - (a) the form or content of works notices;
 - (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
 - (c) steps to be taken for the purposes of any consultation required under subsection (2) or regulations made by virtue of paragraph (b); or
 - (d) any other steps of a procedural nature which are to be taken in connection with or in consequence of the service of a works notice.

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- (4) A works notice shall not be regarded as invalid or as invalidly served by reason only of a failure to comply with the requirements of subsection (2) or of regulations made by virtue of paragraph (b) of subsection (3).
- (5) In this section and section 161A, “appropriate national authority” means—
 - (a) in relation to England, the Secretary of State; and
 - (b) in relation to Wales, the Welsh Ministers.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument subject—
 - (a) in the case of regulations made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) in the case of regulations made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales.
- (7) In this section,—
 - (a) paragraph (1) of section 219 does not apply; and
 - (b) in paragraph (2) of that section, references to “the Ministers” or the “the Secretary of State” shall be taken to be references to the appropriate national authority.

Textual Amendments

F409 Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

161AB. Works notices: exceptions etc

- (1) Nothing in section 161A shall entitle the [^{F409}appropriate agency] to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of [^{F419}an environmental permit] .
- (2) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [^{F409}appropriate agency], to enter any controlled waters.
- (3) Subsection (2) does not apply to the service of a notice on the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- ^{F420}(4)
- (5) In this section “mine” has the same meaning as in the Mines and Quarries Act 1954.]

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

- F409** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F419** Words in s. 161AB(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(8)(b)** (with reg. 1(2), Sch. 4)
- F420** S. 161AB(4) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(n), **Sch. 28** (with reg. 1(2), Sch. 4)

Modifications etc. (not altering text)

- C154** Ss. 161-161D 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**)
- C155** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

^{F421}161B Grant of, and compensation for, rights of entry etc.

- (1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.
 - (2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.
 - (3) Before serving a works notice, the [^{F409}appropriate agency] shall reasonably endeavour to consult every person who appears to it—
 - (a) to be the owner or occupier of any relevant land, and
 - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,concerning the rights which that person may be so required to grant.
 - (4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (3) above.
 - (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.
- [^{F422}(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5), regulations by virtue of that subsection may—
- (a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;
 - (b) without prejudice to the generality of paragraph (a) above, provide for compensation under this section to be payable in respect of—
 - (i) any effect of any rights being granted, or
 - (ii) any consequence of the exercise of any rights which have been granted;

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- (c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;
- (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
 - (i) as to whether any, and (if so) how much and when, compensation under this section is payable, or
 - (ii) as to the person to or by whom it shall be paid,
 is to be determined;
- (e) provide for when or how applications may be made for compensation under this section;
- (f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;
- (g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;
- (h) make provision similar to any provision made by paragraph 8 of Schedule 19;
- (i) make different provision for different cases, including different provision in relation to different persons or circumstances;
- (j) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.]

(7) In this section—

“prescribed” means prescribed in regulations made by the Secretary of State;

“relevant land” means—

- (a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or
- (b) any land adjoining or adjacent to that land or those waters;

“works notice” means a works notice under section 161A above.

Textual Amendments

F409 Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

F421 Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by [1995 c. 25, s. 120](#), **Sch. 22 para. 162** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3; [S.I. 1999/803](#), art. 2; [S.I. 1999/1301](#), art. 2

F422 S. 161B(6) substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 21 para. 21(6)** (with reg. 72, Sch. 4)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

C156 S. 161B applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 4(3)(b)**, 105(3); [S.I. 2006/984](#), art. 2(d)

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^{F423}**161A Appeals against works notices.**

- (1) A person on whom a works notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Secretary of State.
- (2) On any appeal under this section the Secretary of State—
 - (a) shall quash the notice, if he is satisfied that there is a material defect in the notice; but
 - (b) subject to that, may confirm the notice, with or without modification, or quash it.
- (3) The Secretary of State may by regulations make provision with respect to—
 - (a) the grounds on which appeals under this section may be made; or
 - (b) the procedure on any such appeal.
- (4) Regulations under subsection (3) above may (among other things)—
 - (a) include provisions comparable to those in section 290 of the ^{M58}Public Health Act 1936 (appeals against notices requiring the execution of works);
 - (b) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
 - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;
 - (d) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;
 - (e) make provision as respects—
 - (i) the particulars to be included in the notice of appeal;
 - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; or
 - (iii) the abandonment of an appeal.
- (5) In this section “works notice” means a works notice under section 161A above.
- (6) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).

Textual Amendments

F423 Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

Modifications etc. (not altering text)

C154 Ss. 161-161D 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**)

C155 Ss. 161-161D modified (1.1.2017) by **The Environmental Permitting (England and Wales) Regulations 2016** (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

C157 S. 161C: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. **114(2)(a)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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C158 S. 161C applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 4\(3\)\(b\), 105\(3\); S.I. 2006/984, art. 2\(d\)](#)

Marginal Citations

M58 1936 c. 49.

^{F424}161D Consequences of not complying with a works notice.

- (1) If a person on whom the [^{F425}appropriate agency] serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding three months or to [^{F426}a fine] or to both;
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the [^{F425}appropriate agency] may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the [^{F425}appropriate agency] in doing it.
- (4) If the [^{F425}appropriate agency] is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the [^{F425}appropriate agency] may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (5) In this section “works notice” means a works notice under section 161A above.

Textual Amendments

F424 Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by [1995 c. 25, s. 120, Sch. 22 para. 162 \(with ss. 7\(6\), 115, 117\); S.I. 1995/1983, art. 3; S.I. 1999/803, art. 2; S.I. 1999/1301, art. 2](#)

F425 Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 283 \(with Sch. 7\)](#)

F426 Words in s. 161D(2)(a) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\), reg. 1\(1\), Sch. 4 para. 24\(5\) \(with reg. 5\(1\)\)](#)

Modifications etc. (not altering text)

C154 Ss. 161-161D 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\)](#)

C155 Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 Pt. 7 paras. 1\(3\), 2 \(with regs. 1\(3\), 77-79, Sch. 4\)](#)

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162 Other powers to deal with foul water and pollution.

- (1) Without prejudice to the powers conferred by [F427 sections 161 to 161D] above and subsections (2) and (3) below, the [F425 appropriate agency] shall have power, on any land—
 - (a) which belongs to the [F425 appropriate agency]; or
 - (b) over or in which the [F425 appropriate agency] has acquired the necessary easements or rights,
to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose of intercepting, treating or disposing of any foul water arising or flowing on that land or of otherwise preventing any such pollution as is mentioned in section 159(6)(b) above.
- (2) Subject to the following provisions of this Part, the [F425 appropriate agency] shall, for the purpose of carrying out its functions, have power—
 - (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
 - (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials;and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.
- (3) Subject to the following provisions of this Part, the [F425 appropriate agency] shall, for the purpose of carrying out its functions, have power—
 - (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
 - (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;
and the provisions of section 160 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.
- (4) Without prejudice to the provisions of sections 178 to 184 below, nothing in subsection (1) above shall authorise the [F425 appropriate agency], without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.
- (5) Any dispute as to whether any consent for the purposes of subsection (4) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (6) In this section—

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“relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises;

“service pipe” and “water main” have the same meanings as in the ^{M59}Water Industry Act 1991;

“waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

Textual Amendments

F425 Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 283](#) (with Sch. 7)

F427 Words in s. 162(1) substituted (29.4.1999) by [1995 c. 25, s. 120, Sch. 22 para. 163](#) (with ss. 7(6), 115, 117); [S.I. 1999/1301, art. 2](#)

Marginal Citations

M59 [1991 c. 56.](#)

Powers to discharge water

163 Discharges for works purposes.

- (1) Subject to the following provisions of this section and to section 164 below, where the [^{F425}appropriate agency]—
 - (a) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole or other work belonging to or used by the [^{F425}appropriate agency] for the purposes of, or in connection with, the carrying out of any of its functions; or
 - (b) is exercising or about to exercise any power conferred by section 159, 160 or 162(2) or (3) above,
 the [^{F425}appropriate agency] may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.
- (2) Nothing in this section shall authorise any discharge which—
 - (a) damages or injuriously affects the works or property of any railway company or navigation authority; or
 - (b) floods or damages any highway.
- (3) If the [^{F425}appropriate agency] fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—
 - (a) mud and silt;
 - (b) solid, polluting, offensive or injurious substances; and
 - (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,
 it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (4) In this section—

“railway company” means the British Railways Board, [^{F428}Transport for London or any subsidiary (within the meaning of the Greater London

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Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway; and
“relevant pipe” has the same meaning as in section 159 above.

Textual Amendments

- F425** Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F428** Words in s. 163(4) substituted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), **Sch. 1 para. 16(2)**

164 Consents for certain discharges under section 163.

- (1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 163 above except with such consent as may be prescribed.
- (2) Where the [^{F425}appropriate agency] makes an application to any person for a consent for the purposes of this section—
 - (a) that application shall be accompanied or supplemented by all such information as that person may reasonably require; and
 - (b) the [^{F425}appropriate agency] shall serve a copy of the application, and of any consent given on that application, on every person who—
 - (i) is registered with the [^{F425}appropriate agency] in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and
 - (ii) has not agreed in writing that he need not be served with such a copy;but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—
 - (a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and
 - (b) in any other case, before the end of the period of three months beginning with that day;

and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

- (4) Where—
 - (a) the [^{F425}appropriate agency], having made an application to any person for a consent for the purposes of this section, has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that person; and

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- (b) that requirement was made by that person at such a time before the end of the period within which he is required to determine the application as gave the [F425 appropriate agency] a reasonable opportunity to provide the required information within that period,
 that person may delay his determination of the application until a reasonable time after the required information is provided.
- (5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.
- (6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) Where any discharge under section 163 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the [F425 appropriate agency] shall, as soon as practicable after making the discharge, serve a notice which—
- (a) states that the discharge has been made; and
 - (b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,
- on every person on whom the [F425 appropriate agency] would have been required to serve the application for that consent or any copy of that application.
- (8) If the [F425 appropriate agency] contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the M60 Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

Textual Amendments

F425 Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

Modifications etc. (not altering text)

C159 S. 164 modified (30.11.2017) by [The Conservation of Habitats and Species Regulations 2017 \(S.I. 2017/1012\)](#), regs. 1(2), **102(4)**

Marginal Citations

M60 1945 c. 42.

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Flood defence and drainage works

165 [F⁴²⁹General powers to carry out works]

- [F⁴³⁰(1) The [F⁴³¹appropriate agency] may—
- (a) carry out flood risk management work within subsection (1D)(a) to (f) if Conditions 1 and 2 are satisfied;
 - (b) carry out flood risk management work within subsection (1D)(g) or (h) if Condition 1 is satisfied.
- (1A) Condition 1 is that the [F⁴³²appropriate agency] considers the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.
- (1B) Condition 2 is that the purpose of the work is to manage a flood risk (within the meaning of that Act) from—
- (a) the sea, or
 - (b) a main river.
- (1C) In subsection (1B)(b) the reference to a main river includes a reference to a lake, pond or other area of water which flows into a main river.
- (1D) In this section “flood risk management work” means anything done—
- (a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
 - (b) to operate existing works (such as sluiceways or pumps);
 - (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
 - (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
 - (e) for the purpose of maintaining or restoring natural processes;
 - (f) to monitor, investigate or survey a location or a natural process;
 - (g) to reduce or increase the level of water in a place;
 - (h) to alter or remove works.]
- (2) The [F⁴³³appropriate agency] shall also have power^{F⁴³⁴}... to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.
- (3) The [F⁴³⁵appropriate agency] may construct all such works and do all such things in the sea or in any estuary as may, in its opinion, be necessary to secure an adequate outfall for a main river.
- [F⁴³⁶(4) The Agency [F⁴³⁷or the NRBW] may by agreement with any person carry out, improve or maintain, at that person’s expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include such part (if any) of the amount of any grant made under section 47 of the Environment Act 1995 (grants to the new Agencies) [F⁴³⁸or article 12 of the Natural Resources Body for Wales (Establishment) Order 2012

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- (grants to the NRBW) (S.I.2012/1903)] as the Agency [^{F437}or the NRBW] decides (subject to any terms on which the grant is made) to allocate for the works in question.]
- (5) The Agency [^{F439}or the NRBW] may enter into an agreement with any local authority or with any navigation authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work ^{F440}... which the Agency [^{F439}or the NRBW] is authorised to carry out [^{F441}under this section].
- (6) Nothing in subsections (1) to (3) above authorises any person to enter on the land of any person except for the purpose of maintaining existing works.
- (7) In this section “watercourse” has the same meaning as in Part IV of this Act ^{F442}...

Textual Amendments

- F429** S. 165 heading substituted (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(6)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F430** S. 165(1)-(1D) substituted for s. 165(1) (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(2)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F431** Words in s. 165(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F432** Words in s. 165(1A) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F433** Words in s. 165(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F434** Words in s. 165(2) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(3)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F435** Words in s. 165(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F436** S. 165(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(2)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)
- F437** Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(a)** (with Sch. 7)
- F438** Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(b)** (with Sch. 7)
- F439** Words in s. 165(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(4)** (with Sch. 7)
- F440** Words in s. 165(5) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(a)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F441** Words in s. 165(5) added (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(b)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F442** Words in s. 165(7) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(5)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

Modifications etc. (not altering text)

- C160** S. 165 excluded (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 11(2)**, 76(2).

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166 Power to carry out works for purpose of providing flood warning system.

- (1) Without prejudice to its other powers by virtue of section 37 of the 1995 Act (incidental general powers of the Agency), [F443 or (as the case may be) article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),] Part IV of this Act and this Part, the [F444 appropriate agency] shall have power—
- (a) to provide and operate flood warning systems;
 - (b) to provide, install and maintain apparatus required for the purposes of such systems;
 - (c) to carry out any other engineering or building operations so required.
- (2) Subsection (1) above shall not be construed as authorising, on the part of the [F445 appropriate agency], any act or omission which, apart from that subsection, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the [F445 appropriate agency] by virtue of its constitution.
- (3) The [F446 Agency] may exercise the powers conferred by subsection (1)(b) or (c) above in an area in Scotland as if—
- (a) its functions in relation to [F447 the flood risk management regions adjacent to Scotland] were functions in relation to that area in Scotland; and
 - (b) that area in Scotland were included in [F448 those flood risk management regions];

but the powers conferred by this subsection are subject (except in the case of a power to maintain apparatus) to prior consultation with the local authority (within the meaning of section 1 of the M61 Flood Prevention (Scotland) Act 1961) for the area in Scotland in question.

[F449 (4) In this section—

[F450 “flood risk management region” means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010;]

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
- (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
- (c) other matters appearing to the [F451 appropriate agency] to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.]

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[^{F449}(4) In this section—

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
- (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
- (c) other matters appearing to the [^{F451}appropriate agency to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.]]

Textual Amendments

- F443** Words in s. 166(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(2)(a)** (with Sch. 7)
- F444** Words in s. 166(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(2)(b)** (with Sch. 7)
- F445** Words in s. 166(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(3)** (with Sch. 7)
- F446** Words in s. 166 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F447** Words in s. 166(3)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(2)(a)**
- F448** Words in s. 166(3)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(2)(b)**
- F449** S. 166(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), **ss. 69(3)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)
- F450** Words in s. 166(4) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(3)**
- F451** Words in s. 166(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(4)** (with Sch. 7)

Marginal Citations

- M61** 1961 c. 41.

167 Power to dispose of spoil in connection with flood defence works.

- (1) Subject to subsection (2) below, the [^{F452}appropriate agency] may—
- (a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any watercourse; and

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- (b) deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the matter in question to be removed and deposited by mechanical means in one operation.
- (2) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the ^{M62}Environmental Protection Act 1990.
- (3) The [^{F453}appropriate agency] and the council of any district or London borough [^{F454}or Welsh county or county borough] may enter into an agreement providing—
 - (a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
 - (b) for the payment by the [^{F453}appropriate agency] to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.
- (4) In this section “banks” and “watercourse” have the same meanings as in Part IV of this Act.

Textual Amendments

- F452** Words in s. 167(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 286(2)** (with Sch. 7)
- F453** Words in s. 167(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 286(3)** (with Sch. 7)
- F454** Words in s. 167(3) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 para. 3(4)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Marginal Citations

- M62** 1990 c. 43.

[^{F455}**167A** Consultation in relation to works affecting flood and coastal erosion risks

- (1) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010) in Wales, the Agency must consult the NRBW.
- (2) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within that meaning) in England, the NRBW must consult the Agency.
- (3) This section applies to any function under—
 - ^{F456}(a)
 - (b) the flood risk management work provisions;
 - (c) byelaws made under paragraph 5 of Schedule 25.]

Textual Amendments

- F455** S. 167A inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 287** (with Sch. 7)
- F456** S. 167A(3)(a) repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-33)

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Compulsory works orders

168 Compulsory works orders.

- (1) Where the [^{F457}appropriate agency] is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—
 - (a) to carry out any engineering or building operations; or
 - (b) to discharge water into any inland waters or underground strata,
 the [^{F457}appropriate agency] may apply to either of the Ministers for an order under this section (“a compulsory works order”).
- (2) Subject to the following provisions of this section, the Ministers shall each have power, on an application under subsection (1) above, by order made by statutory instrument—
 - (a) to confer such compulsory powers; and
 - (b) to grant such authority,
 as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.
- (3) Schedule 19 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.
- (4) Subject to the provisions of Schedule 19 to this Act, a compulsory works order may—
 - (a) without prejudice to section 154 above, confer power to acquire compulsorily any land, including—
 - (i) power to acquire interests in and rights over land by the creation of new rights and interests; and
 - (ii) power, by the compulsory acquisition by the [^{F457}appropriate agency] of any rights over land which is to be or has been acquired by the [^{F457}appropriate agency], to extinguish any such rights;
 - (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part which do not apply for those purposes apart from by virtue of this paragraph;
 - (c) make any authority granted by the order subject to such conditions as may be specified in the order;
 - (d) amend or repeal any local statutory provision;
 - (e) contain such supplemental, consequential and transitional provision as the Minister making the order considers appropriate;
 and section 156(1) above shall apply in relation to the powers conferred by virtue of this section as it applies in relation to the power conferred by section 154 above.
- (5) Without prejudice to any duty imposed by virtue of section 184 below, where—
 - (a) either of the Ministers makes a compulsory works order authorising the [^{F457}appropriate agency] to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on the [^{F457}appropriate agency]; and
 - (b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,

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he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.

- (6) Nothing in any compulsory works order shall exempt the [^{F457}appropriate agency] from any restriction imposed by Chapter II of Part II of this Act.
- (7) It is hereby declared that a compulsory works order may grant authority for discharges of water by the [^{F457}appropriate agency] where the [^{F457}appropriate agency] has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.
- (8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 155 to 158 and 165 to 167 above.
- [^{F458}(9) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.]

Textual Amendments

F457 Words in s. 168 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 288\(2\)](#) (with Sch. 7)

F458 S. 168(9) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 288\(3\)](#) (with Sch. 7)

CHAPTER II

POWERS OF ENTRY

169 Powers of entry for enforcement purposes.

- (1) Any person designated in writing for the purpose by either of the Ministers [^{F459}, by the Agency, or by the NRBW,] may—
- (a) enter any premises or vessel for the purpose of ascertaining whether any provision of an enactment to which this section applies, of any subordinate legislation or other instrument made by virtue of any such enactment or of any byelaws made by the Agency [^{F460} or of any relevant byelaws made by the NRBW] is being or has been contravened; and
 - (b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as that Minister [^{F461}, the Agency, or the NRBW]—
 - (i) considers appropriate for the purpose mentioned in paragraph (a) above; and
 - (ii) has authorised that person to carry out or take away.
- [^{F462}(2) The powers conferred by subsection (1) above in relation to any premises shall include power, in order to obtain information for the purpose mentioned in subsection (1)(a) above—
- (a) to carry out experimental borings or other works on those premises; and

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- (b) to install and keep monitoring and other apparatus there.]
- (3) ^{F463}[Subject to subsection (4) below,]this section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the ^{F464}[Agency] carries out functions ^{F465}[or the NRBW carries out relevant transferred functions].
- ^{F466}(3A) The Agency may designate a person under subsection (1) in relation to—
- (a) any provision made by or under this Act, so far as it applies otherwise than in relation to Wales;
 - (b) any provision made by or under any other enactment, if the Agency carries out functions under or for the purposes of that provision;
 - (c) any byelaws made by the Agency.
- (3B) The NRBW may designate a person under subsection (1) in relation to—
- (a) any provision made by or under this Act, so far as it applies in relation to Wales;
 - (b) any provision made by or under any other enactment, if the NRBW carries out relevant transferred functions under or for the purposes of that provision;
 - (c) any relevant byelaws.]
- ^{F467}[(4) The powers conferred by this section shall not have effect for the purposes of any of the Agency's ^{F468}[or the NRBW's] pollution control functions, within the meaning of section 108 of the 1995 Act.]
- ^{F469}(5) In this section, “relevant byelaws” means byelaws made (or treated as if made) by the NRBW in the exercise of any relevant transferred functions.]

Textual Amendments

- F459** Words in s. 169(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(2)(a)** (with Sch. 7)
- F460** Words in s. 169(1)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(2)(b)** (with Sch. 7)
- F461** Words in s. 169(1)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(2)(c)** (with Sch. 7)
- F462** S. 169(2) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 71, 105(3)**; S.I. 2004/641, art. 3(r) (with Sch. 3 paras. 67)
- F463** Words in s. 169(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F464** Words in s. 169 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F465** Words in s. 169(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(3)** (with Sch. 7)
- F466** S. 169(3A)(3B) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(4)** (with Sch. 7)
- F467** S. 169(4) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F468** Words in s. 169(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(5)** (with Sch. 7)
- F469** S. 169(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(6)** (with Sch. 7)

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170 Power of entry for certain works purposes.

- (1) Any person designated in writing for the purpose by the Agency [^{F470}or by the NRBW] may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
 - (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the Agency [^{F471}or the NRBW] to exercise any relevant works power; or
 - (ii) how any such power should be exercised;
 - (b) the exercise of any such power.
- (3) The power by virtue of subsection (1) above of a person designated by the Agency [^{F472}or by the NRBW] to enter any premises for the purposes of carrying out any survey or tests shall include power—
 - (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and
 - (b) to take away and analyse such samples of water or effluent or of any land or articles as the Agency [^{F473}or the NRBW] considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above and has authorised that person to take away and analyse.
- (4) In this section “relevant works power” means any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 above.

Textual Amendments

- F470** Words in s. 170(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 290(2)** (with Sch. 7)
- F471** Words in s. 170(2)(a)(i) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 290(3)** (with Sch. 7)
- F472** Words in s. 170(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 290(4)(a)** (with Sch. 7)
- F473** Words in s. 170(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 290(4)(b)** (with Sch. 7)

Modifications etc. (not altering text)

- C161** S. 170 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **5(1)**
- C162** S. 170 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **6(1)**
- C163** S. 170 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **5(1)**
- C164** S. 170 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **6(1)**

171 Power to carry out surveys and to search for water.

- (1) Without prejudice to the rights and powers conferred by the other provisions of this Chapter, any person designated in writing under this section by the Agency [^{F474}or by the NRBW] may enter any premises for any of the purposes specified in subsection (2) below.

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- (2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—
- ^{F475}(a)
- (b) whether it would be appropriate for the Agency [^{F476}or the NRBW] to apply for an order under section 168 above and what compulsory powers it would be appropriate to apply for under that section.
- (3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—
- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
- (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and
- (c) to take away and analyse such samples of water or of any land or articles as the Agency [^{F477}or the NRBW] considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.
- (4) [^{F478}The powers conferred by this section or section 172 of the Housing and Planning Act 2016 shall not be exercised on behalf of the Agency or the NRBW in any case for purposes connected with the determination of—]
- (a) whether, where or how a reservoir should be constructed; or
- (b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,
- unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.
- (5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—
- (a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and
- (b) he has considered any representation or objections with respect to the proposed exercise of the powers under this section which—
- (i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and
- (ii) have not been withdrawn.
- [^{F479}(6) In relation to the NRBW, the reference to functions in subsection (2)(a) has effect as a reference to relevant transferred functions.]

Textual Amendments

F474 Words in s. 171(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(2)** (with Sch. 7)

F475 S. 171(2)(a) omitted (13.7.2016) by virtue of [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 14 para. 23(2)**; S.I. 2016/733, reg. 3(h) (with reg. 6)

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- F476** Words in s. 171(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(3)** (with Sch. 7)
- F477** Words in s. 171(3)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(4)** (with Sch. 7)
- F478** Words in s. 171(4) substituted (13.7.2016) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 14 para. 23(3)**; S.I. 2016/733, reg. 3(h) (with reg. 6)
- F479** S. 171(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(5)** (with Sch. 7)

Modifications etc. (not altering text)

- C165** S. 171 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **5(2)**
- C166** S. 171 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **5(2)**
- C167** S. 171 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **6(2)**
- C168** S. 171 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **6(2)**

172 Powers of entry for other purposes.

- (1) Any person designated in writing for the purpose by either of the Ministers^[F480], by the Agency, or by the NRBW] may enter any premises or vessel for the purpose of—
- determining whether, and if so in what manner, any power or duty conferred or imposed on either of the Ministers^[F481], on the Agency, or on the NRBW,] by virtue of any enactment to which this section applies (including a power of either or both of the Ministers to make subordinate legislation) should be exercised or, as the case may be, performed; or
 - exercising or performing any power or duty which is so conferred or imposed.
- (2) Any person designated in writing for the purpose by either of the Ministers^[F482], the Agency, or the NRBW,] may—
- carry out such inspections, measurements and tests on any premises or vessel entered by that person under this section or of any articles found on any such premises or vessel; and
 - take away such samples of water or effluent or of any land or articles, as that Minister ^[F482], the Agency, or the NRBW,] considers appropriate for any purpose mentioned in subsection (1) above and has authorised that person to carry out or take away.
- (3) ^[F483]Subject to subsection (3A) below,] the powers which by virtue of subsections (1) and (2) above are conferred in relation to any premises for the purpose of enabling either of the Ministers^[F484], the Agency, or the NRBW,] to determine whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under the water pollution provisions of this Act shall include power, in order to obtain the 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.
- ^[F485](3A) The powers conferred by this section shall not have effect for the purposes of any of the Agency's ^[F486]or the NRBW's] pollution control functions, within the meaning of section 108 of the 1995 Act.]

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- (4) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Agency [^{F487}or the NRBW] carries out functions.
- [^{F488}(5) In relation to the NRBW, the reference to functions in subsection (4) has effect as a reference to relevant transferred functions.]

Textual Amendments

- F480** Words in s. 172(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(2)(a)** (with Sch. 7)
- F481** Words in s. 172(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(2)(b)** (with Sch. 7)
- F482** Words in s. 172(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(3)** (with Sch. 7)
- F483** Words in s. 172(3) inserted (1.4.1996) by [1995 c. 25, s. 120](#), **Sch. 22 para. 166** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F484** Words in s. 172(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(3)** (with Sch. 7)
- F485** S. 172(3A) added (1.4.1996) by [1995 c. 25, s. 120](#), **Sch. 22 para. 166** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F486** Words in s. 172(3A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(4)** (with Sch. 7)
- F487** Words in s. 172(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(5)** (with Sch. 7)
- F488** S. 172(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(6)** (with Sch. 7)

173 Powers of entry: supplemental provisions.

Schedule 20 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by the preceding provisions of this Chapter.

Modifications etc. (not altering text)

- C169** S. 173 applied (with modifications) (2.7.2009) by [Broads Authority Act 2009 \(c. i\)](#), **s. 24(3)** (with ss. 2(3), 16(3), 41(4), 42, Sch. 6)
- C170** S. 173 applied (with modifications) (2.7.2009) by [Broads Authority Act 2009 \(c. i\)](#), **s. 17(3)** (with ss. 2(3), 16(3), 42, Sch. 6)

174 Impersonation of persons exercising powers of entry.

- (1) A person who, without having been designated or authorised for the purpose by the Agency [^{F489}or by the NRBW], purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and [^{F490}liable—].
- [^{F490}(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.]

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- (2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist, or would not be exercisable, even if that person had been designated or authorised by the Agency [^{F491}or by the NRBW].

Textual Amendments

- F489** Words in s. 174(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 293** (with Sch. 7)
- F490** S. 174(1)(a)(b) and the word preceding them substituted (1.4.1996) for words by 1995 c. 25, s. 120, **Sch. 22 para. 167** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F491** Words in s. 174(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 293** (with Sch. 7)

CHAPTER III

PROVISIONS SUPPLEMENTAL TO LAND AND WORK POWERS

Vesting of pipes in the [^{F492}appropriate agency]

Textual Amendments

- F492** Words in s. 175 cross-heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

175 Vesting of pipes in the [^{F493}appropriate agency].

- (1) Subject to any provision to the contrary contained in an agreement between the [^{F493}appropriate agency] and the person in whom an interest in the pipe is or is to be vested, every pipe which—
- (a) is a relevant pipe for the purposes of section 159 or 160 above; and
 - (b) has been laid, in exercise of any power conferred by Chapter I of this Part or otherwise, by the [^{F493}appropriate agency],
- shall vest in the [^{F493}appropriate agency].
- (2) Subsection (1) above is without prejudice to the vesting of anything in the [^{F493}appropriate agency] by virtue of the exercise by the [^{F493}appropriate agency] of any power to acquire property by agreement or compulsorily.

Textual Amendments

- F493** Words in s. 175 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

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Offence of interference with works etc.

176 Offence of interference with works etc.

- (1) Subject to subsection (2) below, if any person without the consent of the [^{F494}appropriate agency]—
- (a) intentionally or recklessly interferes with any resource main or other pipe vested in the [^{F494}appropriate agency] or with any structure, installation or apparatus belonging to the [^{F494}appropriate agency]; or
 - (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,
- that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) A person shall not be guilty of an offence under subsection (1) above—
- (a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or
 - (b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—
 - (i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
 - (ii) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.
- (3) Any person who without the consent of the [^{F494}appropriate agency]—
- (a) attaches any pipe or apparatus to any resource main or other pipe vested in the [^{F494}appropriate agency]; or
 - (b) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this section,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In proceedings against any person for an offence by virtue of paragraph (b) of subsection (3) above it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in that subsection.
- (5) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the [^{F494}appropriate agency]; and any such breach of duty which causes the [^{F494}appropriate agency] to sustain loss or damage shall be actionable at the suit of the [^{F494}appropriate agency].
- (6) The amount recoverable by virtue of subsection (5) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.
- (7) In this section “service pipe” and “stopcock” have the same meanings as in the ^{M63}Water Industry Act 1991, and “consumer” has the same meaning as in Part III of that Act.

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Textual Amendments

F494 Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Marginal Citations

M63 1991 c. 56.

Compensation etc. in respect of exercise of works powers

177 Compensation etc. in respect of exercise of works powers.

Schedule 21 to this Act shall have effect for making provision for imposing obligations as to the payment of compensation in respect of the exercise of the powers conferred on the [^{F494}appropriate agency] by sections 159 to 167 above and otherwise for minimising the damage caused by the exercise of those powers.

Textual Amendments

F494 Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Protective provisions

178 Protection for particular undertakings.

Schedule 22 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by the [^{F494}appropriate agency].

Textual Amendments

F494 Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

179 Protective provisions in respect of flood defence works and watercourses etc.

- (1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—
 - (a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or
 - (b) with any such works used by any person for irrigating any land.
- (2) Where the [^{F494}appropriate agency] proposes, otherwise than in exercise of any compulsory powers—
 - (a) to construct or alter any such inland waters in any internal drainage district as do not form part of a main river; or

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- (b) to construct or alter any works on or in any such inland waters, the [^{F494}appropriate agency] shall consult the internal drainage board for that district before doing so.
- (3) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;
 - (b) as to whether any consent for the purposes of this section is being unreasonably withheld; or
 - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) The provisions of this section shall be without prejudice to the provisions of Schedule 22 to this Act.

Textual Amendments

F494 Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Modifications etc. (not altering text)

C171 S. 179 applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 67(2), 76(2)**.

180 Power of navigation authorities etc to divert the [^{F495}appropriate agency's] watercourses.

- (1) Where any watercourses under the control of the [^{F495}appropriate agency] pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any relevant authority, the relevant authority may, at their own expense and on substituting for those watercourses other equally effective watercourses—
- (a) take up, divert or alter the level of those watercourses; and
 - (b) do all such matters and things as may be necessary in connection with the works authorised to be done by them under this section.
- (2) If any question arises under this section between the [^{F495}appropriate agency] and any relevant authority as to whether any watercourses substituted or proposed to be substituted by the relevant authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers on the application of either party.
- (3) In this section—
- “relevant authority” means any navigation authority, harbour authority or conservancy authority; and

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“watercourse” has the same meaning as in Part IV of this Act.

Textual Amendments

F495 Words in s. 180 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

181 Works in tidal lands etc.

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise the [^{F496}appropriate agency] to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.
- (2) An approval for the purposes of subsection (1) above shall be given to the [^{F496}appropriate agency] by the service on the [^{F496}appropriate agency] of a notice containing the approval.
- (3) Section 38 of the ^{M64}Salmon and Freshwater Fisheries Act 1975 (tidal lands etc.) shall apply to any proposed construction, alteration or extension under section 156 above as it applies to any proposed construction, alteration or extension under that Act.
- (4) Section 74 of the ^{M65}Land Drainage Act 1991 (application to Crown and tidal lands), so far as it relates to lands below the high-water mark of ordinary spring tides shall apply, as it applies in relation to that Act, to the flood defence provisions of this Act.
- (5) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of sections 159, 160, 162(2) and (3) and 163 above.

Textual Amendments

F496 Words in ss. 181-183 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Marginal Citations

M64 1975 c. 51.
M65 1991 c. 59.

182 Mineral rights.

Schedule 23 to this Act (which makes provision with respect to the acquisition of mineral rights by the [^{F497}appropriate agency] and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the ^{M66}Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

Textual Amendments

F497 Words in ss. 181-183 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

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Marginal Citations

M66 1981 c. 67.

183 Saving for planning controls etc.

- (1) Without prejudice to the operation of section 90 of the ^{M67}Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the ^{M68}Water Act 1989 relates to the functions of the [^{F498}appropriate agency], nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.
- (2) Nothing in the flood defence provisions of this Act shall authorise any person to carry out any works or do anything in contravention of any of the provisions of the ^{M69}Ancient Monuments and Archaeological Areas Act 1979.

Textual Amendments

F498 Words in ss. 181-183 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

Modifications etc. (not altering text)

C172 S. 183 applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 67(2), 76(2)**.

Marginal Citations

M67 1990 c. 8.

M68 1989 c. 15.

M69 1979 c. 46.

184 Duties to make recreational facilities available when building reservoirs in Wales.

- (1) Where [^{F499}the NRBW] carries out any works for or in connection with the construction or operation of a reservoir in Wales which—
 - (a) permanently affect one or more communities; and
 - (b) are not primarily intended by [^{F499}the NRBW] to benefit the inhabitants of that or those communities,
 it shall be the duty of [^{F499}the NRBW] to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.
- (2) It shall be the duty of [^{F499}the NRBW], in performing its duty under subsection (1) above, to consult—
 - (a) the community councils of the communities affected, in the case of communities having such councils; and
 - (b) in any case, the council of any [^{F500}county or county borough] in which any community affected is situated.

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Textual Amendments

F499 Words in s. 184 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 295** (with Sch. 7)

F500 Words in s. 184(2)(b) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11**, para. 3(5) (with ss. 54(4) (7), 55(5), **Sch. 17** paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Savings in respect of existing drainage obligations

185 Savings in respect of existing drainage obligations.

- (1) Nothing in the flood defence provisions of this Act shall operate to release any person from an obligation to which section 21 of the ^{M70}Land Drainage Act 1991 applies.
- (2) The functions of the [^{F501}appropriate agency] as respects the doing of any work under the flood defence provisions of this Act are not to be treated as in any way limited by the fact that some other person is under an obligation, by reason of tenure, custom, prescription or otherwise, to do that work.

Textual Amendments

F501 Words in s. 185(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 296** (with Sch. 7)

Marginal Citations

M70 1991 c. 59.

Interpretation of Part VII

186 Interpretation of Part VII.

- (1) In this Part—
 - “discharge pipe” means a pipe from which discharges are or are to be made under section 163 above;
 - [^{F502}“relevant transferred functions” means any functions which—
 - (a) were exercisable by the Agency before 1 April 2013, and
 - (b) are functions of the NRBW by virtue of the Natural Resources Body for Wales (Functions) Order 2013,but this is subject to subsection (1A).]
 - “resource main” means any pipe, not being a trunk main within the meaning of the ^{M71}Water Industry Act 1991, which is or is to be used for the purpose of—
 - (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
 - (b) giving or taking a supply of water in bulk.

[^{F503}(1A) For the purposes of the definition of “relevant transferred functions”—

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- (a) a function of the Agency was exercisable before 1 April 2013 whether or not the enactment conferring it had come into force before that date, but
 - (b) a function is only a relevant transferred function when the enactment conferring the Agency function transferred to or conferred on the NRBW has come into force.]
- (2) In subsection (1) above—
 “source of supply” shall be construed without reference to the definition of that expression in section 221 below; and
 “supply of water in bulk” has the same meaning as in section 3 above.
- (3) The powers conferred by Chapter I of this Part shall be without prejudice to the powers conferred on the Agency [^{F504}or on the NRBW] by any other enactment or by any agreement.

Textual Amendments

F502 Words in s. 186(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 297(2)** (with Sch. 7)

F503 S. 186(1A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 297(3)** (with Sch. 7)

F504 Words in s. 186(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 297(4)** (with Sch. 7)

Marginal Citations

M71 1991 c. 56.

PART VIII

INFORMATION PROVISIONS

Annual report and publication of information

^{F505}**187**

Textual Amendments

F505 S. 187 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 168](#), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3** (with art. 4)

^{F506}**188 Duty of the Agency and NRBW to publish information**

- (1) The Agency must—
- (a) collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in England; and

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- (b) collaborate with others, so far as it considers it appropriate to do so, in collating and publishing any such information or any similar information in relation to places outside England.
- (2) The NRBW must—
- (a) collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in Wales; and
 - (b) collaborate with others, so far as it considers it appropriate to do so, in collating and publishing any such information or any similar information in relation to places outside Wales.]

Textual Amendments

F506 S. 188 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 298** (with Sch. 7)

Registers etc. to be kept by the ^{F507}appropriate agency]

Textual Amendments

F507 Words in s. 189 cross-heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

189 Register of abstraction and impounding licences.

- (1) The [^{F508}appropriate agency] shall keep, in such manner as may be prescribed, registers containing such information as may be prescribed with respect—
- (a) to applications made for the grant, revocation or variation of licences under Chapter II of Part II of this Act, including information as to the way in which such applications have been dealt with; and
 - (b) to persons becoming the holders of such licences by virtue of [^{F509}section 59A, 59B or 59C above].
- (2) Every register kept by the [^{F508}appropriate agency] under this section shall also contain such information as may be prescribed with respect—
- (a) to applications made in accordance with regulations under section 64 above; and
 - (b) to licences granted or deemed to be granted, and licences revoked or varied, in accordance with regulations made under that section.
- (3) Subject to any regulations under this section, the information which the [^{F508}appropriate agency] is required to keep in registers under this section shall continue to include the information which immediately before 1st September 1989 was contained in a register kept by a water authority under section 53 of the ^{M72}Water Resources Act 1963.
- (4) The contents of every register kept under this section shall be available, at such place as may be prescribed, for inspection by the public at all reasonable hours.

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Textual Amendments

- F508** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F509** Words in s. 189(1)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(3)**, 105(3); S.I. 2006/984, art. 2(m) (with Sch. para. 3)

Modifications etc. (not altering text)

- C173** S. 189 modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), art. 4(1)(3), Sch. 1 paras. 7(10), 8(3), **9**

Marginal Citations

- M72** 1963 c. 38.

190 Pollution control register.

- (1) It shall be the duty of the [^{F508}appropriate agency] to maintain, in accordance with regulations made by the Secretary of State, registers containing prescribed particulars of [^{F510}or relating to]—
- (a) any notices of water quality objectives or other notices served under section 83 above;
 - ^{F511}(b)
 - ^{F512}(c)
 - ^{F513}(d)
 - (e) the following, that is to say—
 - (i) samples of water or effluent taken by the [^{F508}appropriate agency] for the purposes of any of the water pollution provisions of this Act;
 - (ii) information produced by analyses of those samples;
 - (iii) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples, as is acquired by the [^{F508}appropriate agency] from any person under arrangements made by the [^{F508}appropriate agency] for the purposes of any of those provisions; and
 - (iv) the steps taken in consequence of any such information as is mentioned in any of sub-paragraphs (i) to (iii) above;
 - ^{F514}.....
 - ^{F514}(f)
 - ^{F515}(g)
 - ^{F516}(h)
 - ^{F517}(j)
 - ^{F518}(k)
 - ^{F519}(l) directions given by the Secretary of State in relation to the [^{F508}appropriate agency's] functions under the water pollution provisions of this Act;
 - ^{F520}(m)
 - ^{F521}(n)
 - (o) works notices under section 161A above;
 - (p) appeals under section 161C above;
 - (q) convictions for offences under section 161D above;

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- (r) such other matters relating to the quality of water or the pollution of water as may be prescribed by the Secretary of State.
- (1A) Where information of any description is excluded from any register by virtue of section 191B below, a statement shall be entered in the register indicating the existence of information of that description.]
- (2) It shall be the duty of the [^{F508}appropriate agency]—
 - (a) to secure that the contents of registers maintained by the [^{F508}appropriate agency] under this section are available, at all reasonable times, for inspection by the public free of charge; and
 - (b) to afford members of the public reasonable facilities for obtaining from the [^{F508}appropriate agency], on payment of reasonable charges, copies of entries in any of the registers.
- [^{F522}and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question.]
- (3) Section 101 above shall have effect in relation to any regulations under this section as it has effect in relation to any subordinate legislation under Part III of this Act.
- [^{F523}(4) The Secretary of State may give to the [^{F508}appropriate agency] directions requiring the removal from any register maintained by it under this section of any specified information which is not prescribed for inclusion under subsection (1) above or which, by virtue of section 191A or 191B below, ought to have been excluded from the register.]
- [^{F524}(5)

Textual Amendments

- F508** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F510** Words in s. 190(1) inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 169(2)** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)
- F511** S. 190(1)(b) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F512** S. 190(1)(c) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F513** S. 190(1)(d) repealed (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)\(3\)](#), Sch. 22 para. 169(3), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)
- F514** S. 190(1)(f) and word preceding it repealed (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)\(3\)](#), Sch. 22 para. 169(4), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)
- F515** S. 190(1)(g) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F516** S. 190(1)(h) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F517** S. 190(1)(j) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)

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- F518** S. 190(1)(k) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F519** S. 190(1)(g)-(r)(1A) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(4)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F520** S. 190(1)(m) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F521** S. 190(1)(n) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F522** Words in s. 190(2) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(5)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F523** S. 190(4)(5) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(6)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F524** S. 190(5) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)

Modifications etc. (not altering text)

- C174** S. 190 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C175** S. 190 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**)
- C176** S. 190 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

191 Register for the purposes of works discharges.

- (1) The [^{F508}appropriate agency] shall keep a register of persons and premises for the purposes of section 164 above.
- (2) The [^{F508}appropriate agency] shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—
 - (a) the owner or occupier of those premises; or
 - (b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.
- (3) If the [^{F508}appropriate agency] contravenes, without reasonable excuse, any of the requirements of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Textual Amendments

- F508** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

[^{F525}191A] Exclusion from registers of information affecting national security.

- (1) No information shall be included in a register kept or maintained by the [^{F508}appropriate agency] under any provision of this Act if and so long as, in the

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opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the [^{F508}appropriate agency] directions—

- (a) specifying information, or descriptions of information, to be excluded from their registers; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

(3) The [^{F508}appropriate agency] shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) above.

(4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—

- (a) he shall notify the [^{F508}appropriate agency] that he has done so; and
- (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.]

Textual Amendments

F508 Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

F525 S. 191A inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 170** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)

Modifications etc. (not altering text)

C177 S. 191A applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), **reg. 14(3)**

[^{F526}191B] Exclusion from registers of certain confidential information.

(1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register kept or maintained by the [^{F508}appropriate agency] under any provision of this Act, if and so long as the information—

- (a) is, in relation to him, commercially confidential; and
- (b) is not required to be included in the register in pursuance of directions under subsection (7) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the [^{F508}appropriate agency] or, on appeal, by the Secretary of State.

(2) Where information is furnished to the [^{F508}appropriate agency] for the purpose of—

- ^{F527}(a)

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^{F528}(b)

(c) complying with a notice under section 202 below,

then, if the person furnishing it applies to the [^{F508}appropriate agency] to have the information excluded from any register kept or maintained by the [^{F508}appropriate agency] under any provision of this Act, on the ground that it is commercially confidential (as regards himself or another person), the [^{F508}appropriate agency] shall determine whether the information is or is not commercially confidential.

(3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the [^{F508}appropriate agency] fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.

(4) Where it appears to the [^{F508}appropriate agency] that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the [^{F508}appropriate agency] under or by virtue of any provision of any enactment might be commercially confidential, the [^{F508}appropriate agency] shall—

(a) give to the person to whom or whose business it relates notice that that information is required to be included in a register kept or maintained by the [^{F508}appropriate agency] under any provision of this Act, unless excluded under this section; and

(b) give him a reasonable opportunity—

(i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and

(ii) of making representations to the [^{F508}appropriate agency] for the purpose of justifying any such objection;

and, if any representations are made, the [^{F508}appropriate agency] shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under subsection (2) or (4) above, the [^{F508}appropriate agency] determines that information is not commercially confidential—

(a) the information shall not be entered on the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned; and

(b) that person may appeal to the Secretary of State against the decision;

and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.

^{F529}(6) Section 114 of the 1995 Act (delegation or reference to appeals etc) applies to any appeal brought under subsection (5).

(6A) If either party to the appeal so requests, or the Secretary of State or Welsh Ministers so decide, an appeal shall be or continue in the form of a hearing (which must be held in private).

(6B) The Secretary of State may by regulations make provision as to appeals under subsection (5) to the Secretary of State, and the Welsh Ministers may by regulations make provision as to appeals under that subsection to them; and the regulations may, in particular, may make provision as to—

(a) the period within which and the manner in which appeals are to be brought; and

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- (b) the manner in which appeals are to be considered.]
- (7) The Secretary of State may give to the [^{F508}appropriate agency] directions as to specified information, or descriptions of information, which the public interest requires to be included in registers kept or maintained by the [^{F508}appropriate agency] under any provision of this Act notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the [^{F508}appropriate agency] for the information to remain excluded from the register on the ground that it is still commercially confidential and the [^{F508}appropriate agency] shall determine whether or not that is the case.
- (9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.
- (10) The Secretary of State may by regulations substitute (whether in all cases or in such classes or descriptions of case as may be specified in the regulations) for the period for the time being specified in subsection (3) above such other period as he considers appropriate.
- (11) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.
- ^{F530}(12)]

Textual Amendments

- F508** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F526** S. 191B inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 170** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)
- F527** S. 191B(2)(a) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(2)(p)**, **Sch. 28** (with reg. 1(2), Sch. 4)
- F528** S. 191B(2)(b) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(2)(p)**, **Sch. 28** (with reg. 1(2), Sch. 4)
- F529** Ss. 191B(6)-(6B) substituted for s. 191B(6) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(9)** (with reg. 1(2), Sch. 4)
- F530** S. 191B(12) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(2)(p)**, **Sch. 28** (with reg. 1(2), Sch. 4)

Modifications etc. (not altering text)

- C178** S. 191B applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), **reg. 14(3)**
- C179** S. 191B(5): power to delegate functions conferred (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3** (with art. 4)

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

192 Maps of fresh-water limits.

- (1) The Secretary of State—
 - (a) shall deposit maps with the [^{F508}appropriate agency] showing what appear to him to be the fresh-water limits of every relevant river or watercourse; 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.
- (2) It shall be the duty of the [^{F508}appropriate agency] to keep any maps deposited with it under subsection (1) above available, at all reasonable times, for inspection by the public free of charge.
- (3) In this section “relevant river or watercourse” has the same meaning as in section 104 above.

Textual Amendments

F508 Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

[^{F531}Main river map for England

Textual Amendments

F531 Ss. 193-194E substituted for ss. 193, 194 (1.10.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 59(2), 94**; S.I. 2014/1823, art. 3

193 The main river map for England

- (1) The Agency must keep the main river map for England.
- (2) For the purposes of this Act the main river map for England is a record of areas in England which—
 - (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, and
 - (b) indicates which (if any) of those watercourses are watercourses designated in a scheme made under section 137.
- (3) The map is conclusive as to the extent to which a watercourse in England is to be treated as a main river or as part of a main river for the purposes of this Act.
- (4) The map must specify the date on which it takes effect.
- (5) The Agency must keep the map in electronic form.
- (6) In this section and sections 193A to 193E “watercourse” has the same meaning as in Part 4 of this Act.

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

193A Inspection and copies

- (1) The Agency must provide reasonable facilities for inspecting the main river map for England in electronic form.
- (2) The Agency must on request provide any person with—
 - (a) a hard copy of all or part of the map, or
 - (b) data comprising all or part of the map in electronic form.
- (3) The Agency may charge a fee for providing a copy or data under subsection (2), but the fee—
 - (a) must, in the case of a person appearing to the Agency to have requested a copy or data for commercial purposes, represent a reasonable usage fee, and
 - (b) in any other case, may not exceed the reasonable costs of providing the copy or data.
- (4) The Agency must on request provide a body mentioned in the first column of the following table with a hard copy of, or data comprising, such part of the main river map for England as is described in the second column of the entry for that body.

A local authority in England	The part that relates to the local authority's area
An internal drainage board for an internal drainage district that is wholly or partly in England	The part that relates to its district, so far as that district is in England
A water company that exercises functions in relation to an area in England	The part that relates to that area
A highway authority that exercises functions in relation to highways in England	The part that relates to the area in England in relation to which it exercises functions
A navigation authority that exercises functions in relation to an area in England	The part that relates to that area

- (5) The Documentary Evidence Act 1868 has effect as if—
 - (a) the Agency were mentioned in the first column of the Schedule to that Act;
 - (b) any member of the staff of the Agency authorised to act on behalf of the Agency were specified in the second column of the Schedule to that Act in connection with the Agency;
 - (c) the regulation referred to in that Act included the main river map for England kept by the Agency;
 - (d) references to a copy included references to a print-out of information kept in electronic form.

193B Replacing the main river map for England

- (1) The Agency may at any time replace the existing main river map for England for the purpose of including—
 - (a) a change which, pursuant to section 193(2)(b), is required by the making, amendment or revocation of a scheme under section 137,
 - (b) a change to give effect to a determination under section 193C, or

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- (c) a change directed by the Secretary of State under section 193D(5) (following an appeal against a determination).
- (2) A replacement map may not include other changes.
- (3) A replacement map must specify the date on which it takes effect.

193C Determinations as to main rivers

- (1) Subject to the following provisions of this section, the Agency may determine that—
 - (a) such watercourse or part of a watercourse in England as is specified in the determination is to be treated for the purposes of this Act as a main river or part of a main river;
 - (b) such watercourse or part of a watercourse in England as is specified in the determination (not being a watercourse designated in a scheme made under section 137) is no longer to be treated for the purposes of this Act as a main river or part of a main river.
- (2) Before making a determination under subsection (1) as regards a watercourse, the Agency must—
 - (a) publish (in such manner as it considers appropriate) the determination it proposes to make, and
 - (b) consider representations made within the time and in the manner specified by the Agency when publishing the determination.
- (3) The Agency must consult the NRBW before making a determination under subsection (1)—
 - (a) which affects a watercourse part of which is in England and part of which is in Wales, and
 - (b) in which it seems to the Agency that the NRBW has an interest.
- (4) Having taken such steps as are required by subsections (2) and (3), the Agency may—
 - (a) decide not to make a determination, or
 - (b) decide to make a determination in accordance with what was proposed under subsection (2)(a) or otherwise.
- (5) The Agency must publish (in such manner as it considers appropriate)—
 - (a) that decision;
 - (b) the terms of any determination made;
 - (c) if a determination is made, the date on which a replacement map will give effect to the determination.
- (6) The date specified under subsection (5)(c) may not be before the end of a period of six weeks beginning with the day on which the matters specified in subsection (5) are published.
- (7) The Agency must also inform those persons affected by the proposal who made representations in accordance with subsection (2)(b) containing an objection to the proposal as to the matters referred to in subsection (5).

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

193D Appeals

- (1) A person aggrieved by a determination under section 193C may appeal to the Secretary of State.
- (2) An appeal must be made before the end of a period of six weeks beginning with the day on which the matters referred to in section 193C(5) are published.
- (3) Where an appeal is made against a determination, a replacement map under section 193B may not include a change to give effect to the determination except as specified in this section.
- (4) The Secretary of State may appoint a person to make a report to assist the Secretary of State in determining the appeal.
- (5) If the Secretary of State allows the appeal in whole or in part, the Secretary of State may by direction to the Agency—
 - (a) specify a change to be included in a replacement map under section 193B, and
 - (b) specify the date on which that change is to take effect.
- (6) If the Secretary of State dismisses the appeal, the Agency may include a change to give effect to its determination in a replacement map, the replacement map to have effect on such date as the Secretary of State may direct.
- (7) The Secretary of State may direct the Agency to publish the Secretary of State's decision in such manner as the direction may specify.

193E Guidance

- (1) The Secretary of State may from time to time issue guidance to the Agency about the exercise of its functions under sections 193 to 193D.
- (2) The guidance may in particular include guidance as to—
 - (a) determining whether or not a watercourse or part of a watercourse is suitable to become or to remain a main river or a part of a main river;
 - (b) what kind of publication is appropriate under section 193C(2) and (5).
- (3) The Agency must have regard to the guidance in carrying out its functions under sections 193 to 193D.

Main river map for Wales

194 The main river map for Wales

- (1) The NRBW must keep the main river map for Wales.
- (2) For the purposes of this Act the main river map for Wales is a record of areas in Wales which—
 - (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, and
 - (b) indicates which (if any) of those watercourses are watercourses designated in a scheme made under section 137.

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- (3) The map is conclusive as to the extent to which a watercourse in Wales is to be treated as a main river or as part of a main river for the purposes of this Act.
- (4) The map must specify the date on which it takes effect.
- (5) The NRBW must keep the map in electronic form.
- (6) In this section and sections 194A to 194E “watercourse” has the same meaning as in Part 4 of this Act.

194A Inspection and copies

- (1) The NRBW must provide reasonable facilities for inspecting the main river map for Wales in electronic form.
- (2) The NRBW must on request provide any person with—
 - (a) a hard copy of all or part of the map, or
 - (b) data comprising all or part of the map in electronic form.
- (3) The NRBW may charge a fee for providing a copy or data under subsection (2), but the fee—
 - (a) must, in the case of a person appearing to the NRBW to have requested a copy or data for commercial purposes, represent a reasonable usage fee, and
 - (b) in any other case, may not exceed the reasonable costs of providing the copy or data.
- (4) The NRBW must on request provide a body mentioned in the first column of the following table with a hard copy of, or data comprising, such part of the main river map for Wales as is described in the second column of the entry for that body.

A local authority in Wales	The part that relates to the local authority's area
An internal drainage board for an internal drainage district that is wholly or partly in Wales	The part that relates to its district, so far as that district is in Wales
A water company that exercises functions in relation to an area in Wales	The part that relates to that area
A highway authority that exercises functions in relation to highways in Wales	The part that relates to the area in Wales in relation to which it exercises functions
A navigation authority that exercises functions in relation to an area in Wales	The part that relates to that area

- (5) The Documentary Evidence Act 1868 has effect as if—
 - (a) the NRBW were mentioned in the first column of the Schedule to that Act;
 - (b) any member of the staff of the NRBW authorised to act on behalf of the NRBW were specified in the second column of the Schedule to that Act in connection with the NRBW;
 - (c) the regulation referred to in that Act included the main river map for Wales kept by the NRBW;

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- (d) references to a copy included references to a print-out of information kept in electronic form.

194B Replacing the main river map for Wales

- (1) The NRBW may at any time replace the existing main river map for Wales for the purpose of including—
 - (a) a change which, pursuant to section 194(2)(b), is required by the making, amendment or revocation of a scheme under section 137,
 - (b) a change to give effect to a determination under section 194C, or
 - (c) a change directed by the Welsh Ministers under section 194D(5) (following an appeal against a determination).
- (2) A replacement map may not include other changes.
- (3) A replacement map must specify the date on which it takes effect.

194C Determinations as to main rivers

- (1) Subject to the following provisions of this section, the NRBW may determine that—
 - (a) such watercourse or part of a watercourse in Wales as is specified in the determination is to be treated for the purposes of this Act as a main river or part of a main river;
 - (b) such watercourse or part of a watercourse in Wales as is specified in the determination (not being a watercourse designated in a scheme made under section 137) is no longer to be treated for the purposes of this Act as a main river or part of a main river.
- (2) Before making a determination under subsection (1) as regards a watercourse, the NRBW must—
 - (a) publish (in such manner as it considers appropriate) the determination it proposes to make, and
 - (b) consider representations made within the time and in the manner specified by the NRBW when publishing the determination.
- (3) The NRBW must consult the Agency before making a determination under subsection (1)—
 - (a) which affects a watercourse part of which is in Wales and part of which is in England, and
 - (b) in which it seems to the NRBW that the Agency has an interest.
- (4) Having taken such steps as are required by subsections (2) and (3), the NRBW may—
 - (a) decide not to make a determination, or
 - (b) decide to make a determination in accordance with what was proposed under subsection (2)(a) or otherwise.
- (5) The NRBW must publish (in such manner as it considers appropriate)—
 - (a) that decision;
 - (b) the terms of any determination made;
 - (c) if a determination is made, the date on which a replacement map will give effect to the determination.

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- (6) The date specified under subsection (5)(c) may not be before the end of a period of six weeks beginning with the day on which the matters specified in subsection (5) are published.
- (7) The NRBW must also inform those persons affected by the proposal who made representations in accordance with subsection (2)(b) containing an objection to the proposal as to the matters referred to in subsection (5).

194D Appeals

- (1) A person aggrieved by a determination under section 194C may appeal to the Welsh Ministers.
- (2) An appeal must be made before the end of a period of six weeks beginning with the day on which the matters referred to in section 194C(5) are published.
- (3) Where an appeal is made against a determination, a replacement map under section 194B may not include a change to give effect to the determination except as specified in this section.
- (4) The Welsh Ministers may appoint a person to make a report to assist them in determining the appeal.
- (5) If the Welsh Ministers allow the appeal in whole or in part, they may by direction to the NRBW—
 - (a) specify a change to be included in a replacement map under section 194B, and
 - (b) specify the date on which that change is to take effect.
- (6) If the Welsh Ministers dismiss the appeal, the NRBW may include a change to give effect to its determination in a replacement map, the replacement map to have effect on such date as the Welsh Ministers may direct.
- (7) The Welsh Ministers may direct the NRBW to publish their decision in such manner as the direction may specify.

194E Guidance

- (1) The Welsh Ministers may from time to time issue guidance to the NRBW about the exercise of its functions under sections 194 to 194D.
- (2) The guidance may in particular include guidance as to—
 - (a) determining whether or not a watercourse or part of a watercourse is suitable to become or to remain a main river or a part of a main river;
 - (b) what kind of publication is appropriate under section 194C(2) and (5).
- (3) The NRBW must have regard to the guidance in carrying out its functions under sections 194 to 194D.]

^{F532}[^{F531}**194E** **aps of waterworks.**

.....]

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Textual Amendments

- F531** Ss. 193-194E substituted for ss. 193, 194 (1.10.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 59(2)**, 94; S.I. 2014/1823, **art. 3**
- F532** S. 195 repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 60(1)**, 94(2)(n)

Provision and acquisition of information etc.

^{F533}**196**

Textual Amendments

- F533** S. 196 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 171](#), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with **art. 4**)

197 Provision of information about water flow etc.

- (1) It shall be the duty of the [^{F508}appropriate agency] —
- (a) to provide a water undertaker with all such information to which this section applies as is in the possession of the [^{F508}appropriate agency] and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and
 - (b) to provide reasonable facilities to all persons—
 - (i) for the inspection of the contents of any records kept by the [^{F508}appropriate agency] and containing information to which this section applies; and
 - (ii) for the taking of copies of, or of extracts from, any such records.
- (2) It shall be the duty of every water undertaker to provide the [^{F508}appropriate agency] with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the [^{F508}appropriate agency] for purposes connected with the carrying out of any of its functions.
- (3) Where records of the flow, level or volume of any inland waters, other than discrete waters, are kept by a person other than a water undertaker, the [^{F508}appropriate agency] shall have the right at all reasonable times—
- (a) to inspect the contents of any of those records; and
 - (b) to take copies of, or of extracts from, the contents of any of those records;
- and any person who, without reasonable excuse, refuses or fails to permit the [^{F508}appropriate agency] to exercise its right under this subsection shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.
- (4) Information provided to a water undertaker or to the [^{F508}appropriate agency] under subsection (1) or (2) above shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the [^{F508}appropriate agency] may reasonably require; and the duties of the [^{F508}appropriate agency] under subsection (1) above shall extend to information provided to or obtained by the [^{F508}appropriate agency] under subsection (2) or (3) above.

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- (5) Information or facilities provided under subsection (1) or (2) above to the [^{F508}appropriate agency] , to a water undertaker, to a local authority or joint planning board, or to an internal drainage board, shall be provided free of charge; and facilities provided under subsection (1) above to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as the may determine.
- (6) The duties of a water undertaker under subsection (2) above shall be enforceable under section 18 of the ^{M73}Water Industry Act 1991 by the Secretary of State.
- (7) This section applies to information about the flow, level or volume of any inland waters or any water contained in underground strata, about rainfall or any fall of snow, hail or sleet or about the evaporation of any water.

Textual Amendments

F508 Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

Marginal Citations

M73 1991 c. 56.

198 Information about underground water.

- (1) Any person who, for the purpose of searching for or abstracting water, proposes to sink a well or borehole intended to reach a depth of more than fifty feet below the surface shall, before he begins to do so, give notice to [^{F534}United Kingdom Research and Innovation (“UKRI”)] of his intention to do so.
- (2) Any person sinking any such well or borehole as is mentioned in subsection (1) above shall-
 - (a) keep a journal of the progress of the work and, on completion or abandonment of the work, send a complete copy of the journal to [^{F535}UKRI];
 - (b) send to [^{F536}UKRI] particulars of any test made before completion or abandonment of the work of the flow of water;
 - (c) allow any person authorised by [^{F537}UKRI] for the purpose, on production of some duly authenticated document showing his authority, at all reasonable times to exercise any of the rights specified in subsection (5) below.
- (3) The journal required to be kept under this section shall include measurements of—
 - (a) the strata passed through; and
 - (b) the levels at which water is struck and subsequently rests.
- (4) The particulars required to be sent to [^{F538}UKRI] under subsection (2)(b) above shall specify—
 - (a) the rate of flow throughout the test;
 - (b) the duration of the test;
 - (c) where practicable, the water levels during the test and afterwards until the water returns to its natural level; and
 - (d) where the well or borehole is sunk in connection with an existing pumping station, the rate of pumping at the existing works during the test.

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- (5) The rights mentioned in subsection (2)(c) above are the rights, subject to section 205 below—
- (a) to have free access to the well or borehole;
 - (b) to inspect the well or borehole and the material extracted from it;
 - (c) to take specimens of any such material and of water abstracted from the well or borehole; and
 - (d) to inspect and take copies of or extracts from the journal required to be kept under this section.
- (6) Where the person sinking a well or borehole on any land is not the occupier of the land, the obligation imposed on that person by virtue of subsection (2)(c) above shall be the obligation of the occupier as well.
- (7) Where—
- (a) any person contracts to sink any well or borehole on land belonging to or occupied by another; and
 - (b) the carrying out of the work is under the control of the contractor,
- the contractor and no other person shall be deemed for the purposes of this section to be the person sinking the well or borehole.
- (8) Any person who fails to comply with any obligation imposed on him by this section shall be guilty of an offence and liable, on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
 - (b) where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

Textual Amendments

- F534** Words in s. 198(1) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(a\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F535** Word in s. 198(2)(a) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(b\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F536** Word in s. 198(2)(b) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(c\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F537** Word in s. 198(2)(c) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(c\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F538** Word in s. 198(4) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(d\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)

199 Notice etc. of mining operations which may affect water conservation.

- (1) Where a person proposes to construct or extend a boring for the purpose of searching for or extracting minerals, he shall, before he begins to construct or extend the boring, give to the [^{F539}appropriate agency] a notice of his intention in the prescribed form.

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- [^{F540}(2) Where a notice under subsection (1) above is given to the [^{F539}appropriate agency] by any person, the [^{F539}appropriate agency] may (subject to section 199A below) by notice to that person require him, in connection with the construction, extension or use of the work to which that person’s notice relates, to take such reasonable measures for conserving water as are specified in the notice.
- (2A) The measures that may be specified in a notice under subsection (2) above shall be measures which, in the opinion of the [^{F539}appropriate agency], will not interfere with the winning of minerals.
- (3) Section 70 above shall apply to the restrictions imposed by this section as it applies to the restrictions imposed by sections 24 and 25 above.]
- (4) Any person who contravenes subsection (1) above or fails to comply with a [^{F541}notice under] subsection (2) 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.

Textual Amendments

F539 Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

F540 S. 199(2)(2A)(3) substituted for s. 199(2)(3) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(5)(a)**, 105(3); [S.I. 2006/984](#), art. 2(e) (with Sch. paras. 4, 5)

F541 Words in s. 199(4) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(5)(b)**, 105(3); [S.I. 2006/984](#), art. 2(e) (with Sch. paras. 4, 5)

[^{F542}199A Appeals against conservation notices under section 199

- (1) The person on whom a notice under section 199(2) above (“a conservation notice”) is served may, by notice to the Secretary of State, appeal to him against the conservation notice on either or both of the following grounds, that is to say—
- (a) that the measures required by the conservation notice are not reasonable;
 - (b) that those measures would interfere with the winning of minerals.
- (2) Any notice of appeal against a conservation notice shall be served within such period (not being less than twenty-eight days from the date of service of the conservation notice) and in such manner as may be prescribed.
- (3) Before determining an appeal against a conservation notice, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
 - (b) afford to the appellant and the [^{F539}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the appellant or the [^{F539}appropriate agency] to be heard with respect to an appeal.
- (4) On an appeal against a conservation notice the Secretary of State may confirm, quash or vary the notice as he may consider appropriate.

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- (5) The decision of the Secretary of State on any appeal against a conservation notice shall be final.
- (6) The Secretary of State may by regulations make provision as to the manner in which appeals against conservation notices are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (7) Section 69 above applies to a decision of the Secretary of State on any appeal to him under this section as it applies to a decision of his on an appeal to him under Chapter 2 of Part 2, taking the reference in subsection (2)(b) of that section to that Chapter as a reference to this section.
- (8) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).]

Textual Amendments

F539 Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

F542 S. 199A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(6)**, 105(3); S.I. 2006/984, art. 2(e) (with Sch. paras. 4, 5)

200 Gauges and records kept by other persons.

- (1) Subject to subsection (3) below, any person other than the [^{F539}appropriate agency], who proposes to install a gauge for measuring and recording the flow, level or volume of any inland waters other than discrete waters—
 - (a) shall give notice to the [^{F539}appropriate agency] of his proposal to install the gauge; and
 - (b) shall not begin the work of installing it before the end of the period of three months beginning with the date of service of the notice or such shorter period as the [^{F539}appropriate agency] may in any particular case allow.
- (2) Not more than one month after any such work as is mentioned in paragraph (b) of subsection (1) above is completed, the person required to give notice under that subsection shall give notice to the [^{F539}appropriate agency] stating where the records obtained by means of the gauge are to be kept.
- (3) Subsections (1) and (2) above shall not apply—
 - (a) to any gauge installed for the sole purpose of indicating the level of any inland waters for the benefit of persons who fish in them; or
 - (b) to any gauge which is removed at or before the end of the period of twenty-eight days beginning with the date on which it is installed.
- (4) Any person who contravenes subsection (1) or (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

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Textual Amendments

F539 Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

^{F543}201 Power to require information with respect to abstraction.

- (1) Subject to subsection (2) below, the Secretary of State or the ^{F539}appropriate agency] may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the Secretary of State or by the ^{F539}appropriate agency] for the purpose of carrying out any of his or, as the case may be, its water resources functions.
- (2) The Secretary of State shall have power by regulations to make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.
- (3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section 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 or to imprisonment for a term not exceeding two years, or to both.
- (4) References in this section to the water resources functions of the Secretary of State or of the ^{F539}appropriate agency] are references to the functions of the Secretary of State or of the ^{F539}appropriate agency] under Part 2 of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter 2 of that Part.]

Textual Amendments

F539 Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

F543 S. 201 substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 70, 105(3); S.I. 2005/968, art. 2(k)

Modifications etc. (not altering text)

C180 S. 201 applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 33(3)(c), 105(3); S.I. 2006/984, art. 2(p)

202 Information and assistance required in connection with the control of pollution.

- (1) It shall be the duty of the ^{F539}appropriate agency], if and so far as it is requested to do so by either of the Ministers, to give him all such advice and assistance as appears to it to be appropriate for facilitating the carrying out by him of his functions under the water pollution provisions of this Act.
- (2) Subject to subsection (3) below, either of the Ministers or the ^{F539}appropriate agency] may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the the Minister in

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question or by the ^{F539}appropriate agency] for the purpose of carrying out any of his or, as the case may be, its functions under the water pollution provisions of this Act.

- (3) Each of the Ministers shall have power by regulations to make provision for restricting the information which may be required under subsection (2) above and for determining the form in which the information is to be so required.
- (4) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and ^{F544}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.]

^{F545}(5)

Textual Amendments

- F539** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 299](#) (with [Sch. 7](#))
- F544** Words in s. 202(4) substituted (1.4.1996) by [1995 c. 25](#), s. 120(1), [Sch. 22 para. 172\(1\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))
- F545** S. 202(5) repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 172\(2\)](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))

Modifications etc. (not altering text)

- C181** S. 202 amended (27.8.1993) by [1993 c. 12](#), [ss. 40](#), [51\(2\)](#), [Sch. 3 Pt. 1 para. 9](#) (with [s. 46](#)).
- C182** S. 202 modified (2.1.2004) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(S.I. 2003/3242\)](#), [regs. 1\(a\)](#), [19\(2\)](#) (with [reg. 1\(c\)](#))
- C183** S. 202 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](#))
- C184** S. 202 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), [reg. 1\(1\)](#), [Sch. 23 Pt. 7 paras. 1\(3\)](#), [2](#) (with [regs. 1\(3\)](#), [77-79](#), [Sch. 4](#))
- C185** S. 202 modified (10.4.2017) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2017 \(S.I. 2017/407\)](#), [regs. 1\(a\)](#), [35\(2\)](#) (with [reg. 1\(c\)](#))
- C186** S. 202(2) modified (6.1.1997) by [S.I. 1996/3001](#), [reg. 7\(3\)](#)
S. 202(2) modified (12.6.1997) by [S.I. 1997/1331](#), [reg. 6\(3\)](#)
S. 202(2) modified (12.6.1997) by [S.I. 1997/1332](#), [reg. 6\(3\)](#)
- C187** S. 202(2) modified (24.3.2012) by [The Bathing Water Regulations 2008 \(S.I. 2008/1097\)](#), [regs. 1\(3\)](#) (e), [16\(5\)](#)

203 Exchange of information with respect to pollution incidents etc.

(1) It shall be the duty of the ^{F539}appropriate agency] to provide a water undertaker with all such information to which this section applies as is in the possession of the ^{F539}appropriate agency] and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions.

^{F546}(1A) It shall be the duty of the ^{F539}appropriate agency] to provide a ^{F547}water supply licensee] with all such information to which this section applies as is in the possession of the ^{F539}appropriate agency] and is reasonably requested by the ^{F548}licensee] for purposes connected with the carrying on of activities under ^{F549}the licensee's licence].]

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- (2) It shall be the duty of every water undertaker to provide the ^{F539}appropriate agency] with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the ^{F539}appropriate agency] for purposes connected with the carrying out of any of its functions.
- ^{F550}(2A) It shall be the duty of every ^{F551}water supply licensee] to provide the ^{F539}appropriate agency] with all such information to which this section applies as is in the possession of the ^{F552}licensee] and is reasonably requested by the ^{F539}appropriate agency] for purposes connected with the carrying out of any of its functions.]
- ^{F553}(3) Information provided to a water undertaker, to a ^{F554}water supply licensee] or to the ^{F539}appropriate agency] under subsection (1), (1A), (2) or (2A) above shall be provided in such form and in such manner and at such times as the undertaker, the ^{F555}licensee] or the ^{F539}appropriate agency], as the case may be, may reasonably require.]
- (4) Information provided under ^{F556}subsection (1), (1A), (2) or (2A)] above to a water undertaker ^{F557}, to a ^{F558}water supply licensee]] or to the ^{F539}appropriate agency] shall be provided free of charge.
- (5) The duties of
- ^{F559}(a) a water undertaker under subsection (2) above; or
- (b) a ^{F560}water supply licensee] under subsection (2A) above,
- shall] be enforceable under section 18 of the ^{M74}Water Industry Act 1991 by the Secretary of State.
- (6) This section applies to information—
- (a) about the quality of any controlled waters or of any other waters; or
- (b) about any incident in which any poisonous, noxious or polluting matter or any ^{F561}... waste matter has entered any controlled waters or other waters.
- (7) In this section “controlled waters” has the same meaning as in Part III of this Act.
- ^{F562}(8) Any reference in this section to a ^{F563}water supply licensee] is a reference to ^{F564}a person] holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991.]

Textual Amendments

- F539** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F546** S. 203(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F547** Words in s. 203(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(2)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F548** Word in s. 203(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(2)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F549** Words in s. 203(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(2)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F550** S. 203(2A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(b)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F551** Words in s. 203(2A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(3)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)

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- F552** Word in s. 203(2A) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(3)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F553** S. 203(3) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(2)(c)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F554** Words in s. 203(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(4)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F555** Word in s. 203(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(4)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F556** Words in s. 203(4) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(2)(d)(i)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F557** Words in s. 203(4) inserted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(2)(d)(ii)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F558** Words in s. 203(4) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F559** Words in s. 203(5) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(2)(e)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F560** Words in s. 203(5)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F561** Word in s. 203(6)(b) repealed (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), Sch. 21 para. 21(2), **Sch. 23** (with reg. 72, Sch. 4)
- F562** S. 203(8) inserted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(2)(f)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F563** Words in s. 203(8) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(7)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F564** Words in s. 203(8) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(7)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)

Modifications etc. (not altering text)

- C188** S. 203 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. 1 para. 9** (with s. 46).
- C189** S. 203 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**)
- C190** S. 203 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

- M74** 1991 c. 56.

Restriction on disclosure of information

204 Restriction on disclosure of information.

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
- (a) has been obtained by virtue of any of the provisions of this Act; and
 - (b) relates to the affairs of any individual or to any particular business,
- shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) above does not apply to any disclosure of information which is made—

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- (a) for the purpose of facilitating the carrying out by either of the Ministers, the Agency, [^{F565}the NRBW,] the Scottish Environmental Protection Agency, the [^{F566}the Water Services Regulation Authority, the Consumer Council for Water], the [^{F567}Competition and Markets Authority] or a local authority of any of his, its or, as the case may be, their functions by virtue of this Act, any of the other consolidation Acts [^{F568}, the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990, the 1995 Act, regulations under section 2 of the Pollution Prevention and Control Act 1999, [^{F569}the Water Act 2003, [^{F570}the Water Act 2014] or the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)];
- (b) for the purpose of facilitating the performance by a water undertaker [^{F571}, sewerage undertaker or [^{F572}person] holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991] of any of the duties imposed [^{F573}on the undertaker or, as the case may be, the person] by or under this Act, any of the other consolidation Acts [^{F574}, the Water Act 1989 [^{F575}, the Water Act 2003 or the Water Act 2014]];
- (c) in pursuance of any duty imposed by section 197(1)(a) or (2) or [^{F576}203(1), (1A), (2) or (2A)] above or [^{F577}of any duty imposed by section 27H] of the Water Industry Act 1991;
- [^{F578}(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;]
- (d) for the purpose of facilitating the carrying out by any person mentioned in Part I of Schedule 24 to this Act of any of his functions under any of the enactments or instruments specified in Part II of that Schedule;
- [^{F579}(e) for the purpose of enabling or assisting the Secretary of State, the Treasury [^{F580}, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England] to exercise any powers conferred by or under the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency;
- (ea) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;]
- (f) for the purpose of enabling an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the ^{M75}Insolvency Act 1986 to carry out its functions as such;
- (g) for the purpose of facilitating the carrying out by ^{F581}... the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the ^{M76}Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;
- [^{F582}(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;]
- (h) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;
- (i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (j) for the purposes of any civil proceedings brought under or by virtue of this Act, any of the other consolidation Acts, the ^{M77}Water Act 1989 [^{F583}, the Water Act 2003][^{F584}, the Water Act 2014] or any of the enactments or instruments specified in Part II of Schedule 24 to this Act, or of any arbitration under this

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- Act, any of the other consolidation Acts [^{F585}, the Water Act 1989 [^{F586}, the Water Act 2003 or the Water Act 2014]]; or
- (k) in pursuance of [^{F587}[^{F588}an assimilated] obligation].
- (3) Nothing in subsection (1) above shall be construed—
- (a) as limiting the matters which may be included in, or made public as part of, a report of—
- (i) the [^{F589}Agency];
- [^{F590}(ia) the Scottish Environment Protection Agency;]
- [^{F591}(ib) the NRBW;]
- [^{F592}(ii) the Water Services Regulation Authority;]
- [^{F593}(iii) the Consumer Council for Water (or any regional committee of that Council established under section 27A of the Water Industry Act 1991); or]
- (iv) the [^{F594}Competition and Markets Authority],
- under any provision of this Act [^{F595}, Part I or IIA of the Environmental Protection Act 1990, that Act of 1991 [^{F596}, the 1995 Act [^{F597}, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003]]];
- (b) as limiting the matters which may be published under section 201 of that Act [^{F598}of 1991]; or
- (c) as applying to any information which has been made public as part of such a report or has been so published or to any information exclusively of a statistical nature.
- (4) Subject to subsection (5) below, nothing in subsection (1) above shall preclude the disclosure of information—
- (a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a water undertaker or sewerage undertaker [^{F599}, or with the carrying on by [^{F600}a person] holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 of activities under [^{F601}the person's licence],] and is made by one Minister of the Crown or government department to another; or
- (b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (5) The power to make an order under subsection (4) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and where such an order designates an authority for the purposes of paragraph (b) of that subsection, the order may—
- (a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and
- (b) otherwise restrict the circumstances in which disclosure is so permitted.
- (6) Any person who discloses any information in contravention of the preceding provisions of this section 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 imprisonment for a term not exceeding two years or to a fine or to both.

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(7) In this section “the other consolidation Acts” means the ^{M78}Water Industry Act 1991, ^{F602}... the ^{M79}Land Drainage Act 1991 and the ^{M80}Water Consolidation (Consequential Provisions) Act 1991.

[^{F603}(8) In this section the reference to the Bank of England does not include the Bank acting in its capacity as the Prudential Regulation Authority.]

Textual Amendments

- F565** Words in s. 204(2)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 300(2)(a)** (with Sch. 7)
- F566** Words in s. 204(2)(a) substituted (1.10.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(i)**; S.I. 2005/2714, art. 2(1)(aa)(vi) (with Sch. para. 8)
- F567** Words in s. 204(2)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 96** (with art. 3)
- F568** Words in s. 204(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F569** Words in s. 204(2)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 300(2)(b)** (with Sch. 7)
- F570** Words in s. 204(2)(a) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(a)**
- F571** Words in s. 204(2)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(3)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F572** Word in s. 204(2)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 126(2)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F573** Words in s. 204(2)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 126(2)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F574** Words in s. 204(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(iii)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F575** Words in s. 204(2)(b) substituted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(b)**
- F576** Words in s. 204(2)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(3)(b)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F577** Words in s. 204(2)(c) substituted (1.10.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(iv)**; S.I. 2005/2714, art. 2(1)(aa)(vi) (with Sch. para. 8)
- F578** S. 204(2)(ca) inserted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 48** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F579** S. 204(2)(e)(ea) substituted for s. 204(2)(e) (1.12.2001) by S.I. 2001/3649, **art. 329**
- F580** Words in s. 204(2)(e) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 73** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F581** Words in s. 204(2)(g) omitted (1.4.2008) by virtue of Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)
- F582** S. 204(2)(ga) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 65**; S.I. 2014/251, art. 4
- F583** Words in s. 204(2)(j) inserted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(v)(a)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F584** Words in s. 204(2)(j) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(c)(i)**
- F585** Words in s. 204(2)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), Sch. 7 para. 28(3)(a)(v)(b); S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

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- F586** Words in s. 204(2)(j) substituted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **7(c)(ii)**
- F587** Words in s. 204(2)(k) substituted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **4(7)**; 2020 c. 1, Sch. 5 para. 1(1)
- F588** Words in s. 204(2)(k) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 31(3)**
- F589** Words in s. 204 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F590** S. 204(3)(a)(ia) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F591** S. 204(3)(a)(ib) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 300(3)** (with Sch. 7)
- F592** S. 204(3)(a)(ii) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 28(3)(b)(i)**; S.I. 2005/2714, art. 4(f) (with Sch. para. 8)
- F593** S. 204(3)(a)(iii) substituted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 28(3)(b)(ii)**; S.I. 2005/2714, art. 2(l)(aa)(vi) (with Sch. para. 8)
- F594** Words in s. 204(3)(a) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 96** (with art. 3)
- F595** Words in s. 204(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F596** Words in s. 204(3)(a) substituted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 8**; S.I. 2000/800, **art. 2**
- F597** Words in s. 204(3)(a) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 28(3)(b)(iii)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F598** Words in s. 204(3)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F599** Words in s. 204(4)(a) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(3)(c)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F600** Words in s. 204(4)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 126(3)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F601** Words in s. 204(4)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 126(3)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F602** Words in s. 204(7) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(5)**
- F603** S. 204(8) inserted (1.3.2017) by [The Bank of England and Financial Services \(Consequential Amendments\) Regulations 2017 \(S.I. 2017/80\)](#), reg. 1, **Sch. para. 6**

Modifications etc. (not altering text)

- C191** S. 204 applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 70, 76(2)**.
- C192** S. 204 restricted (31.10.2003) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), **s. 115**; S.I. 2003/2681, art. 2(b)
- C193** S. 204(2): disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt.I para. 32**

Marginal Citations

- M75** 1986 c. 45.
M76 1974 c. 37.
M77 1989 c. 15.
M78 1991 c. 56.
M79 1991 c. 59.
M80 1991 c. 60.

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205 Confidentiality of information relating to underground water etc.

- (1) The person sinking any such well or borehole as is mentioned in section 198 above or, if it is a different person, the owner or occupier of the land on which any such well or borehole is sunk may by notice to [F604United Kingdom Research and Innovation (“UKRI”)] require [F605UKRI] to treat as confidential—
 - (a) any copy of or extract from the journal required to be kept under that section; or
 - (b) any specimen taken in exercise of the rights specified in subsection (5) of that section.
- (2) Subject to subsections (3) and (4) below, [F606UKRI] shall not, without the consent of the person giving the notice, allow any matter to which any notice under subsection (1) above relates to be published or shown to any person who is not an officer of [F607UKRI] or of a department of the Secretary of State.
- (3) Subsection (2) above shall not prohibit any matter from being published or shown to any person in so far as it contains or affords information as to water resources and supplies.
- (4) If at any time [F608UKRI] give notice to any person that in their opinion his consent for the purposes of subsection (2) above is being unreasonably withheld—
 - (a) that person may, within three months after the giving of the notice, appeal to the High Court for an order restraining [F609UKRI] from acting as if consent had been given; and
 - (b) [F609UKRI] may proceed as if consent had been given if either no such appeal is brought within that period or the High Court, after hearing the appeal, do not make such an order.
- (5) Any person who fails to comply with any obligation imposed on him by the preceding provisions of this section shall be guilty of an offence and liable, on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale; and
 - (b) where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.
- (6) If any person who is admitted to any premises in compliance with section 198(2)(c) above discloses to any person any information obtained by him there with regard to any manufacturing process or trade secret, he shall, unless the disclosure is in performance of his duty, be guilty of an offence and liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding three months or to a fine or to both.

Textual Amendments

F604 Words in s. 205(1) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 12 para. 15\(3\)\(a\)\(i\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)

F605 Word in s. 205(1) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 12 para. 15\(3\)\(a\)\(ii\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)

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- F606** Word in s. 205(2) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 12 para. 15\(3\)\(b\)\(i\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F607** Word in s. 205(2) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 12 para. 15\(3\)\(b\)\(ii\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F608** Word in s. 205(4) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 12 para. 15\(3\)\(b\)\(i\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F609** Word in s. 205(4) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 12 para. 15\(3\)\(b\)\(ii\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)

Making of false statements etc.

206 Making of false statements etc.

[^{F610}(1) If, in furnishing any information or making any application under or for the purposes of any provision of this Act [^{F611}or of section 3, 4 or 10 of the Water Act 2003], any person makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, he shall be guilty of an offence under this section.]

^{F612}(2)

(3) Where—

- (a) the provisions contained in a licence under Chapter II of Part II of this Act in pursuance of paragraph (b) of subsection (2) of section 46 above, or of that paragraph as modified by subsection (6) of that section, require the use of a meter, gauge or other device; and
- (b) such a device is used for the purposes of those provisions,

any person who wilfully alters or interferes with that device so as to prevent it from measuring correctly shall be guilty of an offence under this section.

[^{F613}(3A) If a person intentionally makes a false entry in any record required to be kept by virtue of a licence under Chapter II of Part II of this Act, or a consent under Chapter II of Part III of this Act, he shall be guilty of an offence under this section.]

(4) If, in keeping any record or journal or in furnishing any information which he is required to keep or furnish under section 198 or 205 above, any person knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence under this section.

[^{F614}(5) A person who is guilty of an offence under this section 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

F610 S. 206(1) substituted (1.4.1996) by 1995 c. 25, s. 112, [Sch. 19 para. 5\(2\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with [art. 4](#))

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- F611** Words in s. 206(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 11](#); S.I. 2006/984, art. 2(s)(i)
- F612** S. 206(2) repealed (1.4.1996) by [1995 c. 25](#), ss. 112, 125(2), [Sch. 19 para. 5\(3\)](#), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)
- F613** S. 206(3A) inserted (1.4.1996) by [1995 c. 25](#), s. 112, [Sch. 19 para. 5\(4\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)
- F614** S. 206(5) substituted for s. 206(5)-(7) (1.4.1996) by [1995 c. 25](#), s. 112, [Sch. 19 para. 5\(5\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

PART IX

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

207 Directions in the interests of national security etc.

- (1) The Secretary of State may, after consultation with the [^{F615}appropriate agency], give to the [^{F615}appropriate agency] such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency which may occur.
- (2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with the [^{F615}appropriate agency], give to the [^{F615}appropriate agency] a direction requiring it to do, or not to do, a particular thing specified in the direction.
- (3) The duty of the [^{F615}appropriate agency] to comply with a direction under this section is a duty which has effect notwithstanding any other duty imposed on it (whether or not by or under this Act).
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.
- (5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.
- (6) Any person who discloses any matter in contravention of subsection (5) above shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Any reference in this section to a civil emergency is a reference to any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely, in relation to any area—
 - (a) so to disrupt water supplies or sewerage services; or
 - (b) to involve such destruction of or damage to life or property in that area,

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as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.

- (8) In this section “sewerage services” has the same meaning as in the ^{M81}Water Industry Act 1991.

Textual Amendments

F615 Words in s. 207 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 301](#) (with Sch. 7)

Marginal Citations

M81 1991 c. 56.

208 [F616 Civil liability of the Agency or NRBW for escapes of water etc]

- (1) Where an escape of water, however caused, from a pipe vested in the Agency [F617 or the NRBW] causes loss or damage, the Agency [F618 or, as the case may be, the NRBW,] shall be liable, except as otherwise provided in this section, for the loss or damage.
- (2) The Agency [F619 or the NRBW] shall not incur any liability under subsection (1) above if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.
- (3) The Agency [F620 or the NRBW] shall not incur any liability under subsection (1) above in respect of any loss or damage for which the Agency [F620 or the NRBW] would not be liable apart from that subsection and which is sustained—
 - (a) by any water undertaker or sewerage undertaker or by any statutory undertakers, within the meaning of section 336(1) of the ^{M82}Town and Country Planning Act 1990;
 - (b) by any public gas supplier within the meaning of Part I of the ^{M83}Gas Act 1986 or the holder of a licence under section 6(1) of the ^{M84}Electricity Act 1989;
 - (c) by any highway authority; or
 - (d) by any person on whom a right to compensation is conferred by section 82 of the ^{M85}New Roads and Street Works Act 1991.
- (4) The ^{M86}Law Reform (Contributory Negligence) Act 1945, the ^{M87}Fatal Accidents Act 1976 and the ^{M88}Limitation Act 1980 shall apply in relation to any loss or damage for which the Agency [F621 or the NRBW] is liable under this section, but which is not due to the Agency’s [F622 or the NRBW’s] fault, as if it were due to its fault.
- (5) Nothing in subsection (1) above affects any entitlement which the Agency [F623 or the NRBW] may have to recover contribution under the ^{M89}Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which the Agency [F623 or the NRBW] is liable under that subsection shall be treated as if it were damage.
- (6) Where the Agency [F624 or the NRBW] is liable under any enactment or agreement passed or made before 1st April 1982 to make any payment in respect of any loss or damage the Agency [F624 or the NRBW] shall not incur liability under subsection (1) above in respect of the same loss or damage.

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- (7) In this section “fault” has the same meaning as in the ^{M90}Law Reform (Contributory Negligence) Act 1945.
- (8) Until the coming into force of section 82 of the ^{M91}New Roads and Street Works Act 1991, subsection (3) above shall have effect as if for paragraph (d) there were substituted the following paragraphs—
- “(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the ^{M92}Public Utilities Street Works Act 1950; or
- (e) by any person on whom a right to compensation under section 26 of that Act of 1950 is conferred.”; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing section 82 of that Act into force on different days for different purposes (including the purposes of this section).

Textual Amendments

- F616** S. 208 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(6)** (with Sch. 7)
- F617** Words in s. 208(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(2)(a)** (with Sch. 7)
- F618** Words in s. 208(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(2)(b)** (with Sch. 7)
- F619** Words in s. 208(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(3)** (with Sch. 7)
- F620** Words in s. 208(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(3)** (with Sch. 7)
- F621** Words in s. 208(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(4)(a)** (with Sch. 7)
- F622** Words in s. 208(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(4)(b)** (with Sch. 7)
- F623** Words in s. 208(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(5)** (with Sch. 7)
- F624** Words in s. 208(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(5)** (with Sch. 7)

Modifications etc. (not altering text)

- C194** S. 208(3)(b) amended (1.3.1996) by [1995 c. 45, s. 16\(1\)](#), **Sch. 4 para. 2(2)(n)**; [S.I. 1996/218](#), **art. 2**

Marginal Citations

- M82** 1990 c. 8.
M83 1986 c. 44.
M84 1989 c. 29.
M85 1991 c. 22.
M86 1945 c. 28.
M87 1976 c. 30.
M88 1980 c. 58.
M89 1978 c. 47.
M90 1945 c. 28.
M91 1991 c. 22.

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M92 1950 c. 39.

209 Evidence of samples and abstractions.

^{F625}(1)

^{F625}(2)

(3) Where, in accordance with the provisions contained in a licence in pursuance of paragraph (b) of subsection (2) of section 46 above, or in pursuance of that paragraph as read with subsection (6) of that section, it has been determined what quantity of water is to be taken—

- (a) to have been abstracted during any period from a source of supply by the holder of the licence; or
- (b) to have been so abstracted at a particular point or by particular means, or for use for particular purposes,

that determination shall, for the purposes of any proceedings under Chapter II of Part II of this Act or any of the related water resources provisions, be conclusive evidence of the matters to which it relates.

^{F625}(4)

Textual Amendments

F625 S. 209(1)(2)(4) repealed (1.4.1996) by 1995 c. 25, ss. 111(1)(c), 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

Byelaws

210 Byelaw-making powers of the [^{F626}appropriate agency].

(1) Schedule 25 to this Act shall have effect for conferring powers on the [^{F627}appropriate agency] to make byelaws for purposes connected with the carrying out of its functions.

(2) Schedule 26 to this Act shall have effect in relation to byelaws made by the [^{F627}appropriate agency], whether by virtue of subsection (1) above or by virtue of any other enactment.

[^{F628}(3) Schedule 27 to this Act (emergency fisheries byelaws) shall have effect.]

Textual Amendments

F626 Words in s. 210 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)

F627 Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)

F628 S. 210(3) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 225(1)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14

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211 Enforcement of byelaws.

- (1) If any person contravenes any byelaws made by virtue of paragraph 1 of Schedule 25 to this Act, he shall be guilty of an offence and liable, on summary conviction—
 - (a) to a fine not exceeding level 1 on the standard scale; and
 - (b) if the contravention is continued after conviction, to a fine not exceeding £5 for each day on which it is so continued.
- (2) Byelaws made by virtue of paragraph 2 or 3 of that Schedule may contain provision providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws.
- (3) A person who contravenes any byelaws made by virtue of paragraph 4 or 6 of that Schedule shall be guilty of an offence and liable, on summary conviction,
 - ^{F629}(a) in the case of byelaws made by virtue of paragraph 4, to a fine not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws;
 - (b) in the case of byelaws made by virtue of paragraph 6, to ^{F630}[a fine].]
- (4) If any person acts in contravention of any byelaw made by virtue of paragraph 5 of that Schedule he shall be guilty of an offence and liable, on summary conviction—
 - (a) to a fine not exceeding level 5 on the standard scale; and
 - (b) if the contravention is continued after conviction, to a further fine not exceeding £40 for each day on which it is so continued.
- (5) Without prejudice to any proceedings by virtue of subsection (1) or (4) above, the ^{F627}[appropriate agency] may—
 - (a) take such action as it considers necessary to remedy the effect of any contravention of byelaws made by virtue of paragraph 1 of Schedule 25 to this Act;
 - (b) take such action as may be necessary to remedy the effect of any person's contravention of byelaws made by virtue of paragraph 5 of that Schedule; and
 - (c) recover the expenses reasonably incurred by the ^{F627}[appropriate agency] in taking any action under paragraph (a) or (b) above from the person in default.
- (6) So much of the ^{M93}Salmon and Freshwater Fisheries Act 1975 as makes provision with respect to or by reference to offences under that Act shall have effect as if an offence consisting in a contravention of byelaws made by virtue of paragraph 6 of Schedule 25 to this Act were an offence under that Act.
- (7) Section 70 above shall apply in relation to any restrictions imposed by byelaws made by virtue of paragraph 1 of Schedule 25 to this Act as it applies in relation to restrictions imposed by the provisions of Chapter II of Part II of this Act which are mentioned in that section; and sections 100 and 101 above shall have effect in relation to contraventions of byelaws made by virtue of paragraph 4 of that Schedule as they have effect in relation to contraventions of provisions of Part III of this Act.

Textual Amendments

F627 Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)

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- F629** S. 211(3)(a)(b) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 226, 324(3)**; [S.I. 2009/3345](#), art. 2, Sch. para. 14
- F630** Words in s. 211(3)(b) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 24(6)** (with reg. 5(1))

Modifications etc. (not altering text)

- C195** S. 211 excluded (1.7.1999) by [S.I. 1999/1746](#), **art. 4(1)**; [S.I. 1998/3178](#), **art. 3**

Marginal Citations

- M93** 1975 c. 51.

212 Compensation in respect of certain fisheries byelaws.

(1) Where—

- (a) the owner or occupier of any fishery by notice to the [^{F627}appropriate agency] claims that the fishery is injuriously affected by a byelaw made for any of the purposes specified in subsection (2) below; and
- (b) that claim is made at any time before the end of twelve months after the confirmation of the byelaw,

[^{F631}the [^{F627}appropriate agency] may pay that person such amount by way of compensation as it considers appropriate.]

(2) The purposes mentioned in subsection (1)(a) above are the following purposes specified in paragraph 6(2) of Schedule 25 to this Act, that is to say—

- (a) prohibiting the use for taking [^{F632}any fish to which paragraph 6 of that Schedule applies] of any instrument [^{F633}... in such waters and at such times as are prescribed by the byelaw;
- (b) specifying the nets and other instruments [^{F634}... which may be used for taking [^{F635} any such fish] and imposing requirements as to the use of such nets and other instruments;
- (c) imposing requirements as to the construction, design, material and dimensions of any such nets or instruments, including in the case of nets the size of mesh.

[^{F636}(3)

(4) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

Textual Amendments

- F627** Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)
- F631** Words in s. 212(1) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 227(2), 324(3)**; [S.I. 2009/3345](#), art. 2, Sch. para. 14
- F632** Words in s. 212(2)(a) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 16 para. 23(2)(a)(i)**; [S.I. 2009/3345](#), art. 2, Sch. para. 15(i)
- F633** Words in s. 212(2)(a) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 16 para. 23(2)(a)(ii)**, **Sch. 22 Pt. 5(B)**; [S.I. 2009/3345](#), art. 2, Sch. paras. 15(i), 27(b)
- F634** Words in s. 212(2)(b) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 16 para. 23(2)(b)(i)**, **Sch. 22 Pt. 5(B)**; [S.I. 2009/3345](#), art. 2, Sch. paras. 15(i), 27(b)

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- F635** Words in s. 212(2)(b) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 16 para. 23\(2\)\(b\)\(ii\)](#); S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F636** S. 212(3) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), ss. 227(3), 324(3), [Sch. 22 Pt. 5\(B\)](#); S.I. 2009/3345, art. 2, Sch. paras. 14, 27(b)

Local inquiries

^{F637}**213**

Textual Amendments

F637 S. 213 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 174](#), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

^{F638}**214**

Textual Amendments

F638 S. 214 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 174](#), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

^{F639}**215**

Textual Amendments

F639 S. 215 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 174](#), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

Offences etc.

216 Enforcement: powers and duties.

- (1) Without prejudice to its powers of enforcement in relation to the other provisions of this Act, it shall be the duty of the [^{F627}appropriate agency] to enforce the provisions to which this section applies.
- (2) No proceedings for any offence under any provision to which this section applies shall be instituted except—
 - (a) by the [^{F627}appropriate agency]; or
 - (b) by, or with the consent of, the Director of Public Prosecutions.
- (3) This section applies to Chapter II of Part II of this Act and the related water resources provisions.

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Textual Amendments

F627 Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)

Modifications etc. (not altering text)

C196 S. 216 applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 33(3)(d)**, 105(3); S.I. 2006/984, art. 2(p)

217 Criminal liabilities of directors and other third parties.

- (1) Where a body corporate is guilty of an offence under this Act [^{F640}or under section 4 of the Water Act 2003] and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Without prejudice to subsections (1) and (2) above, where the commission by any person of an offence under the water pollution provisions of this Act is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.

Textual Amendments

F640 Words in s. 217(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 12**; S.I. 2006/984, art. 2(s)(i)

Judicial disqualification

^{F641}**218**

Textual Amendments

F641 S. 218 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), **Sch. 22 para. 175**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

Powers to make regulations

219 Powers to make regulations.

- (1) Any power of one or both of the Ministers to make regulations under any provision of this Act shall be exercisable by statutory instrument subject (except in the case of

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regulations made by virtue of paragraph 1(3) of Schedule 15 to this Act) to annulment in pursuance of a resolution of either House of Parliament.

- (2) ^{F642} . . . The provisions of any regulations made by one or both the Ministers under this Act may include-
- (a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker to be enforceable under section 18 of the ^{M94}Water Industry Act 1991 by the Secretary of State, by [^{F643} the Water Services Regulation Authority] or by either of them;
 - (b) provision, where such a duty or requirement is so enforceable by either of them, for enforcement by [^{F644} the Water Services Regulation Authority] to be subject to such consent or authorisation as may be prescribed;
 - (c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to section 206(1) and (5) above;
 - (d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
 - (e) different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (f) such supplemental, consequential and transitional provision as the Minister or Ministers exercising the power considers or consider appropriate.

^{F645}(3)

Textual Amendments

- F642** Words in s. 219(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 176(a), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F643** Words in s. 219(2)(a) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(4)**; S.I. 2005/2714, **art. 4(f)** (with Sch. para. 8)
- F644** Words in s. 219(2)(b) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(4)**; S.I. 2005/2714, **art. 4(f)** (with Sch. para. 8)
- F645** S. 219(3) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 176(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

Marginal Citations

M94 1991 c. 56.

Construction of Act

220 Provisions relating to service of documents.

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
 - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or

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- (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the ^{M95}Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;
- and for the purposes of this subsection the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—
- (a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or
- (b) in the case of service on the occupier, if the premises appear to be or are unoccupied,
- that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.
- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

Modifications etc. (not altering text)

C197 S. 220 applied (21.7.1994) by 1994 c. xiii, s. 29(4)

C198 S. 220 applied (1.4.2006) by Water Act 2003 (c. 37), ss. 33(4), 105(3); S.I. 2006/984, art. 2(p)

Marginal Citations

M95 1978 c. 30.

221 General interpretation.

- (1) In this Act, except in so far as the context otherwise requires—
- [^{F646}“the 1995 Act” means the Environment Act 1995;]
- “abstraction”, in relation to water contained in any source of supply, means the doing of anything whereby any of that water is removed from that source

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of supply, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another source of supply; and “abstract” shall be construed accordingly;

“accessories”, in relation to a main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any [^{F647}electronic communications apparatus] unless it—

- (a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and
- (b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

and in this definition “stopcock” has the same meaning as in the ^{M96}Water Industry Act 1991;

[^{F648}“the Agency” means the Environment Agency;]

“agriculture” has the same meaning as in the ^{M97}Agriculture Act 1947 and “agricultural” shall be construed accordingly;

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

[^{F649}“the appropriate agency” means—

- (a) for the purposes of the flood risk management work provisions—
 - (i) in relation to flood risks (within the meaning of the Flood and Water Management Act 2010) in Wales, the NRBW;
 - (ii) in any other case, the Agency;
- (b) for any other purpose—
 - (i) in relation to Wales, the NRBW;
 - (ii) in any other case, the Agency;]

^{F650}

“conservancy authority” means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water and is not a navigation authority or harbour authority;

^{F651}

“contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;

“damage”, in relation to individuals, includes death and any personal injury (including any disease or impairment of physical or mental condition);

“discrete waters” means inland waters so far as they comprise—

- (a) a lake, pond or reservoir which does not discharge to any other inland waters; or
- (b) one of a group of two or more lakes, ponds or reservoirs (whether near to or distant from each other) and of watercourses or mains connecting them, where none of the inland waters in the group discharges to any inland waters outside the group;

“disposal”—

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- (a) in relation to land or any interest or right in or over land, includes the creation of such an interest or right and a disposal effected by means of the surrender or other termination of any such interest or right; and
- (b) in relation to sewage, includes treatment;

and cognate expressions shall be construed accordingly;

“drain” has, subject to subsection (2) below, the same meaning as in the ^{M98}Water Industry Act 1991;

“drainage” in the expression “drainage works” has the meaning given by section 113 above for the purposes of Part IV of this Act;

“drought order” means an ordinary drought order under subsection (1) of section 73 above or an emergency drought order under subsection (2) of that section;

“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“enactment” includes an enactment contained in this Act or in any Act passed after this Act;

^{F652}

“engineering or building operations”, without prejudice to the generality of that expression, includes—

- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
 - (b) the installation, modification or removal of any machinery or apparatus;
- “financial year” means the twelve months ending with 31st March;

[^{F653}“environmental permit” has the same meaning as in the Environmental Permitting Regulations;

“Environmental Permitting Regulations” means [^{F654}the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)];]

[^{F655}“flood defence functions”, in relation to [^{F656}the appropriate agency], means—

- (a) its functions with respect to flood defence and land drainage by virtue of Part IV of this Act, the ^{M99}Land Drainage Act 1991 and section 6 of the 1995 Act;
- (b) those functions [^{F657}of the appropriate agency which were previously] transferred to the Agency by section 2(1)(a)(iii) of the 1995 Act which were previously transferred to the Authority by virtue of section 136(8) of the ^{M100}Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation); ^{F658} ...
- (c) any other functions of [^{F659}the appropriate agency] under any of the flood defence provisions of this Act;]
- (d) [^{F660}its functions with respect to securing the drainage of land or the management of flood risk contained in regulations made under section 61 of the Water Act 2014; and
- (e) any other function of the appropriate agency under any provision of this Act or the 1995 Act so far as it relates to a function falling within paragraph (d);]

[^{F661}“flood defence provisions”, in relation to this Act, means—

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- (a) any of the following provisions of this Act, that is to say—
 - (i) Part IV;
 - (ii) sections 133 to 141 (including Schedule 15), 143, ^{F662}... 155, 165 to 167, 180, 193, 194 and paragraph 5 of Schedule 25;
- (b) any of the following provisions of the 1995 Act, that is to say—
 - (i) section 6(4) (general supervision of flood defence); [^{F663}and]
 - (ii) section 53 (inquiries and other hearings); and
 - (iii) ^{F664}...
- (c) any other provision of this Act or the 1995 Act so far as it relates to a provision falling within paragraph (a) or (b) above;]
 - [^{F665}“flood risk management work provisions” means—
 - (a) sections 159(1A), 160(1A), 165 and 166; and
 - (b) any other provision of Part 7 so far as it relates to a provision falling within paragraph (a);]

“harbour” has the same meaning for the purposes of the flood defence provisions of this Act as in [^{F666}section 313 of the Merchant Shipping Act 1995];

“harbour authority” (except in the flood defence provisions of this Act, in which it has the same meaning as in [^{F667}section 313 of the Merchant Shipping Act 1995]) means a person who is a harbour authority [^{F667}as defined in section 151 for the purposes of Chapter II of Part VI of that Act] and is not a navigation authority;

“highway” has the same meaning as in the ^{M101}Highways Act 1980;

“information” includes anything contained in any records, accounts, estimates or returns;

“inland waters” means the whole or any part of—

 - (a) any river, stream or other watercourse (within the meaning of Chapter II of Part II of this Act), whether natural or artificial and whether tidal or not;
 - (b) any lake or pond, whether natural or artificial, or any reservoir or dock, in so far as the lake, pond, reservoir or dock does not fall within paragraph (a) of this definition; and
 - (c) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within paragraph (a) or (b) of this definition;

“joint planning board” has the same meaning as in the ^{M102}Town and Country Planning Act 1990;

“local authority” means the council of any county, [^{F668}county borough,] district or London borough or the Common Council of the City of London;

“local statutory provision” means—

 - (a) a provision of a local Act (including an Act confirming a provisional order);
 - (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
 - (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or

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(d) a provision of any other instrument which is in the nature of a local enactment;

“main river” means a main river within the meaning of Part IV of this Act;

[^{F669}“the main river map for England” has the meaning given by section 193(2);

“the main river map for Wales” has the meaning given by section 194(2);]

“micro-organism” includes any microscopic, biological entity which is capable of replication;

“minimum acceptable flow”, in relation to any inland waters, means (except in sections 21 and 22 above and subject to section 23(3) above) the minimum acceptable flow as for the time being contained in provisions which are in force under section 21(7) above in relation to those waters;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the Ministers” means the Secretary of State and the Minister;

“modifications” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

“mortgage” includes any charge or lien on any property for securing money or money’s worth, and “mortgagee” shall be construed accordingly;

“navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“notice” means notice in writing;

[^{F670}“the NRBW” means the Natural Resources Body for Wales;]

“owner”, in relation to any premises, means the person who—

- (a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or
- (b) would receive the rack-rent if the premises were let at a rack-rent,

but for the purposes of Schedule 2 to this Act, Chapter II of Part II of this Act and the related water resources provisions does not include a mortgagee not in possession, and cognate expressions shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Secretary of State or, in relation to regulations made by the Minister, by those regulations;

“public authority” means any Minister of the Crown or government department, the Agency, [^{F671}the NRBW,] any local authority or any person certified by the Secretary of State to be a public authority for the purposes of this Act;

“public sewer” means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the ^{M103}Water Act 1989, section 179 of or Schedule 2 to the ^{M104}Water Industry Act 1991 or otherwise;

“records” includes computer records and any other records kept otherwise than in a document;

[^{F672}“the related water resources provisions”, in relation to Chapter II of Part II of this Act, means—

- (a) the following provisions of this Act, that is to say, the provisions—
 - (i) of sections 21 to 23 (including Schedule 5);
 - (ii) of sections 120, 125 to 130, 158, 189, 199 to 201, 206(3), 209(3), 211(1) and 216; and

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- (iii) of paragraph 1 of Schedule 25; and
- (b) the following provisions of the 1995 Act, that is to say, the provisions—
 - (i) of sections 41 and 42 (charging schemes) as they have effect by virtue of subsection (1)(a) of section 41 (licences under Chapter II of Part II of this Act); and
 - (ii) of subsections (1) [^{F673}, (1A)] and (2) of section 53 (inquiries and other hearings);]

“sewage effluent” includes any effluent from the sewage disposal or sewerage works of a sewerage undertaker but does not include surface water;

“sewer” has, subject to subsection (2) below, the same meaning as in the Water Industry Act 1991;

“source of supply” means—

 - (a) any inland waters except, without prejudice to subsection (3) below in its application to paragraph (b) of this definition, any which are discrete waters; or
 - (b) any underground strata in which water is or at any time may be contained;

“street” has, subject to subsection (4) below, the same meaning as in Part III of the ^{M105}New Roads and Street Works 1991;

“subordinate legislation” has the same meaning as in the ^{M106}Interpretation Act 1978;

“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;

“surface water” includes water from roofs;

“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, and for the purposes of this definition any premises 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 premises used for carrying on a trade;

“underground strata” means strata subjacent to the surface of any land;

“vessel” includes a hovercraft within the meaning of the ^{M107}Hovercraft Act 1968;

“watercourse” includes (subject to sections 72(2) [^{F674}113(1), 193(6) and 194(6)] above) all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except mains and other pipes which—

 - (a) belong to the Agency [^{F675}, the NRBW,] or a water undertaker; or
 - (b) are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises;

“water pollution provisions”, in relation to this Act, means the following provisions of this Act—

 - (a) the provisions of Part III of this Act;
 - (b) sections 161 [^{F676}to 161D], 190, 202, [^{F677}and 203] above; and
 - (c) paragraph 4 of Schedule 25 to this Act and section 211 above so far as it relates to byelaws made under that paragraph.

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[^{F678}and the following provisions of the 1995 Act, that is to say, the provisions of subsections (1) [^{F679}, (1A)] and (2) of section 53.]

[^{F680}(1A) For the purposes of the definition of “the appropriate agency” in subsection (1), “Wales” has the meaning given by section 158 of the Government of Wales Act 2006.]

- (2) References in this Act to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.
- (3) Any reference in this Act 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; but for the purposes of this Act water for the time being contained in—
 - (a) a well, borehole or similar work, 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
 - (b) any excavation into underground strata, where the level of water in the excavation depends wholly or mainly on water entering it from those strata, shall be treated as water contained in the underground strata into which the well, borehole or work was sunk or, as the case may be, the excavation was made.
- (4) Until the coming into force of Part III of the ^{M108}New Roads and Street Works Act 1991, the definition of “street” in subsection (1) above shall have effect as if the reference to that Part were a reference to the ^{M109}Public Utilities Street Works Act 1950; but nothing in this section shall be taken—
 - (a) to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this section); or
 - (b) in the period before the coming into force of that Part, to prevent references in this Act to a street, where the street is a highway which passes over a bridge or through a tunnel, from including that bridge or tunnel.
- (5) For the purposes of any provision of this Act by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.
- (6) References in this Act to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.
- (7) For the purposes of this Act—
 - (a) references in this Act to more than one Minister of the Crown, in relation to anything falling to be done by those Ministers, are references to those Ministers acting jointly; and
 - (b) any provision of this Act by virtue of which any function of a Minister of the Crown is exercisable concurrently by different Ministers, shall have effect as providing for that function also to be exercisable jointly by any two or more of those Ministers.

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- (8) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the ^{M110}Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act, the ^{M111}Water Industry Act 1991 or the ^{M112}Land Drainage Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.
- (9) Subject to any provision to the contrary which is contained in Schedule 26 to the ^{M113}Water Act 1989 or in the ^{M114}Water Consolidation (Consequential Provisions) Act 1991, nothing in any local statutory provision passed or made before 1st September 1989 shall be construed as relieving any water undertaker or sewerage undertaker from any liability arising by virtue of this Act in respect of any act or omission occurring on or after that date.

Textual Amendments

- F646** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F647** Words in s. 221 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 113** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F648** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F649** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 304(2)** (with Sch. 7)
- F650** Words in s. 221(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 177(4)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F651** Words in s. 221(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 177(5)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F652** Words in s. 221 repealed (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), **reg. 1(1)(b)**, **Sch. 26 para. 8(10)(b)**, **Sch. 28** (with **reg. 1(2)**, **Sch. 4**)
- F653** Words in s. 221 inserted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), **reg. 1(1)(b)**, **Sch. 26 para. 8(10)(a)** (with **reg. 1(2)**, **Sch. 4**)
- F654** Words in s. 221(1) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), **reg. 1(1)**, **Sch. 29 Pt. 1 para. 9** (with **regs. 1(3)**, **77-79**, **Sch. 4**)
- F655** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F656** Words in s. 221 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 304(3)(a)** (with Sch. 7)
- F657** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 304(3)(b)** (with Sch. 7)
- F658** Word in s. 221(1) omitted (6.4.2016) by virtue of The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), **reg. 1(2)**, **Sch. 3 para. 2(a)** (with **regs. 31-33**)
- F659** Words in s. 221 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 304(3)(c)** (with Sch. 7)
- F660** Words in s. 221(1) inserted (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), **reg. 1(2)**, **Sch. 3 para. 2(b)** (with **regs. 31-33**)
- F661** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(8)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F662** Words in s. 221(1) repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(4)**, **105(3)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 2(a)(d)**; S.I. 2004/910, **art. 2(1)(b)**

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- F663** Word in s. 221(1) inserted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 13(a)**
- F664** Words in s. 221(1) repealed (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 13(b)**
- F665** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(4)** (with Sch. 7)
- F666** Words in s. 221(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 90(a)** (with s. 312(1))
- F667** Words in s. 221(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 90(b)** (with s. 312(1))
- F668** Words in s. 221(1) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(6)** (with ss. 54(4) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F669** Words in s. 221(1) substituted (1.10.2014) by Water Act 2014 (c. 21), **ss. 59(4)(a)**, 94; S.I. 2014/1823, art. 3
- F670** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(5)** (with Sch. 7)
- F671** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(6)** (with Sch. 7)
- F672** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(9)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F673** Word in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(7)** (with Sch. 7)
- F674** Words in s. 221(1) substituted (1.10.2014) by Water Act 2014 (c. 21), **ss. 59(4)(b)**, 94; S.I. 2014/1823, art. 3
- F675** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(8)** (with Sch. 7)
- F676** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F677** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(a)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F678** Words in s. 221(1) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F679** Word in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(9)** (with Sch. 7)
- F680** S. 221(1A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(10)** (with Sch. 7)

Modifications etc. (not altering text)

- C199** S. 221 applied (1.4.2004) by Water Act 2003 (c. 37), **ss. 27(3)**, 105(3); S.I. 2004/641, art. 3(i) (with Sch. 3 para. 7)
- C200** S. 221(1): definition applied (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 61(2)**, 67(2)(6), 76(2).
- C201** S. 221(3) extended (14.7.2014) by Water Act 2014 (c. 21), **ss. 61(10)**, 94(2)(n)

Marginal Citations

- M96** 1991 c. 56.
M97 1947 c. 48.
M98 1991 c. 56.
M99 1991 c. 59.
M100 1989 c. 15.
M101 1980 c. 66.
M102 1990 c. 8.
M103 1989 c. 15.
M104 1991 c. 56.
M105 1991 c. 22.

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M106 1978 c. 30.
M107 1968 c. 59.
M108 1991 c. 22.
M109 1950 c. 39.
M110 1991 c. 60.
M111 1991 c. 56.
M112 1991 c. 59.
M113 1989 c. 15.
M114 1991 c. 60.

Other supplemental provisions

[^{F681}222 Crown application.

- (1) Subject to the provisions of this section, this Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the [^{F682}appropriate body], declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, the provisions of this Act shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.
- (5) Subject to subsection (4) above, the powers conferred by sections 154, 156, 160, 162(3) and 168 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the ^{M115}Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.
- (7) Nothing in this Act, as read with the other provisions of this section, shall be construed as conferring any power of levying drainage charges in respect of lands below the high-water mark of ordinary spring tides.
- (8) Section 74 of the ^{M116}Land Drainage Act 1991 (Crown application), so far as it relates to land in which there is a Crown or Duchy interest, shall apply in relation to the flood defence provisions of this Act as it applies in relation to that Act; but nothing in this subsection shall affect any power conferred by this Act for the purposes both of the Agency's [^{F683}or the NRBW's] functions under those provisions and of other functions of the Agency [^{F684}or the NRBW].
- (9) In this section—

“the appropriate authority” has the same meaning as it has in Part XIII of the ^{M117}Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;

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[^{F685}“the appropriate body” means—

- (a) in relation to any act or omission of the Crown in England, the Agency;
- (b) in relation to any act or omission of the Crown in Wales, the NRBW;]

“Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown premises” means premises held by or on behalf of the Crown.

- (10) The provisions of subsection (3) of section 293 of the ^{M118}Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.

[^{F686}(11) This section shall apply in relation to sections 3, 4 and 10 of the Water Act 2003 as it applies in relation to the provisions of this Act.]]

Textual Amendments

- F681** S. 222 substituted (1.7.1997 for certain purposes, 1.1.2018 in so far as not already in force) by 1995 c. 25, ss. 116, 125(2), **Sch. 21 Pt. 1 para. 2(4)** (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**); S.I. 2017/1045, **art. 2(b)**
- F682** Words in s. 222(2) substituted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)**, **art. 1(2)**, **Sch. 2 para. 305(2)** (with Sch. 7)
- F683** Words in s. 222(8) inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)**, **art. 1(2)**, **Sch. 2 para. 305(3)(a)** (with Sch. 7)
- F684** Words in s. 222(8) inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)**, **art. 1(2)**, **Sch. 2 para. 305(3)(b)** (with Sch. 7)
- F685** Words in s. 222(9) inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)**, **art. 1(2)**, **Sch. 2 para. 305(4)** (with Sch. 7)
- F686** S. 222(11) added (1.4.2006) by **Water Act 2003 (c. 37)**, s. 105(3), **Sch. 7 para. 13**; S.I. 2006/984, **art. 2(s)(i)**

Modifications etc. (not altering text)

- C202** S. 222 (as in force immediately before the substitution made by 1995 c. 25, Sch. 21 para. 2(4) and for so long as the substituted s. 222 does not apply to Pt. 2 of this Act) applied (1.4.2006) by **Water Act 2003 (c. 37)**, **ss. 33(3)(e)**, 105(3); S.I. 2006/984, **art. 2(p)**

Marginal Citations

- M115** 1947 c. 44.
- M116** 1991 c. 59.
- M117** 1990 c. 8.
- M118** 1990 c. 8.

^{F687}**223 Exemption for visiting forces.**

Textual Amendments

- F687** S. 223 repealed (1.1.2018) by **Water Act 2003 (c. 37)**, ss. 32, 105(3), **Sch. 9 Pt. 1**; S.I. 2017/1043, **art. 2(d)(h)**

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^{F688}**[224 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
 - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F688 S. 224 substituted (1.2.1996 in so far as it confers power to make an order or make provision in relation to the exercise of that power and 1.4.2020 in so far as not already in force) by 1995 c. 25, ss. 118(5), 125(2) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2 (with art. 4); S.I. 2020/216, art. 2

225 Short title, commencement and extent.

- (1) This Act may be cited as the Water Resources Act 1991.
- (2) This Act shall come into force on 1st December 1991.
- (3) Subject to subsections (4) to (6) of section 2 and to section 224 above, to the extension of section 166(3) above to Scotland and to the extension, by virtue of any other enactment, of any provision of this Act to the territorial sea, this Act extends to England and Wales only.
- (4) Nothing in this Act, so far as it extends to Scotland, shall authorise the [^{F689}Agency] to acquire any land in Scotland compulsorily.

Textual Amendments

F689 Word in s. 225 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

^{F690}SCHEDULE 1

Textual Amendments

F690 Sch. 1 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 178, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

SCHEDULE 2

Section 2.

ORDERS AND AGREEMENTS FOR TRANSFER OF OF NAVIGATION, HARBOUR AND CONSERVANCY FUNCTIONS

Modifications etc. (not altering text)

C203 Sch. 2: Functions transferred (1.4.1996) to the Agency by 1995 c. 25, s. 2(1)(a)(vii) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Powers to transfer functions or property

- 1 (1) The [^{F691}appropriate agency] may at any time apply to the Ministers for an order under this Schedule transferring to the [^{F691}appropriate agency] any of the functions or property of a navigation authority, harbour authority or conservancy authority.
- (2) The power to make an order under this Schedule shall be exercisable by statutory instrument.
- (3) Any transfer of functions or property which could be effected by an order under this Schedule may, with the consent of the Ministers, be effected by agreement between the [^{F691}appropriate agency] and the other body concerned.
- (4) Where, in accordance with this paragraph, the [^{F691}appropriate agency] may apply for an order transferring any functions or property of another body, that body may itself apply for such an order.
- (5) For the purposes of this Schedule the references in sub-paragraph (1) above to a navigation authority, to a harbour authority and to a conservancy authority shall each include a reference to a body which no longer has any members but which, if it had members, would be such an authority

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Textual Amendments

F691 Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

Consultation with affected body

- 2 (1) Before determining whether to make an order on an application under paragraph 1 above, the Ministers shall—
- (a) consult whichever of the following is not the applicant, that is to say, the [F691appropriate agency] and the body from which any functions or property are proposed in the application to be transferred; and
 - (b) consider any representations made with respect to the application by the [F691appropriate agency] or, as the case may be, by any such body.
- (2) Sub-paragraph (1) above shall not require the Ministers to consult, or consider representations from, any body which no longer has any members.

Textual Amendments

F691 Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

Public consultation

- 3 (1) If the Ministers propose to make an order on an application under paragraph 1 above, they shall prepare a draft order, and shall cause notice of their intention to make an order—
- (a) to be published in the London Gazette and in such other manner as they think best adapted for informing persons affected; and
 - (b) to be served on—
 - (i) the [F691appropriate agency];
 - (ii) any body (other than one no longer having any members) from which any functions or property are proposed to be transferred; and
 - (iii) any such navigation authority, harbour authority or conservancy authority not falling within paragraph (ii) above as appears to the Ministers to be affected by the proposals.
- (2) A notice under sub-paragraph (1) above shall specify—
- (a) the place where copies of the draft order, and of any map to which it refers, may be inspected and obtained; and
 - (b) the time (not being less than twenty-eight days) within which, and the manner in which, objections to the draft order may be made.
- (3) Before making any order on an application under paragraph 1 above, the Ministers—
- (a) shall consider any objections which may be duly made to the draft order; and
 - (b) may, if they think fit, cause a local inquiry to be held with respect to any such objections;

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and, in making the order, the Ministers may make such modifications in the terms of the draft as appear to them desirable.

Textual Amendments

F691 Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

Supplemental provisions of order

- 4 (1) An order under this Schedule may contain such incidental, supplementary, consequential and transitional provisions as the Ministers consider necessary or expedient.
- (2) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be included in an order by virtue of that sub-paragraph shall include such provisions as the Ministers consider necessary or expedient with respect to—
- (a) the transfer of assets and liabilities, the payment of compensation and other financial adjustments;
 - (b) the amendment, adaptation or repeal of local enactments; and
 - (c) the application, subject to such modifications as may be specified in the order, of provisions corresponding to those originally made by or under Part IX of the ^{M120}Water Resources Act 1963.

Marginal Citations

M120 1963 c. 38.

Objection to final order by affected bodies

- 5 (1) After making an order under this Schedule, the Ministers, if an objection—
- (a) has been duly made by the [^{F692}appropriate agency] or any other body on which notice is required to be served under paragraph 3 above; and
 - (b) has not been withdrawn,
- shall serve notice of the making of the order and of the effect of the order on the [^{F692}appropriate agency] or, as the case may be, that body.
- (2) Where a notice is required to be served under sub-paragraph (1) above, the order shall not have effect before the end of a period of twenty-eight days from the date of service of that notice.
- (3) If, within the period of twenty-eight days mentioned in sub-paragraph (2) above, any body (including the [^{F692}appropriate agency]) on which notice has been served under sub-paragraph (1) above gives notice to one of the Ministers objecting to the order, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

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Textual Amendments

F692 Words in [Sch. 2 para. 5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))

Public notice of order

- 6 (1) After making an order under this Schedule, the Ministers shall publish in the London Gazette, and in such other manner as they think best adapted for informing persons affected, a notice—
- (a) stating that the order has been made; and
 - (b) naming a place where a copy of the order may be seen at all reasonable hours.
- (2) In the case of an order to which sub-paragraph (1) of paragraph 5 above applies, a notice under sub-paragraph (1) above—
- (a) shall not be published until the end of the period of twenty-eight days mentioned in sub-paragraph (2) of that paragraph; and
 - (b) shall state whether or not the order is to be subject to special parliamentary procedure.

Challenge of order

- 7 (1) Subject to sub-paragraph (3) below, if any person aggrieved by an order under this Schedule desires to question its validity on the ground—
- (a) that it is not within the powers of this Schedule; or
 - (b) that any requirement of this Schedule has not been complied with in relation to the order,
- he may, within six weeks after the first publication of the notice required by paragraph 6 above, make an application for the purpose to the High Court.
- (2) Where an application under sub-paragraph (1) above is duly made to the High Court, that Court, if satisfied—
- (a) that the order is not within the powers of this Schedule; or
 - (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Schedule not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) The preceding provisions of this paragraph—
- (a) shall not apply to any order which is confirmed by Act of Parliament under section 6 of the ^{M121}Statutory Orders (Special Procedure) Act 1945; and
 - (b) shall have effect in relation to any other order which is subject to special parliamentary procedure by virtue of the provisions of this Schedule as if, for the reference to the first publication of the notice required by paragraph 6 above, there were substituted a reference to the date on which the order becomes operative under that Act of 1945.
- (4) Except as provided by this paragraph, the validity of an order under this Schedule shall not, either before or after the order has been made, be questioned in any legal proceedings whatsoever.

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Marginal Citations

M121 1945 c. 18 (9 & 10 Geo 6).

Effect of order or agreement

- 8 (1) Where, by virtue of an order or agreement under this Schedule, property is transferred to the [^{F693}appropriate agency] on the terms that—
- (a) the body from which it is transferred shall continue liable for the repayment of, and payment of interest on, any sum borrowed in connection with the property; and
 - (b) the [^{F693}appropriate agency] shall make payments to that body in respect of amounts paid by that body by reason of its continuing so liable,
- any payment so made by the shall be deemed to be a capital payment or an annual payment, according as the amount in respect of which it is made was paid in or towards repayment of the loan or by way of interest thereon.
- (2) Property vested in the [^{F693}appropriate agency] by virtue of an order or agreement under this Schedule shall not be treated as so vested by way of sale for the purpose of section 12 of the ^{M122}Finance Act 1895 (which provides for charging stamp duty in the case of certain statutory transfers by way of sale).
- [^{F694}(3) A land transaction by which property is vested in the [^{F693}appropriate agency] by virtue of an order or agreement under this Schedule is exempt from charge for the purposes of stamp duty land tax.
- (4) Relief under sub-paragraph (3) must be claimed in a land transaction return or an amendment of such a return.
- (5) In this paragraph—
- “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;
- “land transaction return” has the meaning given by section 76(1) of that Act.]

Textual Amendments

F693 Words in Sch. 2 para. 8 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

F694 Sch. 2 para. 8(3)-(5) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 17**

Marginal Citations

M122 1895 c. 16.

Ministers' expenses

- 9 (1) The costs incurred by the Ministers in connection with the making and notification of an order under this Schedule shall be paid by the applicant for the order; and, if there is more than one, the Ministers may apportion the costs between the applicants.

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- (2) The Ministers may require any applicant for an order under this Schedule to give security for the payment of any costs payable by the applicant under this paragraph.
- (3) The reference in sub-paragraph (1) above to any costs incurred in connection with the making and notification of an order under this Schedule includes a reference to any costs incurred in relation to any such order under the Statutory Orders (Special Procedure) Act 1945.

Compensation for officers and staff

- 10 (1) The Ministers shall by regulations make provision requiring the payment by the [^{F695}appropriate agency], subject to such exceptions or conditions as may be prescribed, of compensation to or in respect of persons who—
 - (a) are, or but for any military or other designated service of theirs would be, the holders of any such situation, place or employment as may be prescribed; and
 - (b) suffer loss of employment, or loss or diminution of emoluments, in consequence of any order or agreement under this Schedule.
- (2) Regulations under this paragraph may be so framed as to have effect as from a date earlier than that on which they are made; but so much of any regulations as provides that any provision is to have effect as from a date earlier than that on which they are made shall not place any person other than the [^{F695}appropriate agency] in a worse position than he would have been in if the regulations had been so framed as to have effect only as from the date on which they are made.
- (3) Regulations made under this paragraph may include provision as to the manner in which, and the person to whom, any claim for compensation under this paragraph is to be made, and for the determination of all questions arising under the regulations.
- (4) In this paragraph “military or other designated service” means any such service in any of Her Majesty’s forces or other employment (whether or not in the service of Her Majesty) as may be prescribed by regulations under this paragraph.

Textual Amendments

F695 Words in *Sch. 2 para. 10* substituted (1.4.2013) by *The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)*, art. 1(2), **Sch. 2 para. 306** (with *Sch. 7*)

Power to amend local enactments

- 11 (1) If it appears to the Ministers by whom an order is made under this Schedule that any local enactment passed or made before the relevant date—
 - (a) is inconsistent with any of the provisions of that order; or
 - (b) requires to be amended or adapted, having regard to any of the provisions of that order,
 those Ministers may by order repeal, amend or adapt that enactment to such extent, or in such manner, as they may consider appropriate.
- (2) Any order under this paragraph may include such transitional, incidental, supplementary and consequential provisions as the Ministers may consider necessary or expedient.

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- (3) The power to make an order under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this paragraph “relevant date” means the date which was the second appointed day for the purposes of section 133 of the ^{M123}Water Resources Act 1963.
- (5) The provisions of this paragraph shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

Marginal Citations
M123 1963 c. 38.

Interpretation

- 12 (1) In this Schedule “local enactment” means—
- (a) a local or private Act;
 - (b) a public general Act relating to London;
 - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
 - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme.
- (2) References in this Schedule to the Ministers, in a case in which all the functions in question are exercisable in Wales and all the property in question is situated there, shall have effect as references to the Secretary of State.

^{F696}SCHEDULE 3

Textual Amendments

F696 Sch. 3 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 179, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

^{F697}SCHEDULE 4

Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F697 Sch. 4 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 179, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

SCHEDULE 5

Section 21.

PROCEDURE RELATING TO STATEMENTS ON MINIMUM ACCEPTABLE FLOW

Application of Schedule

- 1 (1) This Schedule applies in the case of any draft statement prepared under section 21 or 22 of this Act.
- (2) References in this Schedule, in relation to a statement for amending the provision for determining the minimum acceptable flow of any inland waters, to the inland waters to which the statement relates are references to the inland waters to which the proposed amendment relates.

Notice of proposed statement

- 2 (1) Before submitting the draft statement to the Secretary of State, the [F698 appropriate agency] shall publish a notice—
 - (a) stating the general effect of the draft statement;
 - (b) specifying the place where a copy of the draft statement, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of first publication of the notice; and
 - (c) stating that any person may within that period, by notice in writing to the Secretary of State, object to the approval of the statement.
- (2) A notice under this paragraph shall be published either—
 - (a) at least once in each of two successive weeks, in one or more newspapers circulating in the locality in which the inland waters to which the draft statement relates are situated; or
 - (b) in any other manner which, in any particular case, may be certified by the Secretary of State to be expedient in that case.
- (3) Not later than the date on which the notice is first published in pursuance of subparagraph (2) above, the [F698 appropriate agency] shall serve a copy of the notice on—
 - (a) every local authority or joint planning board whose area comprises any inland waters to which the draft statement relates;
 - (b) any water undertaker having the right to abstract water from any such inland waters;
 - (c) any other water undertaker which was consulted in relation to the draft statement in pursuance of section 21(3)(b) of this Act;
 - (d) the drainage board for any internal drainage district which comprises any such inland waters or from which water is discharged into any such inland waters;

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- (e) any navigation authority, harbour authority or conservancy authority having functions in relation to any such waters or any related inland waters;
 - (f) if any such waters or any related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, [^{F699}the Secretary of State for Transport];
 - (g) any person authorised by a licence under Part I of the ^{M130}Electricity Act 1989 to generate electricity [^{F700}who has a right to abstract water from any such waters or related inland waters].; and
 - (h) every person who—
 - (i) has given notice to the [^{F698}appropriate agency] requesting it to notify him of action taken in connection with the determination of a minimum acceptable flow for any inland waters to which the draft statement relates; and
 - (ii) if the [^{F698}appropriate agency] have required him to pay a reasonable charge for being so notified, has paid that charge.
- (4) The [^{F698}appropriate agency] shall also publish a notice in the London Gazette—
- (a) stating that the draft statement has been submitted to the Secretary of State;
 - (b) naming the areas in respect of which a copy of a notice is required to be served under sub-paragraph (3)(a) above;
 - (c) specifying a place where a copy of the draft statement and of any relevant map or plan may be inspected; and
 - (d) where the notice required by sub-paragraph (1) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.
- (5) In this paragraph “related inland waters” has the same meaning as for the purposes of subsection (3) of section 21 of this Act is given by subsection (8) of that section.

Textual Amendments

F698 Words in Sch. 5 paras. 2-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 307** (with Sch. 7)

F699 Words in Sch. 5 para. 2(3)(f) substituted (25.11.2002) by [S.I. 2002/2626](#), art. 20, **Sch. 2 para. 18(3)**

F700 Words in Sch. 5 para. 2(3)(g) added (1.4.1996) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 180** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3

Modifications etc. (not altering text)

C205 Sch. 5 para. 2(3)(a) applied (with modifications) (4.6.1996) by [S.I. 1996/1243](#), art. 18, **Sch. 5 Pt. II para. 6(2)(b)**

Marginal Citations

M130 1989 c. 29.

Duty to provide copy of draft statement

- 3 The [^{F698}appropriate agency] shall, at the request of any person, furnish him with a copy of the draft statement on payment of such charge as the [^{F698}appropriate agency] thinks reasonable.

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Textual Amendments

F698 Words in [Sch. 5 paras. 2-5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 307](#) (with [Sch. 7](#))

Approval of draft statement

- 4 (1) The Secretary of State may approve the statement either in the form of the draft or in that form as altered in such manner as he thinks fit.
- (2) Where the Secretary of State—
- (a) proposes to make any alteration of a statement before approving it; and
 - (b) considers that any persons are likely to be adversely affected by it,
- the [^{F698}appropriate agency] shall give and publish such additional notices, in such manner, as the Secretary of State may require.
- (3) Sub-paragraph (4) below shall apply if, before the end of—
- (a) the period of twenty-eight days referred to in sub-paragraph (1) of paragraph 2 above;
 - (b) the period of twenty-five days from the publication in the London Gazette of the notice under sub-paragraph (4) of that paragraph; or
 - (c) any period specified in notices under sub-paragraph (2) above,
- notice of an objection is received by the Secretary of State from any person on whom a notice is required by this Schedule to be served, or from any other person appearing to the Secretary of State to be affected by the draft statement, either as prepared in draft or as proposed to be altered.
- (4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before approving the statement, shall either—
- (a) cause a local inquiry to be held; or
 - (b) afford to the objector and to the [^{F698}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Where under this paragraph an objection is received by the Secretary of State from—
- (a) the drainage board for any internal drainage district which comprises any inland waters to which the draft statement relates or, as the case may be, from which water is discharged into any such inland waters; or
 - (b) such an association or person claiming to represent a substantial fishery interest affected by the statement as is certified by the Minister to appear to him to represent such an interest,
- sub-paragraphs (1) to (4) above and paragraph 5 below shall have effect as if references to the Secretary of State (except the first reference in sub-paragraph (3) above) were references to the Ministers.

Textual Amendments

F698 Words in [Sch. 5 paras. 2-5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 307](#) (with [Sch. 7](#))

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Notice and inspection of approved statement

- 5 (1) Where a statement is approved under this Schedule, whether in the form of the draft proposed by the [F698 appropriate agency] or with alterations, the Secretary of State shall give notice to the [F698 appropriate agency]—
- (a) stating that the statement has been approved, either without alteration or with alterations specified in the notice; and
 - (b) specifying the date (not being earlier than twenty-eight days after the date of the notice under this paragraph) on which the statement shall have effect;
- and the [F698 appropriate agency] shall forthwith publish the notice.
- (2) The [F698 appropriate agency] shall keep a copy of every statement, as approved under this Schedule, available at its offices for inspection by the public, free of charge, at all reasonable times.

Textual Amendments

F698 Words in Sch. 5 paras. 2-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 307** (with Sch. 7)

[F701] SCHEDULE 6

Sections 27A(4) and 39B(7)

ORDERS RELATING TO ABSTRACTION OF SMALL QUANTITIES
AND COMPULSORY REGISTRATION OF PROTECTED RIGHTS

Textual Amendments

F701 Sch. 6 substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 14**; S.I. 2004/641, art. 3(y), **Sch. 2** (with **Sch. 3 para. 7**)

Notice of draft order

- 1 (1) An application to the Secretary of State for an order under section 27A(1) or 39B(3) of this Act (an “order”) shall be accompanied by a draft of the proposed order.
- (2) Before submitting a draft order to the Secretary of State, the [F702 appropriate agency] shall publish a notice—
- (a) stating the general effect of the draft order;
 - (b) specifying the place where a copy of the draft 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 twenty-eight days beginning with the date of first publication of the notice; and
 - (c) stating that any person may within that period, by notice to the Secretary of State, object to the making of the order.
- (3) A notice under this paragraph shall be published either—
- (a) at least once in each of two successive weeks, in one or more newspapers circulating in the area to which the draft order relates; or

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- (b) in any other manner which, in any particular case, may be certified by the Secretary of State to be expedient in that case.
- (4) Not later than the date on which the notice is first published in pursuance of sub-paragraph (2) above, the [^{F703}appropriate agency] shall serve a copy of the notice on—
- (a) every local authority (in its capacity as the local planning authority), joint planning board [^{F704}, National Park authority or [^{F705}corporate joint committee]] whose area consists of, includes or is included in the area to which the draft order relates;
 - (b) any relevant water undertaker;
 - (c) any internal drainage board—
 - (i) whose district consists of, includes or is included in the area to which the draft order relates;
 - (ii) from whose district water is discharged into any relevant source of supply; or
 - (iii) into whose district water is discharged from any relevant source of supply;
 - (d) any navigation authority, harbour authority or conservancy authority having functions in relation to—
 - (i) any relevant source of supply; or
 - (ii) any related inland waters;
 - (e) if a relevant source of supply or related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, the Secretary of State for Transport;
 - (f) any person authorised by a licence under Part 1 of the Electricity Act 1989 to generate electricity who is (in that capacity) the holder of a licence to abstract water under Chapter 2 of Part 2 of this Act from—
 - (i) any relevant source of supply; or
 - (ii) any related inland waters;
 - (g) [^{F706}Natural England], if the area to which the order relates is or includes England, or part of it; [^{F707}and]
 - ^{F708}(h)
 - (i) the Broads Authority (established under the Norfolk and Suffolk Broads Act 1988), if the area to which the order relates is or includes the Broads (as defined in that Act), or part of it.
- (5) Where an application for an order is made, the [^{F709}appropriate agency] shall also publish a notice in the London Gazette—
- (a) stating that the draft order has been submitted to the Secretary of State;
 - (b) naming the areas of each of the authorities or boards in respect of which a copy of the notice is required to be served under sub-paragraph (4)(a) above;
 - (c) specifying a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (d) where the notice required by sub-paragraph (2) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.
- (6) In this paragraph—

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- (a) where a draft order makes provision generally (rather than for a specified geographical area), references to the area to which the order relates are to the whole area (whether England, Wales or both of them) in relation to which the order is applied;
- (b) references to a National Park authority are to a National Park authority established under Part 3 of the 1995 Act;
- [^{F710}(ba) references to a corporate joint committee are to a corporate joint committee to which Part 6 of the Planning and Compulsory Purchase Act 2004 applies by virtue of regulations under Part 5 of the Local Government and Elections (Wales) Act 2021;]
- (c) a “relevant source of supply”, in relation to a draft order, means—
 - (i) if the draft order relates only to particular sources of supply (or a class of them) in an area, any of those sources of supply (or any source of supply in that class) in that area;
 - (ii) otherwise, any source of supply in the area to which the draft order relates;
- (d) a “relevant water undertaker”, in relation to a draft order, means a water undertaker which is the holder of a licence to abstract water under Chapter 2 of Part 2 of this Act from—
 - (i) a relevant source of supply; or
 - (ii) a source of supply which is related to a relevant source of supply;
- (e) for the purposes of paragraph (d) above, a source of supply (the “related source”) is related to a relevant source of supply if it appears to the [^{F711}appropriate agency] that, having regard to the extent to which the level or flow of water in the related source depends on the level or flow of the waters in the relevant source of supply, the ability of the water undertaker to abstract water from the related source in accordance with its licence may be substantially affected as a result of the draft order;
- (f) “related inland waters” are inland waters the level or flow of which may, in the [^{F711}appropriate agency's] opinion, be affected by changes in the level or flow of the waters in a relevant source of supply.

Textual Amendments

- F702** Words in Sch. 6 para. 1(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(a)** (with Sch. 7)
- F703** Words in Sch. 6 para. 1(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(b)(i)** (with Sch. 7)
- F704** Words in Sch. 6 para. 1(4)(a) substituted (6.9.2015 for specified purposes, 7.1.2021 in so far as not already in force) by [Planning \(Wales\) Act 2015 \(anaw 4\)](#), s. 58(2)(b)(4)(b), **Sch. 2 para. 16(a)**; [S.I. 2021/7](#), reg. 2(c)
- F705** Words in Sch. 6 para. 1(4)(a) substituted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), s. 175(1)(e), **Sch. 9 para. 30(a)**
- F706** Words in Sch. 6 para. 1(4)(g) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), s. 107, **Sch. 11 para. 133**; [S.I. 2006/2541](#), art. 2 (with Sch.)
- F707** Word in Sch. 6 para. 1(4)(g) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(b)(ii)** (with Sch. 7)
- F708** Sch. 6 para. 1(4)(h) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(b)(iii)** (with Sch. 7)

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- F709** Words in Sch. 6 para. 1(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(c)** (with Sch. 7)
- F710** Sch. 6 para. 1(6)(ba) substituted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), s. 175(1)(e), **Sch. 9 para. 30(b)**
- F711** Words in Sch. 6 para. 1(6) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(d)** (with Sch. 7)

Duty to provide copy of draft order

- 2 Where an application for an order is made, the [^{F712}appropriate agency] shall, at the request of any person, furnish him with a copy of the draft order on payment of such charge as the [^{F712}appropriate agency] thinks reasonable.

Textual Amendments

- F712** Words in [Sch. 6 paras. 2-4](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(3)** (with Sch. 7)

Making of order

- 3 (1) Where an application for an order is made, the Secretary of State may make the order either in the form of the draft or in that form as altered in such manner as he thinks fit.
- (2) Where the Secretary of State—
- (a) proposes to make any alteration of an order before making it; and
 - (b) considers that any persons are likely to be adversely affected by it,
- the [^{F712}appropriate agency] shall give and publish such additional notices, in such manner, as the Secretary of State may require.
- (3) Sub-paragraph (4) below shall apply if before the end of—
- (a) the period of twenty-eight days referred to in sub-paragraph (2)(b) of paragraph 1 above;
 - (b) the period of twenty-five days from the publication in the London Gazette of the notice under sub-paragraph (5) of that paragraph; or
 - (c) any period specified in notices under sub-paragraph (2) above,
- notice of an objection is received by the Secretary of State from any person on whom a notice is required by this Schedule to be served, from any other person appearing to the Secretary of State to be affected by the order (either as prepared in draft or as proposed to be altered) or, in a case where the Secretary of State directed the [^{F712}appropriate agency] to apply for the order, from the [^{F712}appropriate agency].
- (4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before making the order, may take such steps as he sees fit and, in particular, may—
- (a) cause a local inquiry to be held; or
 - (b) afford to the objector and to the [^{F712}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Where—

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- (a) the order (whether as prepared in draft or as proposed to be altered) relates to any tidal water situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales); and
 - (b) no navigation authority, harbour authority or conservancy authority has functions in relation to that tidal water,
- the Secretary of State shall not make the order except with the approval of the Secretary of State for Transport.

Textual Amendments

F712 Words in [Sch. 6 paras. 2-4](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 308\(3\)](#) (with [Sch. 7](#))

Notice and inspection of final order

- 4 (1) Where an order is made under section 27A(1) or 39B(3) of this Act, whether in the form of the draft proposed by the [^{F712}appropriate agency] or with alterations, the Secretary of State shall give notice to the [^{F712}appropriate agency]—
- (a) stating that the order has been made, either without alteration or with alterations specified in the notice; and
 - (b) specifying the date (not being earlier than twenty-eight days after the date of the notice under this paragraph) on which the order shall have effect;
- and the [^{F712}appropriate agency] shall forthwith publish the notice.
- (2) The [^{F712}appropriate agency] shall keep a copy of every order made under section 27A(1) or 39B(3) of this Act available at its offices for inspection by the public, free of charge, at all reasonable times.]

Textual Amendments

F712 Words in [Sch. 6 paras. 2-4](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 308\(3\)](#) (with [Sch. 7](#))

SCHEDULE 7

Sections 48, 55, 60, 61 and 65.

LICENCES OF RIGHT

Applications for licences of right under paragraph 30 or 31 of Schedule 26 to the Water Act 1989

- 1 (1) Paragraphs 30 and 31 of Schedule 26 to the ^{M131}Water Act 1989 shall continue to apply (notwithstanding the repeals made by the ^{M132}Water Consolidation (Consequential Provisions) Act 1991 but subject to the following provisions of this Schedule) in relation—
- (a) to any application made under either of those paragraphs which is outstanding immediately before the coming into force of this Act; and

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- (b) to any appeal against a determination made, on an application under either of those paragraphs, either before the coming into force of this Act or, thereafter, by virtue of paragraph (a) above;
- but for the purposes of any such application or appeal any reference in those paragraphs to a provision of the ^{M133}Water Resources Act 1963 which is re-enacted in this Act shall have effect, in relation to a time after the coming into force of this Act, as a reference to the corresponding provision of this Act.
- (2) Where an application for the grant of a licence by virtue of paragraph 30 or 31 of Schedule 26 to the Water Act 1989 has been made before the end of the period within which such an application was required to be made under that paragraph, then—
- (a) sections 24 and 48 of this Act and Part II of the ^{M134}Gas Act 1965 shall have effect, until the application is disposed of, as if the licence had been granted on the date of the application and the provisions of the licence had been in accordance with the proposals contained in the application; and
- (b) for the purposes of those sections and Part II of the said Act of 1965 any licence granted on the application shall be treated as not having effect until the application has been disposed of.
- (3) For the purposes of this paragraph an application for the grant of a licence by virtue of paragraph 30 or 31 of Schedule 26 to the Water Act 1989 above shall be taken to be disposed of on (but not before) the occurrence of whichever of the following events last occurs, that is to say—
- (a) the grant, on the determination of the application by the [^{F713}appropriate agency], of a licence the provisions of which are in accordance with the proposals contained in the application;
- (b) the expiration, without a notice of appeal having been given, of the period (if any) within which the applicant is entitled to give notice of appeal against the decision on the application;
- (c) the determination or withdrawal of an appeal against that decision;
- (d) the grant, variation or revocation, in compliance with a direction given by the Secretary of State in consequence of such an appeal, of any licence;
- and in this sub-paragraph any reference to a decision includes a reference to a decision which is to be treated as having been made by virtue of any failure of the [^{F713}appropriate agency] to make a decision within a specified time.
- (4) Subject to the other provisions of this Schedule, any licence granted by virtue of this paragraph shall have effect as a licence under Chapter II of Part II of this Act; and, so far as necessary for the purposes of this paragraph, anything done under or for the purposes of a provision of the ^{M135}Water Resources Act 1963 applied by paragraph 30 or 31 of Schedule 26 to the 1989 Act, shall have effect as if that paragraph applied the corresponding provision of this Act and that thing had been done under or for the purposes of that corresponding provision.

Textual Amendments

F713 Words in Sch. 7 para. 1(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 309](#) (with Sch. 7)

Marginal Citations

M131 1989 c. 15.

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M132 1991 c. 60.

M133 1963 c. 38.

M134 1965 c. 36.

M135 1963 c. 38.

Section 48 of this Act

- 2 Subsection (2) of section 48 of this Act shall not afford any defence to an action brought before 1st September 1992 if the licence referred to in that subsection is a 1989 Act licence of right; and there shall be no defence afforded to such an action by that subsection as applied by paragraph 1(2) above.

Section 55 of this Act

- 3 No application shall be made under section 55 of this Act (variation of licence on application of owner of fishing rights) in respect of any 1989 Act licence of right.

Section 60 of this Act

- 4 (1) Where the plaintiff in any action brought against the [F714appropriate agency] in pursuance of section 60 of this Act (liability of the [F714appropriate agency] for derogation from protected right) is entitled to a protected right for the purposes of Chapter II of Part II of this Act by reason only that he is the holder of, or has applied for, a licence of right, it shall be a defence for the [F714appropriate agency] to prove—
- (a) that the plaintiff could have carried out permissible alterations in the means whereby he abstracted water from the source of supply in question; and
 - (b) that, if he had carried out such alterations, the abstraction or, as the case may be, the obstruction or impeding of the flow of the inland waters authorised by the licence to which the action relates would not have derogated from his protected right for the purposes of that Chapter;
- and subsection (3) of that section (liability of [F714appropriate agency] for compliance with direction requiring derogation from protected rights) shall not apply to a direction given in consequence of an appeal against the decision of the [F714appropriate agency] on an application for the grant of a 1989 Act licence of right.
- (2) In this paragraph “permissible alterations”—
- (a) in relation to a person who is the holder of a licence of right, means any alteration of works, or modification of machinery or apparatus, which would fulfil the requirements of the licence as to the means whereby water is authorised to be abstracted;
 - (b) in relation to a person who is not the holder of a licence of right, but to whose application for such a licence paragraph 1 above applies, means any alteration of works, or modification of machinery or apparatus, by means of which he abstracted water from the source of supply in question during the period of five years ending with 1st September 1989, being an alteration or modification which would be within the scope of the licence if granted in accordance with the application.

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Textual Amendments

F714 Words in [Sch. 7 para. 4](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 309](#) (with [Sch. 7](#))

Section 61 of this Act

- 5 (1) No compensation shall be payable under section 61 of this Act (compensation for revocation or variation of a licence) in respect of the revocation or variation of a 1989 Act licence of right if the revocation or variation is for giving effect to the decision of the court in an action in respect of which paragraph 2 above has effect or in any proceedings in consequence of such an action.
- (2) Nothing in section 61(3) of this Act (compensation not payable in respect of works etc. carried out before the grant of a licence) shall apply in relation to any licence of right.

Licences of right

- 6 (1) In this Schedule references to a licence of right are references to—
- (a) any 1989 Act licence of right, that is to say, a licence granted (whether or not by virtue of paragraph 1 above) under paragraph 30 or 31 of Schedule 26 to the ^{M136}Water Act 1989; or
 - (b) any licence which, having been granted in pursuance of an application under section 33 of the ^{M137}Water Resources Act 1963 (or in pursuance of an appeal consequential on such an application), has effect after the coming into force of this Act by virtue of sub-paragraph (2) below.
- (2) The repeal by the ^{M138}Water Consolidation (Consequential Provisions) Act 1991 of paragraph 29(4) of Schedule 26 to the Water Act 1989 shall not prevent any licence granted as mentioned in paragraph (b) of sub-paragraph (1) above from continuing (in accordance with paragraph 1 of Schedule 2 to that Act of 1991 and subject to the preceding provisions of this Schedule) to have effect after the coming into force of this Act as a licence under Chapter II of Part II of this Act.

Marginal Citations

M136 1989 c. 15.
M137 1963 c. 38.
M138 1991 c. 60.

PROCEEDINGS ON APPLICATIONS FOR DROUGHT ORDERS

- 1 (1) The applicant for a drought order shall—
- (a) cause notice of the application to be served on the persons specified in the Table set out in sub-paragraph (2) below;

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- (b) cause a notice of the application to be published in one or more local newspapers circulating within the area affected by the order; and
- (c) cause a notice of the application to be published in the London Gazette.

(2) The said Table is as follows—

TABLE

All orders	(a) The [^{F715} Agency] (where it is not the applicant). [^{F716} (aa) The NRBW (where it is not the applicant).] (b) Every local authority (not being [^{F717} an English county] council) and water undertaker (not being the applicant) whose area would be affected by the order.
Orders which suspend or modify any enactment or any order or scheme made or confirmed under any enactment.	Such persons (if any) as are specified by name in the enactment, order or scheme as being persons for whose protection it was enacted or made.
Orders concerning the taking of water from a source or the discharge of water or effluent to a place.	(a) Every local authority (not being [^{F717} an English county] council) in whose area the source, or the place at which water or effluent is to be discharged, is situated.(b) Every drainage board for an internal district in which the source, or the place at which water or effluent is to be discharged, is situated.(c) Every navigation authority exercising functions over any watercourse affected by the order.(d) If the order concerns any [^{F718} environmental permit] relating to the discharge of sewage effluent or trade effluent, the person to whom the [^{F718} environmental permit] was given.
Orders which authorise the carrying out of any works.	(a) Every local authority (not being [^{F717} an English county] council) within whose area the works are situated.(b) If the order authorises the carrying out of works in, under or over a watercourse, every drainage board for an internal drainage district within which the works, or any part of the works, are situated.
Orders which authorise the occupation and use of land.	Every owner, lessee and occupier of the land.

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Orders which prohibit or limit the taking of water.	Every named person to whom the prohibition or limitation applies.
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- (3) A notice for the purposes of this paragraph of an application for a drought order—
- (a) shall state the general effect of the application;
 - (b) shall specify a place within the area affected by the order where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable times within a period of seven days from the date on which it is served or, as the case may be, published;
 - (c) shall state that objections to the application may be made to the Secretary of State within seven days from the date on which it is served or, as the case may be, published; and
 - (d) in the case of an application for an order authorising the occupation and use of land, shall specify the land to which the application relates.
- (4) A notice sent in a letter in pursuance of section 220 of this Act to an address to which it may be sent in pursuance of that section shall not be treated as having been properly served for the purposes of this paragraph unless the sender takes such steps as are for the time being required to secure that the letter is transmitted in priority to letters of other descriptions.

Textual Amendments

- F715** Word in Sch. 8 para. 1(2) Table substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F716** Words in Sch. 8 para. 1(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 310(2)** (with Sch. 7)
- F717** Words in Sch. 8 para. 1(2) Table substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(7)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, **art. 3**, **Sch. 1**
- F718** Words in Sch. 8 substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), **reg. 1(1)(b)**, **Sch. 26 para. 8(3)(c)** (with reg. 1(2), Sch. 4)

Objections to and making of orders

- 2 (1) If any objection is duly made with respect to an application for a drought order and is not withdrawn, then, subject to the provisions of this paragraph, the Secretary of State shall, before making the order, either—
- (a) cause a local inquiry to be held; or
 - (b) afford an opportunity—
 - (i) to the objector; and
 - (ii) if the objector avails himself of the opportunity, to the applicant and to any other persons to whom it appears to the Secretary of State expedient to afford the opportunity,
 of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (2) Subject to sub-paragraph (3) below, where, on an application for a drought order, it appears to the Secretary of State that a drought order is required to be made urgently if it is to enable the deficiency of supplies of water to be effectively met, he may direct that the requirements of sub-paragraph (1) above shall be dispensed with in relation to the application.

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- (3) Nothing in sub-paragraph (2) above shall authorise the Secretary of State to fail to consider any objection to a proposed drought order which has been duly made and not withdrawn.
- (4) Notwithstanding anything in sub-paragraph (1) above, the Secretary of State may—
- (a) require any person who has made an objection to a proposed drought order to state in writing the grounds of his objection; and
 - (b) disregard the objection for the purposes of this paragraph if the Secretary of State is satisfied—
 - (i) that the objection relates exclusively to matters which can be dealt with on a reference under Schedule 9 to this Act or by any person by whom compensation is to be assessed; or
 - (ii) in a case where the order is one confined to the extension of a period specified in a previous order, that the objection is one that has in substance been made with respect to the application for that previous order.
- (5) Subject to the requirements of this paragraph, the Secretary of State, upon being satisfied that the proper notices have been published and served, may, if he thinks fit, make the order in respect of which the application is made with or without modifications.
- (6) The Secretary of State may hold a local inquiry on any application for a drought order notwithstanding that he is not required to do so by this paragraph.
- [^{F719}(7) For the purposes of subsection (2) of section 53 of the 1995 Act (which applies subsections (2) to (5) of section 250 of the Local Government Act 1972 to inquiries in connection with functions of or in relation to the Agency [^{F720}or in connection with relevant environmental functions of or in relation to the NRBW]) [^{F721}as modified by subsection (4) of that section], a local inquiry held under this paragraph with respect to an application by a water undertaker for a drought order, if it would not otherwise fall within paragraph (a) or (b) of that subsection, is to be treated as one which falls within paragraph (b).]

Textual Amendments

- F719** Sch. 8 para. 2(7) added (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 65, 105(3)**; S.I. 2004/641, art. 3(p) (with Sch. 3 para. 7)
- F720** Words in Sch. 8 para. 2(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 310(3)(a)** (with Sch. 7)
- F721** Words in Sch. 8 para. 2(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 310(3)(b)** (with Sch. 7)

Notice after making of order

- 3 After a drought order has been made, the person on whose application it was made shall cause to be published (in the manner in which notice of the application was required under paragraph 1 above to be published) a notice—
- (a) stating that the order has been made; and
 - (b) naming a place where a copy of it may be inspected.

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SCHEDULE 9

Section 79.

COMPENSATION IN RESPECT OF DROUGHT ORDERS

Compensation to be made in the case of all drought orders

- 1 Where a drought order has been made, compensation in respect of the entry upon or occupation or use of land shall be made by the applicant for the order to—
- (a) the owners and occupiers of the land; and
 - (b) all other persons interested in the land or injuriously affected by the entry upon, occupation or use of the land,
- for loss or damage sustained by reason of the entry upon, occupation or use of the land.

Compensation to be made in the case of ordinary orders only

- 2 (1) This paragraph shall apply for determining the compensation to be made, in addition to any made under paragraph 1 above, where an ordinary drought order has been made.
- (2) Compensation in respect of the taking of water from a source or its taking from a source otherwise than in accordance with a restriction or obligation which has been suspended or modified shall be made by the applicant for the order to—
- (a) the owners of the source of water; and
 - (b) all other persons interested in the source of water or injuriously affected by the taking of the water,
- for loss or damage sustained by reason of the taking of the water.
- (3) Compensation in respect of water's being discharged or not discharged to any place or its being discharged otherwise than in accordance with a restriction or obligation (whether relating to the treatment or discharge of the water) which has been suspended or modified shall be made by the applicant for the order to—
- (a) the owners of the place of discharge; and
 - (b) all other persons interested in the place of discharge or injuriously affected by the discharge or lack of discharge,
- for loss or damage sustained by reason of the water being discharged or not discharged or being discharged otherwise than in accordance with the restriction or obligation.
- (4) Compensation in respect of the imposition of a prohibition or limitation on the taking of water from a source shall be made by the applicant for the order, to any persons to whom the prohibition or limitation applies, for loss or damage sustained by reason of the prohibition or limitation.
- (5) Compensation in respect of a power to make discharges of sewage effluent or trade effluent in pursuance of any [^{F722}environmental permit] shall be made by the applicant for the order, to any person who has been exercising that power, for loss or damage sustained by reason of the suspension or variation of the [^{F722}environmental permit] or the attachment of conditions to the [^{F722}environmental permit].

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Textual Amendments

F722 Words in Sch. 9 para. 2(5) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(d)** (with reg. 1(2), Sch. 4)

Claims for compensation: general

- 3 (1) A claim for compensation under this Schedule shall be made by serving upon the applicant a notice stating the grounds of the claim and the amount claimed.
- (2) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall, in default of agreement, be referred to, and determined by, the [^{F723}Upper Tribunal] .

Textual Amendments

F723 Words in Sch. 9 para. 3(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)

Claims for compensation under paragraph 2

- 4 (1) A claim for compensation under paragraph 2 above may be made at any time not later than six months after the end of the period for which the order authorises, as the case may be—
- (a) the taking or discharge of water;
 - (b) the imposition of a prohibition or limitation on the taking of water;
 - (c) the suspension or modification of any restriction or obligation; or
 - (d) the suspension or variation of, or attachment of conditions to, any [^{F724}environmental permit] relating to the discharge of sewage effluent or trade effluent.
- (2) Where a claim for compensation under paragraph 2 above is made during the continuance of the ordinary drought order, the [^{F725}Upper Tribunal] may, if it thinks fit, award a sum representing the loss or damage which is likely to be sustained by the claimant in respect of each day on which, as the case may be—
- (a) water is taken or discharged;
 - (b) water is not discharged or is discharged otherwise than in accordance with an obligation or restriction; or
 - (c) sewage effluent or trade effluent is discharged otherwise than in accordance with [^{F726}an environmental permit] originally given.
- (3) In assessing the compensation to be made under paragraph 2(2) above the [^{F727}Upper Tribunal] may, if it thinks fit, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the applicant and other persons taking water from the source, may fairly be apportioned to the claimant.
- (4) In assessing the compensation to be made under paragraph 2(3) above in respect of the lack of discharge of compensation water, the [^{F728}Upper Tribunal] may, if it thinks fit, have regard to the amount of water which, under the conditions existing by

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reason of the shortage of rain, would have been available to the claimant during the period during which the deficiency of supplies of water is continued, if the applicant in relation to whom the obligation was imposed had never carried on its undertaking.

- (5) In sub-paragraph (4) above “compensation water” has the same meaning as in section 77 of this Act.

Textual Amendments

- F724** Words in Sch. 9 para. 4(1)(d) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(d)** (with reg. 1(2), Sch. 4)
- F725** Words in Sch. 9 para. 4(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)
- F726** Words in Sch. 9 para. 4(2)(c) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(11)** (with reg. 1(2), Sch. 4)
- F727** Words in Sch. 9 para. 4(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)
- F728** Words in Sch. 9 para. 4(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)

^{F729}SCHEDULE 10

Textual Amendments

- F729** Sch. 10 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(q), **Sch. 28** (with regs. 1(2), 109(2), Sch. 4)

SCHEDULE 11

Section 93.

WATER PROTECTION ZONE ORDERS

Application for consent

- 1 (1) Where the [^{F730}appropriate agency] applies to the Secretary of State for an order under section 93 of this Act, it shall—
- (a) submit to the Secretary of State a draft of the order applied for;
 - (b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in the locality proposed to be designated as a water protection zone by the order;
 - (c) not later than the date on which that notice is first published serve a copy of the notice on every local authority and water undertaker whose area includes the whole or any part of that locality; and
 - (d) publish a notice in the London Gazette which-

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- (i) states that the draft order has been submitted to the Secretary of State;
 - (ii) names every local authority on whom a notice is required to be served under this paragraph;
 - (iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.
- (2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order shall—
 - (a) state the general effect of the order applied for;
 - (b) specify a place where a copy of the draft 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 twenty-eight 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.

Textual Amendments

F730 Words in Sch. 11 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(a)** (with Sch. 7)

Supply of copies of draft orders

- 2 Where the [^{F730}appropriate agency] has applied for an order under section 93 of this Act, it shall, at the request of any person and on payment by that person of such charge (if any) as the [^{F730}appropriate agency] may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above.

Textual Amendments

F730 Words in Sch. 11 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(a)** (with Sch. 7)

Modifications of proposals

- 3 (1) On an application for an order under section 93 of this Act, the Secretary of State may make the order either in the terms of the draft order submitted to him or, subject to sub-paragraph (2) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.
- (2) The Secretary of State shall not make such a modification of a draft order submitted to him as he considers is likely adversely to affect any persons unless he is satisfied that the [^{F730}appropriate agency] has given and published such additional notices, in such manner, as the Secretary of State may have required.

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- (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 State of any draft order include any modification of the area designated by the draft order as a water protection zone.

Textual Amendments

F730 Words in Sch. 11 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(a)** (with Sch. 7)

Consideration of objections etc.

- 4 Without prejudice to [^{F731}section 53 of the 1995 Act (inquiries and other hearings)], where an application for an order under section 93 of this Act has been made, the Secretary of State may, if he considers it appropriate to do so, hold a local inquiry before making any order on the application.

Textual Amendments

F731 Words in Sch. 11 para. 4 substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 184** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3

^{F732}SCHEDULE 12

Section 94.

Textual Amendments

F732 Sch. 12 repealed (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 4 (with reg. 7)

^{F733}SCHEDULE 13

Section 103.

Textual Amendments

F733 Sch. 13 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(r), **Sch. 28** (with reg. 1(2), Sch. 4)

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SCHEDULE 14

Section 108.

ORDERS TRANSFERRING MAIN RIVER
FUNCTIONS TO THE [F734 APPROPRIATE AGENCY]

Textual Amendments

F734 Words in Sch. 14 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(b)** (with Sch. 7)

Procedure on application for order

- 1 As soon as any scheme under section 108 of this Act has been submitted to one of the Ministers, the [F735 appropriate agency] shall—
- (a) send copies of the scheme to every internal drainage board, local authority, navigation authority, harbour authority and conservancy authority affected by it; and
 - (b) publish, in one or more newspapers circulating in the area affected by the scheme, a notice stating—
 - (i) that the scheme has been submitted to that Minister;
 - (ii) that a copy of it is open to inspection at a specified place; and
 - (iii) that representations with respect to the scheme may be made to that Minister at any time within one month after the publication of the notice.

Textual Amendments

F735 Words in Sch. 14 para. 1 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(b)** (with Sch. 7)

Order making procedure etc.

- 2 (1) Before either of the Ministers makes an order under section 108 of this Act, he shall cause notice of—
- (a) the intention to make it;
 - (b) the place where copies of the draft order may be inspected and obtained; and
 - (c) the period within which, and the manner in which, objections to the draft order may be made,
- to be published in the London Gazette and in such other manner as he thinks best adapted for informing persons affected and to be sent to the persons specified in sub-paragraph (2) below.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) every county council [F736, county borough council] or London borough council in whose area any part of the area proposed to be affected by the order is situated and, if any part of that area is situated in the City of London, the Common Council of the City of London;
 - (b) the [F737 appropriate agency] and every drainage body, navigation authority, harbour authority or conservancy authority that is known to the Minister in

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question to be exercising jurisdiction within the area proposed to be affected by the order.

- (3) In sub-paragraph (2) above “drainage body” has the same meaning as in section 108 of this Act.

Textual Amendments

F736 Words in Sch. 14 para. 2(2)(a) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(8)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

F737 Words in Sch. 14 para. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(b)** (with Sch. 7)

Determination of whether to make order

- 3 (1) Before either of the Ministers makes an order under section 108 of this Act he—
- (a) shall consider any objections duly made to the draft order; and
 - (b) may, in any case, cause a public local inquiry to be held with respect to any objections to the draft order.
- (2) Each of the Ministers may, in making an order under section 108 of this Act, make such modifications in the terms of the draft as appear to him to be desirable and may confirm the scheme to which the order relates either with or without modifications.

Notice of orders

- 4 As soon as may be after an order under section 108 of this Act has effect one of the Ministers shall publish in the London Gazette, and in such other manner as he thinks best adapted for informing persons affected, a notice—
- (a) stating that the order has come into force; and
 - (b) naming a place where a copy of it may be seen at all reasonable hours.

Challenge to orders

- 5 (1) If any person aggrieved by an order under section 108 of this Act desires to question its validity on the ground—
- (a) that it is not within the powers of this Act; or
 - (b) that any requirement of this Act has not been complied with,
- he may, within six weeks of the date of the publication of the notice mentioned in paragraph 4 above, make an application for the purpose to the High Court.
- (2) Where an application is duly made to the High Court under this paragraph, the High Court, if satisfied—
- (a) that the order is not within the powers of this Act; or
 - (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Act not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) Except by leave of the Court of Appeal, no appeal shall lie to the ^{F738}Supreme Court] from a decision of the Court of Appeal in proceedings under this paragraph.

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- (4) Subject to the preceding provisions of this paragraph an order under section 108 of this Act shall not at any time be questioned in any legal proceedings whatsoever.

Textual Amendments

F738 Words in Sch. 14 para. 5(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 55](#); [S.I. 2009/1604, art. 2\(d\)](#)

Power to make regulations for purposes of Schedule etc.

- 6 The Ministers may make regulations in relation to—
- (a) the publication of notices under paragraph 2 or 4 above;
 - (b) the holding of public local inquiries under this Schedule and procedure at those inquiries; and
 - (c) any other matters of procedure respecting the making of orders under section 108 of this Act.

SCHEDULE 15

Sections 135 and 138.

SUPPLEMENTAL PROVISIONS WITH RESPECT TO DRAINAGE CHARGES

Raising of drainage charge

- 1 (1) A drainage charge—
- (a) shall be raised by the [^{F739}appropriate agency] in writing under the common seal of the [^{F739}appropriate agency]; and
 - (b) shall be deemed to be raised on the date on which a resolution is passed by the [^{F739}appropriate agency] authorising their seal to be affixed to the charge.
- (2) Every drainage charge shall be raised for a year ending on 31st March and shall be raised before or during the year for which it is raised.
- (3) Without prejudice to their powers by virtue of section 112 of this Act, the Ministers shall each have power by regulations to prescribe the forms of drainage charges and of demands for drainage charges.

Textual Amendments

F739 Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 311\(c\)](#) (with Sch. 7)

Publication of drainage charge

- 2 (1) A drainage charge shall not be valid unless notice of the charge is given by the [^{F739}appropriate agency] in accordance with sub-paragraph (2) below within ten days of the date on which it is raised.
- (2) The notice must—

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- (a) state the amount of the charge and the date on which it was raised; and
- (b) be published in one or more newspapers circulating in the area in respect of which the charge was raised.

Textual Amendments

F739 Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

Occupiers liable for drainage charge

- 3 (1) Subject to paragraphs 4 and 5 below—
- (a) drainage charges shall be levied on the occupiers of chargeable land in [^{F740}the flood risk management region] or, as the case may be, the designated area; and
 - (b) sub-paragraphs (2) to (4) below shall have effect with respect to the assessment of persons to a drainage charge with respect to any land (“the relevant land”) and their liability in regard to the charge.
- (2) A drainage charge shall be assessed on the person who at the date of the raising of the charge is the occupier of the relevant land.
- (3) The full amount of a drainage charge may be recovered by the [^{F739}appropriate agency] from any person who is the occupier of the relevant land at any time during the period for which the charge is raised; but a person who is in occupation of the relevant land for part only of the period for which the charge is raised shall be liable, by virtue of sub-paragraph (4) below, to bear a proportionate part only of the charge.
- (4) If a person who is in occupation of the relevant land for part only of a period for which a drainage charge is raised is required under sub-paragraph (3) above to pay the full amount of the charge, he may (subject to any agreement to the contrary) recover, from any other person who has been in occupation of the land for part of that period, the amount which that other person is liable to bear.

Textual Amendments

F739 Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

F740 Words in Sch. 15 para. 3(1)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 14**

Cases where identity of occupiers in doubt

- 4 (1) The [^{F739}appropriate agency] may serve on the owner of any land a notice requiring him to state in writing the name and address of any person known to him as being an occupier of that land.
- (2) The owner of any land shall be guilty of an offence if—
- (a) he fails without reasonable excuse to comply with a notice under sub-paragraph (1) above;

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- (b) he makes any statement in respect of the information required by such a notice which he knows to be false in a material particular; or
 - (c) he recklessly makes any statement in respect of the information required by such a notice which is false in a material particular.
- (3) A person guilty of an offence under sub-paragraph (2) above shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale; and a person convicted by virtue of paragraph (a) of that sub-paragraph shall be liable to a further conviction by virtue of that paragraph if, after conviction, he continues without reasonable excuse [^{F741}to fail] to comply with the notice in question.
- (4) Where the name of any person liable to be assessed to any drainage charge is not known to the [^{F739}appropriate agency], it shall be sufficient to assess him to the charge by the description of the “occupier” of the premises (naming them) in respect of which the assessment is made, without further name or description.
- (5) For the purposes of this Schedule the owner of any land shall be deemed to be its occupier during any period during which it is unoccupied.
- (6) Sub-paragraphs (1) to (3) above shall be without prejudice to the provisions of Part VIII of this Act.

Textual Amendments

- F739** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)
- F741** Words in Sch. 15 para. 4(3) inserted (21.9.1995) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 187\(1\)](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983, art. 3](#)

Arrangements for owner of land to pay drainage charge

- 5 (1) Subject to paragraph 6 below, the [^{F739}appropriate agency] may make arrangements with the owner of any chargeable land for any drainage charges which may be raised by the [^{F739}appropriate agency] for any period in respect of the land to be levied on the owner, instead of on the occupier of the land.
- (2) Where arrangements under this paragraph are made—
- (a) the charges in question shall be levied on the owner, instead of on the occupier; and
 - (b) any reference to an occupier in the provisions of this Schedule (except in this paragraph and paragraph 6 below) shall be construed accordingly.
- (3) Subject to sub-paragraph (4) below, where in pursuance of any arrangements under this paragraph the owner of any land pays drainage charges in respect of the land to the [^{F739}appropriate agency] either—
- (a) before the end of the period of two months beginning with the date of the service on him of the demand for the charges; or
 - (b) before the end of one-half of the period for which the charges are raised,
- the [^{F739}appropriate agency] shall make to him an allowance equal to ten per cent. of the full amount of the charges.

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- (4) No allowance shall be made under sub-paragraph (3) above in respect of charges which, apart from this paragraph, are payable for any period by the owner in pursuance of paragraph 4(5) above.
- (5) Where arrangements are made under this paragraph, it shall be the duty of the [^{F739}appropriate agency] to give notice of the arrangements, forthwith after they are made, to the occupier of the land affected by them.
- (6) The owner of any land who is a party to any arrangements under this paragraph in respect of the land may recover from the occupier of the land a sum equal to the amount of any drainage charges in respect of the land which, apart from the arrangements, would be payable by the occupier.

Textual Amendments

F739 Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

Power of occupier to prevent arrangements under paragraph 5

- 6 (1) The occupier of any chargeable land may, by notice given to the [^{F739}appropriate agency], determine—
 - (a) that no arrangements under paragraph 5 above shall be made in respect of the land; and
 - (b) that any such arrangements previously made shall cease to have effect so far as they relate to the land and any drainage charge to be raised for a period beginning after the date on which the notice takes effect;
 and may, by a notice so given, revoke any determination under this sub-paragraph so far as it prohibits the making of any such arrangements in respect of the land.
- (2) A notice under sub-paragraph (1) above shall take effect on the day following that on which it is given to the [^{F739}appropriate agency].
- (3) Where notice is given to the [^{F739}appropriate agency] under sub-paragraph (1) above, it shall be the duty of the [^{F739}appropriate agency] to send a copy of the notice to the owner of the land to which it relates.

Textual Amendments

F739 Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

Assessment of chargeable land to drainage charge

- 7 (1) Where land is chargeable land during part only of the year for which a drainage charge is raised, a proportionate part only of the charge shall be payable in respect of that land; and any amount overpaid shall be repaid.
- (2) Where the area of chargeable land in respect of which, apart from this sub-paragraph, a sum is payable by any person by way of a drainage charge consists of or includes

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a fraction of a hectare, then for the purpose of calculating that sum the fraction shall be disregarded if it is less than one-half and treated as one hectare in any other case.

Partial exemption of commercial woodlands

- 8 (1) The sum payable by way of a drainage charge in respect of chargeable land consisting of commercial woodlands shall be calculated as if the area of the land were one-fifth of its actual area.
- (2) In the application of paragraph 7(2) above to chargeable land to which sub-paragraph (1) above applies the area ascertained in pursuance of sub-paragraph (1) above (and not the area of which it is one-fifth) shall be treated as the area in relation to which paragraph 7(2) above has effect.

Returns with respect to land

- 9 (1) The [F742appropriate agency] may serve on any person appearing to it to be the occupier of any land a notice requiring him to furnish a return under sub-paragraph (2) below to the [F742appropriate agency] within twenty-eight days beginning with the date of service of the notice on him.
- (2) The return required of a person by a notice under sub-paragraph (1) above is a return, in writing and in such form as may be specified in the notice, containing such particulars as may reasonably be required for the purpose of enabling the [F742appropriate agency] to determine—
- (a) how much (if any) of the land occupied by that person is chargeable land; and
 - (b) how much (if any) consists of commercial woodlands.
- (3) If any person on whom notice has been served under sub-paragraph (1) above—
- (a) fails without reasonable excuse to comply with the notice;
 - (b) in a return made in pursuance of such a notice, makes any statement which he knows to be false in a material particular; or
 - (c) in any such return recklessly makes any statement which is false in a material particular,
- he shall be guilty of an offence
- (4) A person guilty of an offence under sub-paragraph (3) above shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale; and a person convicted by virtue of paragraph (a) of that sub-paragraph shall be liable to a further conviction by virtue of that paragraph if, after conviction, he continues without reasonable excuse [F743to fail] to comply with the notice in question.
- (5) This paragraph shall be without prejudice to the provisions of Part VIII of this Act.

Textual Amendments

F742 Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

F743 Words in Sch. 15 para. 9(4) inserted (21.9.1995) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 187(1)** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Power to correct erroneous assessments etc.

- 10 (1) The [^{F742}appropriate agency] may, as respects any drainage charge raised by it for the current or the preceding year, make such amendments in any demands or other documents relating to the charge as appear to the [^{F742}appropriate agency] necessary in order to make the raising, levying and collection of the charge conform with this Act.
- (2) In particular, the [^{F742}appropriate agency] may—
- (a) correct any clerical or arithmetical error;
 - (b) correct any erroneous insertions or omissions or any misdescriptions;
 - (c) make such additions or corrections as appear to the [^{F742}appropriate agency] to be necessary by reason of any change in the occupation of any chargeable land or any property ceasing to be chargeable land.
- (3) The [^{F742}appropriate agency] shall serve a notice of any amendment made by the [^{F742}appropriate agency] in pursuance of this paragraph on the occupier of all land affected thereby.
- (4) Where an amendment is made in pursuance of this paragraph—
- (a) any amount overpaid shall be repaid or allowed; and
 - (b) any amount underpaid may be recovered as if it were arrears of the charge.

Textual Amendments

F742 Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

Appeals against demands for drainage charges

- 11 (1) If any person is aggrieved by—
- (a) a demand for a drainage charge made on him as the occupier of chargeable land; or
 - (b) an amendment of such a demand,
- he may appeal to the county court ^{F744}... .
- (2) Notice of appeal under this paragraph, specifying the grounds of appeal, must be given within the required period—
- (a) to the court to which the appeal is made;
 - (b) to the [^{F742}appropriate agency]; and
 - (c) if the appeal relates to land not in the occupation of the appellant, to the occupier of the land.
- (3) For the purposes of sub-paragraph (2) above the required period is twenty-eight days after the date on which the demand is made or, as the case may be, notice of the amendment is served on the appellant.
- (4) On an appeal under this paragraph the court shall, as it thinks just, either confirm the demand or annul or modify it.

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Textual Amendments

- F742** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)
- F744** Words in Sch. 15 para. 11(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 140**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Recovery of drainage charges

- 12 (1) Arrears of any drainage charge may be recovered by the [^{F742}appropriate agency] in the same manner in which arrears of a non-domestic rate may be recovered under the ^{M139}Local Government Finance Act 1988 by a [^{F745}billing authority] within the meaning of that Act.
- (2) Without prejudice to its powers by virtue of [^{F746}section 37 of, and paragraph 6 of Schedule 1 to, the 1995 Act], the [^{F742}appropriate agency] may by resolution authorise any member or officer of the [^{F742}appropriate agency], either generally or in respect of particular proceedings—
- (a) to institute or defend on its behalf any proceedings in relation to a drainage charge; or
 - (b) notwithstanding that he is not qualified to act as a solicitor, to appear on the [^{F742}appropriate agency's] behalf in any proceedings before a magistrates' court for the issue of a [^{F747}warrant of control] for failure to pay a drainage charge.
- (3) In proceedings for the recovery of arrears of a drainage charge the defendant shall not be entitled to raise by way of defence any matter which might have been raised on an appeal under paragraph 11 above.
- (4) The [^{F742}appropriate agency] shall not be required to demand or enforce payment of a drainage charge in any case where the amount of the charge is insufficient to justify the expense of collection.

Textual Amendments

- F742** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)
- F745** Words in Sch. 15 para. 12(1) substituted (1.8.1992 subject to savings in S.I. 1992/1755, art. 2(2)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1), **Sch. 13 para. 98** (with s. 118(1)(2)(4); S.I. 1992/1755, art. 2(1))
- F746** Words in Sch. 15 para. 12(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 187(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F747** Words in Sch. 15 para. 12(2)(b) substituted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, **Sch. 13 para. 99** (with s. 89); S.I. 2014/768, art. 2(1)(b)

Marginal Citations

- M139** 1988 c. 41.

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Use of certain authorities as agents for assessment, collection etc. of drainage charges

- 13 (1) The [F742appropriate agency] and any relevant authority may enter into agreements for—
- (a) the doing by the relevant authority, as agents of the [F742appropriate agency], of anything required for the purpose of the assessment to and recovery of a drainage charge in respect of any relevant land; and
 - (b) the making by the [F742appropriate agency] to the relevant authority of payments in respect of anything so done.
- (2) The [F742appropriate agency] may make arrangements with either of the Ministers for the exercise by him on behalf of the [F742appropriate agency], in such cases as may be determined in pursuance of the arrangements, of the powers conferred on the [F742appropriate agency] by paragraph 9 above.
- (3) Any arrangements under sub-paragraph (2) above shall contain provision for the reimbursement by the [F742appropriate agency] of any expenses incurred by the Minister in question in pursuance of the arrangements.
- (4) In this paragraph—
- “relevant authority” means the council of any district or London borough [F748or Welsh county or county borough]or any internal drainage board; and
- “relevant land”, in relation to an agreement with any relevant authority, means—
- (a) where the relevant authority is a district or London borough [F748or Welsh county or county borough]council, the chargeable land within the council’s area; and
 - (b) where the relevant authority is an internal drainage board, such land as may be specified in the agreement.

Textual Amendments

F742 Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

F748 Words in Sch. 15 para. 13(4) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(9)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

SCHEDULE 16

Section 137.

SCHEMES IMPOSING SPECIAL DRAINAGE CHARGES

Submission of scheme

- 1 (1) Before submitting a special charges scheme to either of the Ministers, the [F749appropriate agency] shall consult organisations appearing to it to represent the interests of persons engaged in agriculture in the area designated in the scheme.
- (2) As soon as any special charges scheme has been submitted to either of the Ministers, the [F749appropriate agency] shall—

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- (a) send copies of the scheme to—
- (i) the council of any county, [^{F750}county borough]district or London borough wholly or partly within the relevant area;
 - (ii) the drainage board for any internal drainage district within the relevant area; and
 - (iii) every organisation appearing to the [^{F749}appropriate agency] to represent the interests of persons engaged in agriculture in the relevant area;
- and
- (b) publish, in one or more newspapers circulating in the area affected by the scheme, a notice stating—
- (i) that the scheme has been submitted to that Minister;
 - (ii) that a copy of it is open to inspection at a specified place; and
 - (iii) that representations with respect to the scheme may be made to that Minister at any time within one month after the publication of the notice.
- (3) Where the [^{F749}appropriate agency] submit a special charges scheme which designates any watercourse wholly or partly within an internal drainage district, then (unless the [^{F749}appropriate agency] is the drainage board for that district) the scheme must be accompanied either—
- (a) by a statement of the drainage board for that district that they have consented to the designation; or
 - (b) by a statement that they have not consented thereto and a further statement setting out the reasons why the watercourse should nevertheless be designated for the purposes of section 137 of this Act.
- (4) For the purposes of sub-paragraph (2) above “the relevant area” is the area designated in the scheme.

Textual Amendments

F749 Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(d\)](#) (with Sch. 7)

F750 Words in Sch. 16 para. 1(2)(a)(i) inserted (1.4.1996) by [1994 c. 19, s. 22\(5\)](#), [Sch. 11 Pt. I para. 3\(10\)\(a\)](#) (with ss. 54(4)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396](#), art. 3, [Sch. 1](#)

Confirmation of scheme

- 2 (1) Subject to the following provisions of this Schedule the Minister to whom a special charges scheme has been submitted may by order made by statutory instrument confirm the scheme either with or without modifications.
- (2) Neither of the Ministers shall confirm a special charges scheme unless he is satisfied that the scheme is reasonable and financially sound, having regard to all the circumstances, and in particular to any contributions from local authorities and internal drainage boards which, if the scheme is confirmed, are likely to be available to the [^{F749}appropriate agency] in addition to the special drainage charge authorised by the scheme.

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- (3) An order confirming a special charges scheme may contain provisions with respect to the persons by whom all or any of the expenses incurred by either of the Ministers or by other persons in connection with the making or confirmation of the order, or the making of the scheme, are to be borne.

Textual Amendments

F749 Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 311(d) (with Sch. 7)

Notice of proposed order

- 3 (1) Before either of the Ministers makes an order confirming a special charges scheme he shall cause notice of—
- (a) the intention to make it;
 - (b) the place where copies of the draft order may be inspected and obtained; and
 - (c) the period within which, and the manner in which, objections to the draft order may be made,
- to be published in the London Gazette and in such other manner as he thinks best adapted for informing persons affected and to be sent to the persons specified in sub-paragraph (2) below.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) every county council [^{F751}, county borough council] or London borough council in whose area any part of the area proposed to be affected by the order is situated and, if any part of that area is situated in the City of London, the Common Council of the City of London; and
 - (b) the [^{F749}appropriate agency] and every drainage body, navigation authority, harbour authority or conservancy authority that is known to the Minister in question to be exercising jurisdiction within the area proposed to be affected by the order.
- (3) In sub-paragraph (2) above “drainage body” has the same meaning as in section 108 of this Act.

Textual Amendments

F749 Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 311(d) (with Sch. 7)

F751 Words in Sch. 16 para. 3(2)(a) inserted (1.4.1996) by 1994 c. 19, s. 22(5), Sch. 11 Pt. I para. 3(10)(b) (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, Sch. 1

Determination of whether to make order

- 4 (1) Before either of the Ministers makes an order confirming a special charges scheme, he—
- (a) shall consider any objections duly made to the draft order; and
 - (b) may, in any case, cause a public local inquiry to be held with respect to any objections to the draft order.

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- (2) Each of the Ministers shall have power, in making an order confirming a special charges scheme, to make such modifications in the terms of the draft as appear to him to be desirable.

Procedure and other matters after the making of an order

- 5 (1) After either of the Ministers has made an order confirming a special charges scheme, the order (together with a notice under sub-paragraph (2) below) shall be published in such manner as he thinks best adapted for informing the persons affected.
- (2) A notice under this sub-paragraph is a notice—
- (a) that the Minister in question has made the order; and
 - (b) that the order will become final and have effect unless, within such period of not less than thirty days as may be specified in the notice, a memorial praying that the order shall be subject to special parliamentary procedure is presented to that Minister, by a person who is affected by the order and has such interest as may be prescribed by regulations made by one of the Ministers as being sufficient for the purpose.

Orders subject to special parliamentary procedure

- 6 (1) If—
- (a) no such memorial as is mentioned in paragraph 5(2) above has been presented within the period so mentioned in respect of any order confirming a special charges scheme; or
 - (b) every such memorial has been withdrawn,
- the Minister who made the order shall confirm the order and it shall thereupon have effect.
- (2) If such a memorial has been presented in respect of such an order and has not been withdrawn, the order shall be subject to special parliamentary procedure.
- (3) An order confirming a special charges scheme shall in any event be subject to special parliamentary procedure if the Minister who makes the order so directs.
- (4) The Minister who makes an order confirming a special charges scheme may, at any time before it has been laid before Parliament, revoke, either wholly or partially, any order that is subject to special parliamentary procedure.

Notice of unconfirmed orders

- 7 As soon as may be after an unconfirmed order has effect, the Minister who made the order shall publish in the London Gazette, and in such other manner as he thinks best adapted for informing persons affected, a notice—
- (a) stating that the order has come into force; and
 - (b) naming a place where a copy of it may be seen at all reasonable hours.

Challenge to unconfirmed orders

- 8 (1) If any person aggrieved by an unconfirmed order desires to question its validity on the ground—
- (a) that it is not within the powers of this Act; or

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- (b) that any requirement of this Act has not been complied with, he may, within six weeks of the relevant date, make an application for the purpose to the High Court.
- (2) Where an application is duly made to the High Court under this paragraph, the High Court, if satisfied—
- (a) that the order is not within the powers of this Act; or
- (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Act not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) Except by leave of the Court of Appeal, no appeal shall lie to the [^{F752}Supreme Court] from a decision of the Court of Appeal in proceedings under this paragraph.
- (4) Subject to the preceding provisions of this paragraph an unconfirmed order shall not at any time be questioned in any legal proceedings whatsoever.
- (5) In this paragraph “the relevant date”, in relation to an order, means—
- (a) where the order is subject to special parliamentary procedure, the date on which the order becomes operative under the ^{M140}Statutory Orders (Special Procedure) Act 1945;
- (b) where the order is not subject to special parliamentary procedure, the date of the publication of the notice mentioned in paragraph 7 above.

Textual Amendments

F752 Words in Sch. 16 para. 8(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 55](#); [S.I. 2009/1604, art. 2\(d\)](#)

Marginal Citations

M140 1945 c. 18 (9 & 10 Geo 6).

Power to make regulations for purposes of Schedule

- 9 The Ministers may make regulations in relation to—
- (a) the publication of notices under this Schedule;
- (b) the holding of public local inquiries under this Schedule and procedure at those inquiries; and
- (c) any other matters of procedure respecting the making of orders confirming a special charges scheme.

Interpretation

- 10 (1) In this Schedule—
- “special charges scheme” means a scheme under section 137 of this Act; and
- “unconfirmed order” means an order confirming a special charges scheme, other than one which is itself confirmed under section 6 of the Statutory Orders (Special Procedure) Act 1945.

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- (2) Section 113 of this Act shall apply for the interpretation of this Schedule as it applies for the interpretation of Part IV of this Act.

SCHEDULE 17

Section 143.

ORDERS WITH RESPECT TO NAVIGATION TOLLS

Orders to be made by statutory instrument

- 1 The power to make an order under section 143 of this Act shall be exercisable by statutory instrument.

Inquiries

- 2 (1) The Secretary of State may hold inquiries for the purposes of section 143 of this Act as if those purposes were purposes of the ^{M141}Ministry of Transport Act 1919; and section 20 of that Act (power to hold inquiries) shall have effect accordingly.
- (2) The Secretary of State may make such order as to the payment of costs incurred by him in connection with any such inquiry as he may think just.

Marginal Citations

M141 1919 c. 50.

Notice of order

- 3 (1) After the Secretary of State has made an order under section 143 of this Act, the order, together with a notice under sub-paragraph (2) below, shall be published in such manner as he thinks best adapted for informing the persons affected.
- (2) A notice under this sub-paragraph is a notice—
- (a) that the Secretary of State has made the order; and
 - (b) that the order will become final and have effect unless, within such period of not less than thirty days as may be specified in the notice, a memorial praying that the order shall be subject to special parliamentary procedure is presented to the Secretary of State, by a person who is affected by the order and has such an interest as may be prescribed as being sufficient for the purpose.

Orders subject to special parliamentary procedure

- 4 (1) If—
- (a) no such memorial as is mentioned in paragraph 3(2) above has been presented within the period so mentioned in respect of any order under section 143 of this Act; or
 - (b) every such memorial has been withdrawn,
- the Secretary of State shall confirm the order and it shall thereupon have effect.

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- (2) If such a memorial has been presented in respect of such an order and has not been withdrawn, the order shall be subject to special parliamentary procedure.
- (3) An order under section 143 of this Act shall, in any event, be subject to special parliamentary procedure if the Secretary of State so directs.
- (4) The Secretary of State may, at any time before it has been laid before Parliament, revoke, either wholly or partially, any order under section 143 of this Act that is subject to special parliamentary procedure.

SCHEDULE 18

Section 154.

MODIFICATION OF COMPENSATION PROVISION ETC IN RELATION TO THE CREATION OF NEW RIGHTS

Compensation enactments

- 1 Subject to the following provisions of this Schedule, the enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under section 154 of this Act of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

Adaptation of the Compulsory Purchase Act 1965

- 2 (1) The Compulsory Purchase Act 1965 (in the following provisions of this Schedule referred to as “the 1965 Act”) shall have effect with the modifications necessary to make it apply to the compulsory acquisition under section 154 of this Act of a right by the creation of a new right as it applies to the compulsory acquisition under that section of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—
 - (a) the right acquired or to be acquired; or
 - (b) the land over which the right is or is to be exercisable.
- (2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under section 154 of this Act of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

Section 7 of the 1965 Act

- 3 For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—
 - “7 In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously

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affecting that other land by the exercise of the powers conferred by this or the special Act.”

Section 8 of the 1965 Act

[^{F753}4 Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

“SCHEDULE
2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

- 1 (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
- (2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).
- 2 In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

- 3 A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
- 4 A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

- 5 On receiving a counter-notice the acquiring authority must decide whether to—
 - (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
- 6 The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
- 7 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 8 If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
- 9 If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

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Determination by Upper Tribunal

- 10 On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—
- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
 - (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
- 11 In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right,
 - (b) the proposed use of the right, and
 - (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.
- 12 If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.
- 13 If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.
- 14 (1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
- (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
- (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”]

Textual Amendments

F753 Sch. 18 para. 4 substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), Sch. 17 paras. 6, 7; S.I. 2017/75, reg. 3(g) (with reg. 5)

Effect of deed poll

- 5 The following provisions of the 1965 Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—
- (a) section 9(4) (refusal by owners to convey);
 - (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
 - (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

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(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land), shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

Section 11 of the 1965 Act

- 6 Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) shall be modified correspondingly.

Section 20 of the 1965 Act

- 7 Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under section 154 of this Act of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

Section 22 of the 1965 Act

- 8 Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 19

Section 168.

ORDERS CONFERRING COMPULSORY WORKS POWERS

Modifications etc. (not altering text)

- C206** Sch. 19 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2(1), **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- C207** Sch. 19 applied (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2(1), **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Applications for orders

- 1 (1) Where the [^{F754}appropriate agency] applies to either of the Ministers for a compulsory works order, it shall—
- (a) submit to that Minister a draft of the order applied for;
 - (b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality;
 - (c) not later than the date on which that notice is first published—
 - (i) serve a copy of the notice on each of the persons specified in relation to the application in sub-paragraph (3) below; and
 - (ii) in the case of a draft order which would authorise the stopping-up or diversion of a footpath^{F755}, bridleway or restricted byway], cause such a copy, together with a plan showing the general effect of the draft order so far as it relates to the footpath^{F755}, bridleway or restricted byway], to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted;

and

 - (d) publish a notice in the London Gazette which-
 - (i) states that the draft order has been submitted to that Minister;
 - (ii) names every local authority on whom a notice is required to be served under this paragraph;
 - (iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.
- (2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order by the [^{F754}appropriate agency] shall—
- (a) state the general effect of the order applied for;
 - (b) in the case of an application made wholly or partly for the purpose of enabling any discharges of water to be made—
 - (i) contain particulars of the proposed discharges, stating the purposes of the discharges and specifying each place of discharge;
 - (ii) specify the places at which the water to be comprised in the proposed discharges is to be taken and the treatment (if any) which the draft order proposes to require the water, or any of it, to receive before being discharged under the order; and
 - (iii) state the effect which, in the opinion of the [^{F754}appropriate agency], the proposed discharges would have on the flow, level and quality of water in any inland waters or underground strata;
 - (c) specify a place where a copy of the draft 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 twenty-eight days beginning with the date of the first publication of the notice; and
 - (d) state that any person may within that period, by notice to the Minister applied to, object to the making of the order.

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- (3) The persons mentioned in sub-paragraph (1)(c) above in relation to an application for a compulsory works order a draft of which has been submitted to either of the Ministers are—
- (a) every local authority whose area is or includes the whole or any part of a relevant locality and which is not [^{F756}an English county] council;
 - (b) every water undertaker whose area is or includes the whole or any part of such a locality;
 - (c) every navigation authority, harbour authority and conservancy authority which would be affected by, or has functions in relation to any inland waters which would be affected by, any provision proposed to be made by the order;
 - [^{F757}(d) every person who—
 - (i) is an owner, lessee, tenant (whatever the tenancy period) or occupier of any land in relation to which compulsory powers would become exercisable if the order were made in the terms of the draft order; or
 - (ii) who the water undertaker thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory powers become exercisable, so far as he is known to the water undertaker after making diligent inquiry;]
 - (e) every person who has given notice to the [^{F754}appropriate agency] requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the [^{F754}appropriate agency] may have required him to pay for being notified by virtue of this paragraph;
 - (f) such other persons as may be prescribed.
- (4) In this paragraph “relevant locality”, in relation to an application for an order, means—
- (a) any locality which would be affected by any provision proposed to be made by the order for the purpose of enabling any engineering or building operations to be carried out; and
 - (b) where provision is proposed to be made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the proposed discharges is situated or in which there appears to the [^{F754}appropriate agency] to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the proposed discharges.

Textual Amendments

- F754** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)
- F755** Words in Sch. 19 para. 1(1)(c)(ii) substituted (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F756** Words in Sch. 19 para. 1(3)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(11)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1) 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F757** Sch. 19 para. 1(3)(d) substituted (24.5.2007) by [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 9(a)** (with art. 1(3))

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Supply of copies of draft orders

- 2 Where the [^{F754}appropriate agency] is applying for a compulsory works order, it shall, at the request of any person and on payment by that person of such charge (if any) as the [^{F754}appropriate agency] may reasonably require, furnish that person with a copy of any draft order submitted to either of the Ministers under paragraph 1 above and of any relevant map or plan.

Textual Amendments

F754 Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

Powers on an application

- 3 (1) On an application for a compulsory works order, the Minister or the Secretary of State may make the order either in the terms of the draft order submitted or, subject to sub-paragraphs (2) and (3) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.
- (2) Neither of the Ministers shall make such a modification of a draft order as he considers is likely adversely to affect any persons unless he is satisfied that the [^{F754}appropriate agency] has given and published such additional notices, in such manner, as he may have required.
- (3) Neither of the Ministers shall, unless all interested parties consent, make a compulsory works order so as to confer in relation to any land any powers of compulsory acquisition which would not have been conferred in relation to that land if the order were made in the terms of the draft order submitted under paragraph 1 above.
- (4) Where one of the Ministers refuses, on an application for a compulsory works order, to make an order, the [^{F754}appropriate agency] shall, as soon as practicable after the refusal, notify the refusal to every person on whom it was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application.

Textual Amendments

F754 Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

Consideration of objections etc.

- 4 (1) If, where an application for a compulsory works order has been made, either of the Ministers receives any notice of an objection to it, before the end of the relevant period, from—
- (a) any person on whom a notice under paragraph 1 or 3 above is required to be served; or
- (b) from any other person appearing to that Minister to be affected by the order as submitted or as proposed to be modified under paragraph 3 above,

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then, unless the objection is withdrawn, the Minister or the Secretary of State shall, before making the order, either cause a local inquiry to be held or afford to the objector and to the [^{F754}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.

- (2) Where any objection received by one of the Ministers as mentioned in subparagraph (1) above relates to any powers of compulsory acquisition, the Minister or the Secretary of State—
- (a) may require the objector to state in writing the grounds of his objection; and
 - (b) if he is satisfied that the objection relates exclusively to matters that can be dealt with in the assessment of compensation, may disregard the objection for the purposes of that subparagraph.
- (3) In this paragraph “the relevant period”, in relation to an application for any order, means the period ending with whichever is the later of—
- (a) the end of the period of twenty-eight days beginning with the date of the first publication of the notice published with respect to the application for the purposes of paragraph 1(1)(b) above; and
 - (b) the end of the period of twenty-five days beginning with the date of the publication in the London Gazette of the notice published for the purposes of the application by virtue of paragraph 1(1)(d) above,

together, in the case of an application for an order modifications to which have been proposed by the Minister considering the application, with any further periods specified with respect to the modifications in notices under paragraph 3(2) above.

Textual Amendments

F754 Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)

Notice after making of order

- 5 (1) As soon as practicable after a compulsory works order has been made, the [^{F754}appropriate agency] shall—
- (a) publish a notice of the making of the order, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality; and
 - (b) not later than the date on which that notice is first published—
 - (i) serve a copy of the notice on every person on whom the [^{F754}appropriate agency] was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application for the order; and
 - (ii) in the case of an order authorising the stopping-up or diversion of a footpath^{F758}, bridleway or restricted byway], cause such a copy, together with a plan showing the general effect of the order so far as it relates to the footpath^{F758}, bridleway or restricted byway], to be displayed in a prominent position at the ends of the appropriate part of the path or way.

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- (2) The notice required by virtue of sub-paragraph (1)(a) above to be published with respect to a compulsory works order shall—
- (a) state the general effect of the order;
 - (b) in the case of an order made wholly or partly for the purpose of enabling any discharges of water to be made—
 - (i) contain particulars of the discharges, stating the purposes of the discharges and specifying each place of discharge;
 - (ii) specify the places at which the water to be comprised in the discharges is to be taken and the treatment (if any) which the order requires the water, or any of it, to receive before being discharged under the order; and
 - (iii) state the effect which, in the opinion of the applicant, the discharges would have on the flow, level and quality of water in any inland waters or underground strata; and
 - (c) specify a place where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times.
- (3) Where a compulsory works order has been made, the [^{F754}appropriate agency] shall, at the request of any person and on payment by that person of such charge (if any) as the [^{F754}appropriate agency] may reasonably require, furnish that person with a copy of the order and of any relevant map or plan.
- (4) In this paragraph “relevant locality”, in relation to any compulsory works order, means—
- (a) any locality which is affected by any provision made by the order for the purpose of enabling any engineering or building operations to be carried out; and
 - (b) where provision is made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the discharges is situated or in which there appears to the [^{F754}appropriate agency] to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the discharges.

Textual Amendments

- F754** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)
- F758** Words in Sch. 19 para. 5(1)(b)(ii) substituted (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), Sch. Pt. I; [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3); [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3)

Compulsory acquisition provisions

- 6 (1) Without prejudice to the provisions of Schedule 23 to this Act—
- (a) Part I of the ^{M142}Compulsory Purchase Act 1965;
 - (b) [^{F759}sections 2A and] 4 and Part III of, and Schedule 3 to, the ^{M143}Acquisition of Land Act 1981; and
 - (c) the enactments for the time being in force with respect to compensation for the compulsory purchase of land,

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shall apply in relation to so much of a compulsory works order as confers powers of compulsory acquisition as they apply in relation to a compulsory purchase order made by virtue of section 154 of this Act and, accordingly, shall so apply, where the case so requires, with the modifications made by Schedule 18 to this Act.

(2) Subject to the provisions of sub-paragraph (6) below, if any person aggrieved by a compulsory works order containing powers of compulsory acquisition, or by a certificate given under the special land provisions in connection with such an order, desires—

- (a) to question the validity of the order, or of any provision of the order, on the grounds that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred, or that any of the relevant requirements have not been complied with in relation to the order; or
- (b) to question the validity of the certificate on the grounds that any of the relevant requirements have not been complied with in relation to the certificate,

he may make an application for the purpose to the High Court at any time before the end of the period of six weeks beginning with the date on which notice of the making of the order is first published in accordance with paragraph 5 above or, as the case may be, notice of the giving of the certificate is first published in accordance with the special land provisions.

(3) On any application under sub-paragraph (2) above with respect to any order or certificate, the High Court—

- (a) may by interim order suspend the operation of the order, or any provision of the order, or of the certificate (either generally or in so far as it affects any property of the applicant to the High Court) until the final determination of the proceedings; and
- (b) if satisfied—
 - (i) that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred; or
 - (ii) that the interests of that applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to the order or the certificate,

may quash the order, or any provision of the order, or the certificate (either generally or in so far as it affects any property of that applicant).

(4) Except as provided by sub-paragraph (2) above, the validity of any such order or certificate as is mentioned in that sub-paragraph shall not, either before or after the order or certificate has been made or given, be questioned in any legal proceedings whatsoever.

(5) Subject to any order of the High Court under sub-paragraph (3) above, any such order or certificate as is mentioned in sub-paragraph (2) above shall become operative (except, in the case of an order, where it is subject by virtue of the special land provisions to special parliamentary procedure) on the date on which notice of the making or giving of the order or certificate is published as mentioned in the said sub-paragraph (2).

(6) Where an order such as is mentioned in sub-paragraph (2) above is subject to special parliamentary procedure, sub-paragraphs (2) to (4) of this paragraph—

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- (a) shall not apply to the order if it is confirmed by Act of Parliament under section [^{F760}4 or] 6 of the ^{M144}Statutory Orders (Special Procedure) Act 1945; and
- (b) in any other case, shall have effect as if the reference in sub-paragraph (2) of this paragraph to the date on which notice of the making of the order is first published in accordance with paragraph 5 above were a reference to the date on which the order becomes operative under the said Act of 1945.

(7) In this paragraph—

“the special land provisions” means the provisions, as applied by virtue of sub-paragraph (1) above, of Part III of the ^{M145}Acquisition of Land Act 1981 or, as the case may require, of Part II of Schedule 3 to that Act; and

“the relevant requirements”, in relation to an order or certificate, means the requirements of this Schedule and such requirements of the special land provisions or of any other enactment as are applicable to that order or certificate by virtue of this paragraph.

Textual Amendments

F759 Words in Sch. 19 para. 6(1)(b) substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), [Sch. 17 para. 11](#); S.I. 2017/75, reg. 3(g)

F760 Words in Sch. 19 para. 6(6)(a) inserted (25.6.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [ss. 25\(9\)](#), 35(1); S.I. 2013/1488, art. 3(e) (with art. 8(3))

Marginal Citations

M142 1965 c. 56.

M143 1981 c. 67.

M144 1945 c. 18 (9 & 10 Geo. 6).

M145 1981 c. 67.

Compensation in certain cases of compulsory acquisition

7 Where—

- (a) in connection with any engineering or building operations to which a compulsory works order relates, a licence under Chapter II of Part II of this Act is granted, or is deemed to be granted, to the [^{F761}appropriate agency]; and
- (b) that licence is a licence to abstract water or to obstruct or impede the flow of any inland waters,

no compensation shall be payable by virtue of sub-paragraph (1) of paragraph 6 above in respect of any land or interest injuriously affected by the carrying out of those operations, in so far as that land or interest is injuriously affected by the abstraction of water, or the obstruction or impeding of the flow, in accordance with the provisions of the licence.

Textual Amendments

F761 Words in Sch. 19 para. 7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)

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Compensation in respect of powers other than acquisition powers

- 8 (1) If the value of any interest in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—
- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
 - (b) grants authority for the carrying out of the operations,
- the person entitled to that interest shall be entitled to compensation from the [F762appropriate agency] of an amount equal to the amount of the depreciation.
- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to so much of any compulsory works order as—
 - (i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
 - (ii) grants authority for the carrying out of the operations;
 - (b) does not consist in depreciation of the value of that interest; and
 - (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 154 of this Act in pursuance of a notice to treat served on the date on which the order comes into force,
- he shall be entitled to compensation from the [F762appropriate agency] in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to so much of any compulsory works order as—
- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
 - (b) grants authority for the carrying out of the operations,
- the [F762appropriate agency] shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
- (4) A person who sustains any loss or damage which is attributable to any discharge of water made by the [F762appropriate agency] in pursuance of a compulsory works order shall be entitled to recover compensation from the [F762appropriate agency] in respect of the loss or damage.
- (5) For the purposes of sub-paragraph (4) above any extra expenditure—
- (a) which it becomes reasonably necessary for any water undertaker or public authority (other than the [F762appropriate agency]) to incur for the purpose of properly carrying out any statutory functions; and
 - (b) which is attributable to any such discharge of water as is mentioned in that sub-paragraph,
- shall be deemed to be a loss sustained by the undertaker or public authority and to be so attributable.
- (6) Any question of disputed compensation under this paragraph, shall be referred to and determined by the [F763Upper Tribunal]; and in relation to the determination of any

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such compensation the provisions of [^{F764}section] 4 of the ^{M146}Land Compensation Act 1961 shall apply, subject to any necessary modifications.

- (7) For the purpose of assessing any compensation under this paragraph, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (8) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (7) above is subject to a mortgage—
- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
 - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (9) In this paragraph “relevant land”, in relation to a compulsory works order, means any land which is not land in relation to which powers of compulsory acquisition are conferred by the order but is—
- (a) land where any operations for which authority is granted by the order are to be carried out;
 - (b) land in relation to which compulsory powers are conferred by the order; or
 - (c) land held with any land falling within paragraph (a) or (b) above.

Textual Amendments

F762 Words in Sch. 19 para. 8 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

F763 Words in Sch. 19 para. 8(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 233(a)** (with Sch. 5)

F764 Word in Sch. 19 para. 8(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 233(b)** (with Sch. 5)

Marginal Citations

M146 1961 c. 33.

Protection of public undertakings

- 9 The provisions of section 179 and paragraphs 1, 2 and 5 of Schedule 22 to this Act shall apply, as they apply in relation to the carrying out of works in exercise of the powers specified in those provisions, in relation to the carrying out of works by virtue of an authority granted by so much of any compulsory works order as makes provision other than provision conferring powers of compulsory acquisition.

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Interpretation

10 In this Schedule—

“bridleway” and “footpath” have the same meanings as in the ^{M147}Highways Act 1980;

“compulsory works order” means an order under section 168 of this Act;
“powers of compulsory acquisition” means any such powers as are mentioned in subsection (4)(a) of section 168 of this Act;

[^{F765}“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;]

^{F766}

Textual Amendments

F765 Words in Sch. 19 para. 10 inserted (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

F766 Words in Sch. 19 para. 10 omitted (24.5.2007) by virtue of [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 9(b)** (with art. 1(3))

Marginal Citations

M147 1980 c. 66.

SCHEDULE 20

Section 173.207.

SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

Modifications etc. (not altering text)

C208 Sch. 20 applied (with modifications) (2.7.2009) by [Broads Authority Act 2009 \(c. i\)](#), **s. 24(3)** (with ss. 2(3), 16(3), 41(4), 42, Sch. 6)

C209 Sch. 20 applied (with modifications) (2.7.2009) by [Broads Authority Act 2009 \(c. i\)](#), **s. 17(3)** (with ss. 2(3), 16(3), 42, Sch. 6)

C210 Sch. 20 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **6(3)**

C211 Sch. 20 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **5(3)**

C212 Sch. 20 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **6(3)**

C213 Sch. 20 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **5(3)**

Notice of entry

1 (1) Without prejudice to any power exercisable by virtue of a warrant under this Schedule, no person shall make an entry into any premises or vessel by virtue of any power conferred by sections 169 to 172 of this Act except—

(a) in an emergency; or

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- (b) at a reasonable time and after the required notice of the intended entry has been given to the occupier of the premises or vessel.
- (2) For the purposes of this paragraph the required notice is seven days' notice; but such notice shall not be required in the case of an exercise of a power conferred by section 169 or 172 above, except where the premises in question are residential premises, the vessel in question is used for residential purposes or the entry in question is to be with heavy equipment.
 - (3) For the purposes of the application of this paragraph to the power conferred by section 170 of this Act the reference in sub-paragraph (1) above to an emergency—
 - (a) in relation to any entry to premises for the purposes of, or for purposes connected with, the exercise or proposed exercise of any power in relation to a street, includes a reference to any circumstances requiring the carrying out of emergency works within the meaning of Part III of the ^{M148}New Roads and Street Works Act 1991; and
 - (b) in relation to any other entry to premises, includes a reference to any danger to property and to any interruption of a supply of water provided to any premises by any person and to any interruption of the provision of sewerage services to any premises.
 - (4) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (3) above shall have effect as if the reference to Part III of that Act were a reference to the ^{M149}Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

Marginal Citations

M148 1991 c. 22.

M149 1950 c. 39.

Warrant to exercise power

- 2 (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
 - (a) that there are reasonable grounds for the exercise in relation to any premises or vessel of a power conferred by sections 169 to 172 of this Act; and
 - (b) that one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to those premises or that vessel,
 the justice may by warrant authorise the relevant authority to designate a person who shall be authorised to exercise the power in relation to those premises, or that vessel, in accordance with the warrant and, if need be, by force.
- (2) The conditions mentioned in sub-paragraph (1)(b) above are—
 - (a) that the exercise of the power in relation to the premises or vessel has been refused;
 - (b) that such a refusal is reasonably apprehended;
 - (c) that the premises are unoccupied or the vessel is unoccupied;
 - (d) that the occupier is temporarily absent from the premises or vessel;

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- (e) that the case is one of urgency; or
 - (f) that an application for admission to the premises or vessel would defeat the object of the proposed entry.
- (3) A justice of the peace shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises or vessel has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied—
- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises or vessel; or
 - (b) that the giving of such a notice would defeat the object of the proposed entry.
- (4) For the purposes of the application of this Schedule to the powers conferred by section 171 of this Act in a case to which subsection (4) of that section applies, a justice of the peace shall not issue a warrant under this Schedule unless he is satisfied that the Secretary of State has given his authorisation for the purposes of that subsection in relation to that case.
- (5) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

Manner of exercise of powers

- 3 A person designated as the person who may exercise any power to which this Schedule applies shall produce evidence of his designation and other authority before he exercises the power.

Supplementary powers of person making entry etc.

- 4 A person authorised to enter any premises or vessel by virtue of any power to which this Schedule applies shall be entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take with him on to the premises or vessel such other persons and such equipment as may be necessary.

Duty to secure premises

- 5 A person who enters any premises or vessel in the exercise of any power to which this Schedule applies shall leave the premises or vessel as effectually secured against trespassers as he found them.

Compensation

- 6 (1) Where any person exercises any power to which this Schedule applies, it shall be the duty of the relevant authority to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise by the designated person of that power or of any power to take any person or equipment with him when entering the premises or vessel in relation to which the power is exercised; or
 - (b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 5 above.
- (2) Compensation shall not be payable by virtue of sub-paragraph (1) above in respect of any loss or damage if the loss or damage—
- (a) is attributable to the default of the person who sustained it; or

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- (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.
- (3) Any dispute as to a person’s entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant authority and the person who claims to have sustained the loss or damage or, in default of agreement—
- (a) by the [^{F767}Upper Tribunal] where the relevant authority is one of the Ministers; and
- (b) by one of the Ministers, where the Agency [^{F768}or the NRBW] is the relevant authority.

Textual Amendments

F767 Words in Sch. 20 para. 6(3)(a) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 234** (with Sch. 5)

F768 Words in Sch. 20 para. 6(3)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 312(2)** (with Sch. 7)

Obstruction of person exercising power

- 7 A person who intentionally obstructs another person acting in the exercise of any power to which this Schedule applies shall be guilty of an offence and [^{F769}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

F769 Sch. 20 para. 7(a)(b) and word substituted (1.4.1996) for words by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 188** (with ss. [7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), **art. 3**

Interpretation

- 8 (1) In this Schedule—
- “relevant authority”, in relation to a power to which this Schedule applies, means one of the Ministers [^{F770}, the Agency or the NRBW], according to who is entitled, by virtue of the provision by which the power is conferred or, as the case may be, the warrant, to designate the person by whom the power may be exercised; and
- “sewerage services” has the same meaning as in the ^{M150}Water Industry Act 1991.
- (2) References in this Schedule to a power to which this Schedule applies are references to any power conferred by Chapter II of Part VI of this Act, including a power exercisable by virtue of a warrant under this Schedule.
- (3) For the purposes of paragraphs 5 and 6 above a person enters any premises or vessel by virtue of a power to which this Schedule applies notwithstanding that he has failed

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(whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with-

- (a) any requirement to enter those premises at a reasonable time or after giving notice of his intended entry; or
- (b) the requirement imposed by paragraph 3 above.

Textual Amendments

F770 Words in *Sch. 20 para. 8(1)* substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 312(3)** (with *Sch. 7*)

Marginal Citations

M150 1991 c. 56.

SCHEDULE 21

Section 177.

CCOMPENSATION ETC. IN RESPECT OF CERTAIN WORKS POWER

Compensation in respect of street works powers

- 1 (1) This paragraph applies, in relation to the [^{F771}appropriate agency], to the powers conferred on it in relation to streets by sections 159 and 162 of this Act.
- (2) It shall be the duty of the [^{F771}appropriate agency]—
 - (a) to do as little damage as possible in the exercise of the powers to which this paragraph applies; and
 - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (2) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Secretary of State.
- (4) Until the coming into force of Part III of the ^{M151}New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the ^{M152}Public Utilities Street Works Act 1950 (provisions against duplication of compensation) as made under an enactment passed before that Act of 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this paragraph).

Textual Amendments

F771 Words in *Sch. 21 para. 1* substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with *Sch. 7*)

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Marginal Citations

M151 1991 c. 22.

M152 1950 c. 39.

Compensation in respect of pipe-laying works on private land

- 2 (1) If the value of any interest in any relevant land is depreciated by virtue of the exercise by the [F772appropriate agency] of any power to carry out pipe-laying works on private land, the person entitled to that interest shall be entitled to compensation from the [F772appropriate agency] of an amount equal to the amount of the depreciation.
- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to the exercise by the [F772appropriate agency] of any power to carry out pipe-laying works on private land;
 - (b) does not consist in depreciation of the value of that interest; and
 - (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 154 of this Act,
- he shall be entitled to compensation from the [F772appropriate agency] in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by the [F772appropriate agency], of any power to carry out pipe-laying works on private land, the [F772appropriate agency] shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
- (4) The Secretary of State may by regulations make provision requiring the [F772appropriate agency], where it is proposing or has begun, in a prescribed case, to exercise any power to carry out pipe-laying works on private land, to make advance payments on account of compensation that will become payable in respect of the exercise of that power.
- (5) In this paragraph “relevant land”, in relation to any exercise of a power to carry out pipe-laying works on private land, means the land where the power is exercised or land held with that land.
- (6) In this paragraph the references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of section 160 or 162(3) of this Act.

Textual Amendments

F772 Words in Sch. 21 para. 2 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

Assessment of compensation under paragraph 2

- 3 (1) Any question of disputed compensation under paragraph 2 above shall be referred to and determined by the [F773Upper Tribunal] ; and in relation to the determination

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of any such compensation the provisions of [^{F774}section] 4 of the ^{M153}Land Compensation Act 1961 shall apply, subject to any necessary modifications.

- (2) For the purpose of assessing any compensation under paragraph 2 above, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (3) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (2) above is subject to a mortgage—
 - (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
 - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (4) Where, apart from this sub-paragraph, any person entitled to an interest in any land would be entitled under paragraph 2 above to an amount of compensation in respect of any works, there shall be deducted from that amount an amount equal to the amount by which the carrying out of the works has enhanced the value of any other land which—
 - (a) is contiguous or adjacent to that land; and
 - (b) is land to an interest in which that person is entitled in the same capacity.

Textual Amendments

F773 Words in Sch. 21 para. 3(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(a)(i)** (with Sch. 5)

F774 Word in Sch. 21 para. 3(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(a)(ii)** (with Sch. 5)

Marginal Citations

M153 1961 c. 33.

Compensation in respect of discharges for works purposes

- 4 (1) It shall be the duty of the [^{F775}appropriate agency]—
 - (a) to cause as little loss and damage as possible in the exercise of the powers conferred on it by section 163 of this Act; and
 - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.

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- (2) For the purposes of sub-paragraph (1) above any extra expenditure—
- (a) which it becomes reasonably necessary for any water undertaker, sewerage undertaker or public authority (other than the ^{F775}appropriate agency] itself) to incur for the purpose of properly carrying out any statutory functions; and
 - (b) which is attributable to any discharge of water under section 163 of this Act, shall be deemed to be a loss sustained by the undertaker or public authority and to have been caused in exercise of the powers conferred by that section.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (1) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

Textual Amendments

F775 Words in Sch. 21 para. 4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

Compensation in respect of flood defence and drainage works

- 5 (1) Where injury is sustained by any person by reason of the exercise by the ^{F776}appropriate agency] of any powers under section 165(1) to (3) of this Act, the ^{F776}appropriate agency] shall be liable to make full compensation to the injured party.
- (2) In case of dispute, the amount of any compensation under sub-paragraph (1) above shall be determined by the ^{F777}Upper Tribunal] .
- (3) Where injury is sustained by any person by reason of the exercise by the ^{F776}appropriate agency] of its powers under subsection (1)(b) of section 167 of this Act—
- (a) the ^{F776}appropriate agency] may, if it thinks fit, pay to him such compensation as it may determine; and
 - (b) if the injury could have been avoided if those powers had been exercised with reasonable care, the provisions of sub-paragraphs (1) and (2) above shall apply as if the injury had been sustained by reason of the exercise by the ^{F776}appropriate agency] of its powers under section 165(1) to (3) of this Act.

Textual Amendments

F776 Words in Sch. 21 para. 5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

F777 Words in Sch. 21 para. 5(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(b)** (with Sch. 5)

Modifications etc. (not altering text)

C214 Sch. 21 para. 5(1)(2) applied (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), s. 7(5) (with s. 61)

C215 Sch. 21 para. 5(1)(2) applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, 8

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- C216** Sch. 21 para. 5(1)(2) applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, 7
- C217** Sch. 21 para. 5(1)(2) applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), 7
- C218** Sch. 21 para. 5(1)(2) applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), 8

SCHEDULE 22

Section 178.

PROTECTION FOR PARTICULAR UNDERTAKINGS

Modifications etc. (not altering text)

- C219** Sch. 22 applied (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), ss. 67(2), 76(2)

General provisions protecting undertakings

- 1 (1) Nothing in any of the provisions of this Act conferring power on the [^{F778}appropriate agency] to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—
- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
 - (b) with the use of any such works or property,
- as to affect injuriously those works or that property or the carrying on of that undertaking.
- (2) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;
 - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
 - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) The following are the undertakings protected by this paragraph, that is to say—
- (a) the undertakings of the Civil Aviation Authority, [^{F779}the Coal Authority] and [^{F780}a universal service provider (so far as it is his undertaking in relation to the provision of a universal postal service)];
 - (b) the undertaking of any water undertaker or sewerage undertaker;
 - [^{F781}(c) any undertaking consisting in the provision of an electronic communications network;]

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- (d) any airport to which Part V of the ^{M154}Airports Act 1986 applies;
 - (e) the undertaking of any public gas supplier within the meaning of Part I of the ^{M155}Gas Act 1986;
 - (f) the undertaking of any person authorised by a licence under Part I of the ^{M156}Electricity Act 1989 to generate, [^{F782}supply or participate in the transmission of] electricity;
 - (g) the undertaking of any navigation authority, harbour authority or conservancy authority or of any internal drainage board;
 - (h) the undertaking of any railway company;
 - (i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act.
 - [^{F783}(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;]
 - [^{F784}(k) the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services) to the extent that it is the person's undertaking as licence holder.]
- (4A) In sub-paragraph (4)(a) above “universal service provider” has the same meaning as in [^{F785}Part 3 of the Postal Services Act 2011]; and the reference to the provision of a universal postal service shall be construed in accordance with [^{F786}that Part].
- (5) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (4)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.
- (6) The reference in sub-paragraph (1) above to the provisions of this Act conferring power to carry out works includes (without prejudice to the extent of that reference apart from this sub-paragraph) a reference to any provisions of any order under section 108 of this Act by virtue of which any such power is conferred.

Textual Amendments

- F778** Words in Sch. 22 para. 1(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 314\(2\)](#) (with Sch. 7)
- F779** Words in Sch. 22 para. 1(4)(a) substituted (31.10.1994) by 1994 c. 21, s. 67, [Sch. 9 para. 43\(1\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F780** Words in Sch. 22 para. 1(4)(a) substituted (26.3.2001) by S.I. 2001/1149, [art. 3\(1\)](#), [Sch. 1 para. 89\(2\)](#)
- F781** Sch. 22 para. 1(4)(c) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 114\(2\)](#) (with Sch. 18); S.I. 2003/1900, [arts. 1\(2\), 2\(1\)](#), Sch. 1 (with [art. 3](#)) (as amended by S.I. 2003/3142, [art. 1\(3\)](#)); S.I. 2003/3142, [art. 3\(2\)](#) (with [art. 11](#))
- F782** Words in Sch. 22 para. 1(4)(f) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 19 para. 18](#); S.I. 2004/2184, [art. 2\(2\)](#), Sch. 2
- F783** Sch. 22 para. 1(4)(j) inserted (31.10.1994) by 1994 c. 21, s. 67, [Sch. 9 para. 43\(1\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F784** Sch. 22 para. 1(4)(k) inserted (1.4.2001) by 2000 c. 38, s. 37, [Sch. 5 para. 15](#) (with s. 106); S.I. 2001/869, [art. 2](#)
- F785** Words in Sch. 22 para. 1(4A) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 138\(a\)](#); S.I. 2011/2329, [art. 3](#)
- F786** Words in Sch. 22 para. 1(4A) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 138\(b\)](#); S.I. 2011/2329, [art. 3](#)

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Modifications etc. (not altering text)

C220 Sch. 22 para. 1(4)(e) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(n)**; S.I. 1996/218, **art. 2**

Marginal Citations

M154 1986 c. 31.

M155 1986 c. 44.

M156 1989 c. 29.

Protection for statutory powers and jurisdiction

- 2 (1) Subject to sub-paragraph (2) below, nothing in—
- (a) any provision of this Act conferring power on the [^{F787}appropriate agency] to carry out any works; or
 - (b) any of the flood defence provisions of this Act,
- shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.
- (2) Nothing in this paragraph shall be taken to exclude the application of section 109 of this Act to any work executed by persons carrying on an undertaking protected by paragraph 1 above.
- (3) Sub-paragraph (6) of paragraph 1 above shall apply for the purposes of sub-paragraph (1) above as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (4) This paragraph shall be without prejudice to any power under this Act to transfer the functions of any authority.

Textual Amendments

F787 Words in Sch. 22 para. 2(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 314(2)** (with Sch. 7)

Special protection for certain undertakings in respect of street works

- 3 (1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the ^{M157}Highways Act 1980)—
- (a) is under the control or management of, or is maintainable by, a railway company or a navigation authority; or
 - (b) forms part of a level crossing belonging to such a company or authority or to any other person,
- except with the consent of the company or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the ^{M158}New Roads and Street Works Act 1991.

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- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or
 - (b) as to whether the conditions to which any such consent is made subject are reasonable,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) If the [^{F788}appropriate agency] contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) The restrictions contained in paragraphs (1) to (5) of section 32 of the ^{M159}Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provision s—
- (a) as they apply in relation to the powers mentioned in that section; and
 - (b) as if references in that section to a tramway included references to a trolley vehicle system.
- (7) In this paragraph “the street works provisions” means sections 159 and 162(2) of this Act.
- (8) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the ^{M160}Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

Textual Amendments

F788 Words in Sch. 22 para. 3(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 314(2)** (with Sch. 7)

Marginal Citations

M157 1980 c. 66.
M158 1991 c. 22.
M159 1870 c. 78.
M160 1950 c. 39.

Protection for railways in connection with carrying out of flood defence functions

- 4 (1) Without prejudice to the preceding provisions of this Schedule, nothing in the flood defence provisions of this Act shall authorise any person, except with the consent of the railway company in question, to interfere with—
- (a) any railway bridge or any other work connected with a railway; or

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- (b) the structure, use or maintenance of a railway or the traffic on it.
- (2) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything interferes, or will interfere, as mentioned in sub-paragraph (1) above;
 - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
 - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

[^{F789}Protection for electronic communications networks]

Textual Amendments

F789 Sch. 22 para. 5 cross-heading substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 31(b); S.I. 2017/1286, reg. 2(d)

- 5 ^{F790}Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)] (which provides a procedure for certain cases where works involve the alteration of ^{F791}electronic communications apparatus]) shall apply to the ^{F792}appropriate agency] for the purposes of any works carried out by the ^{F792}appropriate agency] in exercise of any of the powers conferred by any enactment (including ^{F793}section 37 of the 1995 Act ^{F794}or, as the case may be, article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)]).

Textual Amendments

- F790** Words in Sch. 22 para. 5 substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 31(a); S.I. 2017/1286, reg. 2(d)
- F791** Words in Sch. 22 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 17 para. 114(3) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F792** Words in Sch. 22 para. 5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 314(3)(a) (with Sch. 7)
- F793** Words in Sch. 22 para. 5 substituted (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 189 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F794** Words in Sch. 22 para. 5 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 314(3)(b) (with Sch. 7)

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Interpretation

- 6 In this Schedule “railway company” means the British Railways Board, [^{F795}Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway.

Textual Amendments

F795 Words in Sch. 22 para. 6 substituted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), **Sch. 1 para. 16(3)**

SCHEDULE 23

Section 182.

MINERAL RIGHTS

Acquisition of mineral rights

- 1 (1) This paragraph applies in each of the following cases, that is to say—
- (a) where the [^{F796}appropriate agency] acquires any land (whether compulsorily in exercise of any power conferred by or under this Act or otherwise); and
 - (b) where the [^{F796}appropriate agency] carries out any works in relation to any land for the purposes of, or in connection with, the carrying out of any of its functions.
- (2) Subject to sub-paragraph (3) below, the [^{F796}appropriate agency] shall not, by virtue only of its acquisition of the land or the carrying out of the works, become entitled to any mines or minerals lying under the land; and, accordingly, any such mines or minerals shall be deemed to be excepted from any instrument by virtue of which the land vests in the [^{F796}appropriate agency] unless express provision to the contrary is contained—
- (a) where the land vests in the [^{F796}appropriate agency] by virtue of a conveyance, in the conveyance; or
 - (b) where the land is acquired by the [^{F796}appropriate agency] in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.
- (3) The [^{F796}appropriate agency] shall be entitled to such parts of any mines or minerals that lie under the land as it may be necessary for it to dig, carry away or use in carrying out any works for the purpose of constructing, making, erecting or laying any part of its undertaking.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

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Notice required for the working of underlying mines

- 2 (1) If the owner of any mines or minerals underlying any part of the [F796 appropriate agency's] undertaking proposes to work them, he shall, not less than thirty days before the commencement of working, serve notice of his intention to do so on the [F796 appropriate agency].
- (2) On receipt of a notice under sub-paragraph (1) above the [F796 appropriate agency] may cause the mines or minerals to be inspected by a person designated by it for the purpose.
- (3) Subject to sub-paragraph (5) and paragraph 3 below, if, where notice has been served under this paragraph, the [F796 appropriate agency]—
- (a) considers that the working of the underlying mines or minerals is likely to damage any part of its undertaking;
 - (b) is willing to compensate the owner of the mines or minerals for the restriction imposed by virtue of this sub-paragraph; and
 - (c) serves notice to that effect on the owner of the mines or minerals before the end of the period of thirty days mentioned in sub-paragraph (1) above,
- the owner shall not work the mines or minerals except to such extent as may be determined by the [F796 appropriate agency], and the [F796 appropriate agency] shall so compensate the owner.
- (4) Any dispute as to the amount of any compensation payable by virtue of sub-paragraph (3) above shall be referred to and determined by the [F797 Upper Tribunal].
- (5) If before the end of the period of thirty days mentioned in sub-paragraph (1) above, no notice has been served under sub-paragraph (3)(c) above by the [F796 appropriate agency], the entitlement of the owner of the mines and minerals to work them shall be an entitlement to work them by proper methods and in the usual manner of working such mines or minerals in the district in question.
- (6) If any damage to the undertaking of the [F796 appropriate agency] is caused by the working otherwise than as authorised by this paragraph of any mines or minerals underlying any part of its undertaking—
- (a) the owner of the mines or minerals shall, at his own expense, forthwith repair the damage; and
 - (b) the [F796 appropriate agency] may, without waiting for the owner to perform his duty, repair the damage and may recover the expenses reasonably incurred by it in doing so from the owner.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

F797 Words in Sch. 23 para. 2(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 236** (with Sch. 5)

Mining communications

- 3 (1) If the working of any mines or minerals is prevented by reason of any of the preceding provisions of this Schedule, the owner of the mines or minerals may cut and make

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such communication works through the mines or minerals, or the strata in which they are situated, as are required for the ventilation, drainage and working of mines or minerals which are not underlying any part of the undertaking of the [^{F796}appropriate agency].

- (2) Communication works cut or made under this paragraph—
- (a) shall not, in a case where—
- (i) the part of the undertaking in question was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the [^{F796}appropriate agency] in pursuance of any powers of compulsory acquisition; and
- (ii) the order authorising the works or acquisition designates dimensions or sections for the communication works, exceed those dimensions or fail to conform to those sections; and
- (b) in any other case, shall not be more than 2.44 metres high or more than 2.44 metres wide.
- (3) Communication works cut or made under this paragraph shall not be cut or made on the land where the part of the undertaking is situated so as to cause damage to that part of the undertaking.
- (4) Where works carried out under this paragraph by the owner of any mines or minerals cause loss or damage to the owner or occupier of land lying over the mines or minerals, the [^{F796}appropriate agency] shall pay full compensation to him for the loss or damage.
- (5) Sub-paragraph (4) above shall not apply where the person sustaining the loss or damage is the owner of the mines.
- (6) In this paragraph “communication works” means airways, headways, gateways or water levels.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

Compensation relating to severance

- 4 (1) Where mines or minerals underlying any part of the [^{F796}appropriate agency's] undertaking are situated so as, on two or more sides of that land, to extend beyond the land on which that part of the undertaking is situated, the [^{F796}appropriate agency] shall from time to time pay to the owner of the mines or minerals (in addition to any compensation under paragraph 2 above) any expenses and losses incurred by him in consequence of—
- (a) the severance by the undertaking of the land lying over the mines;
- (b) the interruption of continuous working of the mines in consequence of paragraph 2(3) above;
- (c) the mines being so worked in accordance with restrictions imposed by virtue of this Act or any order made under this Act,

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and shall pay for any minerals not purchased by the [^{F796}appropriate agency] which cannot be got or won by reason of the part of the undertaking in question being situated where it is or by reason of the requirement to avoid damage to any part of the [^{F796}appropriate agency's] undertaking.

- (2) Any dispute as to whether any sum should be paid under this paragraph, or as to the amount payable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the [^{F796}appropriate agency] and the owner of the mines or minerals or, in default of agreement, by the Secretary of State.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

Powers of entry

- 5 (1) Any person designated in writing for the purpose by the [^{F796}appropriate agency] may, for any purpose specified in sub-paragraph (2) below—
- (a) enter on any land in which the mines or minerals are, or are thought to be, being worked, and which is in or near to the land where any part of the [^{F796}appropriate agency's] undertaking is situated; and
 - (b) enter the mines and any works connected with the mines.
- (2) The purposes mentioned in sub-paragraph (1) above are—
- (a) carrying out any inspection under paragraph 2(2) above;
 - (b) ascertaining whether any mines or minerals have been worked so as to damage the undertaking of the [^{F796}appropriate agency]; and
 - (c) carrying out any works and taking any other steps which the [^{F796}appropriate agency] in question is authorised to carry out or take under paragraph 2(6) above.
- (3) A person authorised to enter any premises under this paragraph may—
- (a) make use of any equipment belonging to the owner of the mines or minerals in question; and
 - (b) use all necessary means for discovering the distance from any part of the undertaking of the [^{F796}appropriate agency] to the parts of the mines or the minerals which are, or are about to be, worked.
- (4) Schedule 20 to this Act shall apply in relation to the powers conferred by this paragraph as it applies to the powers conferred by sections 169 to 172 of this Act.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

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No exemption for injury to mines and minerals

- 6 Nothing in any provision of this Act or of any order made under this Act shall be construed as exempting the [F796 appropriate agency] from any liability to which it would, apart from that provision, have been subject in respect of any damage to any mines or minerals underlying any part of its undertaking or in respect of any loss sustained in relation to any such mines or minerals by a person having an interest therein.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

Interpretation

- 7 (1) In this Schedule—
- “conveyance” has the same meaning as in the ^{M161}Law of Property Act 1925;
- “designated distance”, in relation to any part of the [F796 appropriate agency's] undertaking, means, subject to sub-paragraph (6) below, thirty-seven metres;
- “mines” means mines of coal, ironstone, slate or other minerals;
- “owner”, in relation to mines and minerals, includes a lessee or occupier;
- and
- “underlying”, in relation to any part of the [F796 appropriate agency's] undertaking, means lying under, or within the designated distance from, that part of that undertaking.
- (2) For the purposes of this Schedule the [F796 appropriate agency's] undertaking shall be taken to consist of so much of any of the following as is for the time being vested in or held by the [F796 appropriate agency] for the purposes of, or in connection with, the carrying out of any of its functions, that is to say—
- (a) any buildings, reservoirs, wells, boreholes or other structures; and
- [F798](b) any resource mains, discharge pipes or other underground works which are for the time being vested in the appropriate agency.]
- (3) References in this Schedule to the working of any mines or minerals include references to the draining of mines and to the winning or getting of minerals.
- (4) For the purposes of this Schedule land shall be treated as acquired by the [F796 appropriate agency] in pursuance of powers of compulsory acquisition if it—
- (a) was so acquired by a water authority or any predecessor of a water authority; and
- (b) is now vested in the [F796 appropriate agency] in accordance with a scheme under Schedule 2 to the ^{M162}Water Act 1989 or otherwise.
- (5) In relation to any land treated by virtue of sub-paragraph (4) above as acquired in pursuance of powers of compulsory acquisition, references in this Schedule to the order authorising the acquisition include references to any local statutory provision

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which immediately before 1st September 1989 had effect in relation to that land for the purposes of any provisions corresponding to the provisions of this Schedule.

(6) For the purposes of this Schedule where—

- (a) any part of the [^{F796}appropriate agency's] undertaking was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the [^{F796}appropriate agency] in pursuance of any powers of compulsory acquisition; and
- (b) the order authorising the works or acquisition designates any distance for the purposes of any enactment relating to mines or minerals underlying that part of the undertaking,

then for the purposes of this Schedule that distance (instead of the distance specified in subsection (1) above) shall be the designated distance in relation to that part of the undertaking.

Textual Amendments

F796 Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

F798 Sch. 23 para. 7(2)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 60(2)**, 94(2)(n)

Marginal Citations

M161 1925 c. 20.

M162 1989 c. 15.

SCHEDULE 24

Section 204.

DISCLOSURE OF INFORMATION

PART I

PERSONS IN RESPECT OF WHOSE FUNCTIONS DISCLOSURE MAY BE MADE

Any Minister of the Crown.

F799 ...

Textual Amendments

F799 Words in Sch. 24 Pt. I omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 97(a)** (with art. 3)

[^{F800}The Competition and Markets Authority].

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Textual Amendments

F800 Words in Sch. 24 Pt. I substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 97\(a\)](#) (with art. 3)

[^{F801}The Office of Communications]

Textual Amendments

F801 Words in Sch. 24 Pt. I substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 115\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

The Civil Aviation Authority.

The Director General of Gas Supply.

The Director General of Electricity Supply.

[^{F802}The Coal Authority.]

Textual Amendments

F802 Entry in Sch. 24 Pt. I inserted (31.10.1994) by [1994 c. 21](#), s. 67, [Sch. 9 para. 43\(2\)\(a\)](#) (with s. 40(7)); [S.I. 1994/2553](#), [art. 2](#)

[^{F803}Office of Rail and Road]

Textual Amendments

F803 Words in Sch. 24 substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), [Sch. para. 4\(j\)](#)

A local weights and measures authority in England and Wales.

PART II

ENACTMENTS ETC. IN RESPECT OF WHICH DISCLOSURE MAY BE MADE

Modifications etc. (not altering text)

C221 Sch. 24 Pt. II modified (8.2.2007 immediately before the [Wireless Telegraphy Act 2006 \(c. 36\)](#) comes into force) by [Wireless Telegraphy \(Pre-Consolidation Amendments\) Order 2006 \(S.I. 2006/1391\)](#), art. 1, [Sch. para. 7\(3\)\(c\)](#)

The ^{M163}Trade Descriptions Act 1968.

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Marginal Citations

M163 1968 c. 29.

The ^{M164}Fair Trading Act 1973.

Marginal Citations

M164 1973 c. 41.

The ^{M165}Consumer Credit Act 1974.

Marginal Citations

M165 1974 c. 39.

F804

Textual Amendments

F804 Entries in Sch. 24 Pt. II repealed (1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), 76(3), Sch. 10 Pt. IV para. 14(a), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 3(1), **Sch.**

F804

The ^{M166}Estate Agents Act 1979.

Marginal Citations

M166 1979 c. 38.

The ^{M167}Competition Act 1980.

Marginal Citations

M167 1980 c. 21.

The ^{M168}Telecommunications Act 1984.

Marginal Citations

M168 1984 c. 12.

The ^{M169}Airports Act 1986.

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Marginal Citations

M169 1986 c. 31.

The ^{M170}Gas Act 1986.

Marginal Citations

M170 1986 c. 44.

The ^{M171}Consumer Protection Act 1987.

Marginal Citations

M171 1987 c. 43.

The ^{M172}Electricity Act 1989.

Marginal Citations

M172 1989 c. 29.

[^{F805}The Railways Act 1993]

Textual Amendments

F805 Entry in Sch. 24 Pt. II inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), **Sch. 12 para. 31**; S.I. 1993/3237, **art. 2(2)**.

[^{F806}The Coal Industry Act 1994.]

Textual Amendments

F806 Entry in Sch. 24 Pt. II inserted (31.10.1994) by 1994 c. 21, s. 67, **Sch. 9 para. 43(2)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

[^{F807}The Competition Act 1998.]

Textual Amendments

F807 Entry in Sch. 24 Pt. II inserted (11.1.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 14(b)** (with s. 73); S.I. 1998/3166, **art. 2, Sch.**

[^{F808}Part I of the Transport Act 2000.]

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Textual Amendments

F808 Entry in Sch. 24 Pt. II inserted (21.12.2001) by [S.I. 2001/4050](#), art. 2, **Sch. Pt. IV para. 22**

[^{F809}The Enterprise Act 2002.]

Textual Amendments

F809 Words in Sch. 24 Pt. II inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 26(2)(b)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

[^{F810}The Communications Act 2003.]

Textual Amendments

F810 Words in Sch. 24 Pt. II inserted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 115(3)** (with **Sch. 18**); [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

[^{F811}The Railways Act 2005.]

Textual Amendments

F811 Words in Sch. 24 Pt. II inserted (8.6.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), **Sch. 12 para. 11**; [S.I. 2005/1444](#), art. 2(1), **Sch. 1**

F812

Textual Amendments

F812 Words in Sch. 24 Pt. II repealed (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#), reg. 1, **Sch. 2 para. 50(a)**, **Sch. 4 Pt. 1** (with reg. 28(2)(3))

[^{F813}Any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.]

Textual Amendments

F813 Words in Sch. 24 Pt. II inserted (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#), reg. 1, **Sch. 2 para. 50(b)** (with reg. 28(2)(3))

[^{F814}Part 1 of the Civil Aviation Act 2012.]

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Textual Amendments

F814 Words in Sch. 24 Pt. II inserted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), s. 110(1), [Sch. 9 para. 7](#) (with [Sch. 10 paras. 12, 17](#)); S.I. 2013/589, art. 2(3)

[^{F815}Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.]

Textual Amendments

F815 Words in Sch. 24 Pt. II inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 97\(b\)](#) (with art. 3)

SCHEDULE 25

Section 210.

BYELAW - MAKING POWERS OF THE [^{F816}APPROPRIATE AGENCY]

Textual Amendments

F816 Words in [Sch. 25](#) heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 315\(b\)](#) (with [Sch. 7](#))

Byelaws for regulating use of inland waters

- 1 (1) Subject to the following provisions of this paragraph but without prejudice to the powers conferred by the following provisions of this Schedule, where it appears to the [^{F817}appropriate agency] to be necessary or expedient to do so for the purposes of any of the functions specified in [^{F818}sub-paragraphs (i), (iii) and (v) of section 2(1) (a) of the 1995 Act], the [^{F817}appropriate agency] may make byelaws—
- (a) prohibiting such inland waters as may be specified in the byelaws from being used for boating (whether with mechanically propelled boats or otherwise), swimming or other recreational purposes; or
 - (b) regulating the way in which any inland waters so specified may be used for any of those purposes.
- (2) Byelaws made by the [^{F817}appropriate agency] under this paragraph shall not apply to—
- (a) any tidal waters or any discrete waters;
 - (b) any inland waters in relation to which functions are exercisable by a navigation authority, harbour authority or conservancy authority other than the [^{F817}appropriate agency]; or
 - (c) any reservoir belonging to, and operated by, a water undertaker.
- (3) Byelaws made in respect of any inland waters by virtue of this paragraph may—
- (a) include provision prohibiting the use of the inland waters by boats which are not for the time being registered with the [^{F817}appropriate agency] in such manner as the byelaws may provide; and

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- (b) authorise the [^{F817}appropriate agency] to make reasonable charges in respect of the registration of boats in pursuance of the byelaws.

Textual Amendments

F817 Words in Sch. 25 para. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

F818 Words in Sch. 25 para. 1(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 190** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C222 Sch. 25 para. 1 applied (with modifications) (15.8.2002) by S.I. 2002/1998, **arts. 4, 32** (with art. 33)

Byelaws for regulating the use of navigable waters etc.

- 2 (1) The [^{F817}appropriate agency] shall have power to make such byelaws as are mentioned in sub-paragraph (3) below with respect to any inland waters in relation to which—
- (a) there is a public right of navigation; and
 - (b) the condition specified in sub-paragraph (2) below is satisfied,
- and with respect to any land associated with such waters.
- (2) For the purposes of this paragraph the condition mentioned in sub-paragraph (1) above is satisfied in relation to any waters if navigation in those waters—
- (a) is not for the time being subject to the control of any navigation authority, harbour authority or conservancy authority; or
 - (b) is subject to the control of such a navigation authority, harbour authority or conservancy authority as is prescribed for the purposes of this paragraph by reason of its appearing to the Secretary of State to be unable for the time being to carry out its functions.
- (3) The byelaws referred to in sub-paragraph (1) above in relation to any inland waters or to any land associated with any such waters are byelaws for any of the following purposes, that is to say—
- (a) the preservation of order in or on any such waters or land;
 - (b) the prevention of damage to anything in or on any such waters or land or to any such land;
 - (c) securing that persons resorting to any such waters or land so behave as to avoid undue interference with the enjoyment of the waters or land by others.
- (4) Without prejudice to the generality of any of the paragraphs of sub-paragraph (3) above or to the power conferred on the [^{F817}appropriate agency] by virtue of paragraph 4 below, the byelaws mentioned in that sub-paragraph include byelaws—
- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
 - (b) prohibiting the use of the inland waters in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the [^{F817}appropriate agency];
 - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution; and

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- (d) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (5) In this paragraph “boat” includes a vessel of any description, and “boating” shall be construed accordingly.

Textual Amendments

F817 Words in Sch. 25 para. 2 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

Byelaws for regulating the use of the ^{F819}appropriate agency's] waterways etc.

Textual Amendments

F819 Words in Sch. 25 para. 3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

- 3 (1) The ^{F819}appropriate agency] shall have power to make such byelaws as are mentioned in sub-paragraph (2) below with respect to any waterway owned or managed by the ^{F819}appropriate agency] and with respect to any land held or managed with the waterway.
- (2) The byelaws referred to in sub-paragraph (1) above in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—
- (a) the preservation of order on or in any such waterway or land;
 - (b) the prevention of damage to anything on or in any such waterway or land or to any such land;
 - (c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.
- (3) Without prejudice to the generality of any of the paragraphs of sub-paragraph (2) above or to the power conferred on the ^{F819}appropriate agency] by virtue of paragraph 4 below, the byelaws mentioned in that sub-paragraph include byelaws—
- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
 - (b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the ^{F819}appropriate agency];
 - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution; and
 - (d) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (4) In this paragraph—
- “boat” and “boating” have the same meanings as in paragraph 2 above; and
- “waterway” has the same meaning as in the National Parks and Access to the ^{M173}Countryside Act 1949.

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Marginal Citations

M173 1949 c. 97.

Byelaws for controlling certain forms of pollution

- 4 (1) The [^{F820}appropriate agency] may by byelaws make such provision as the [^{F820}appropriate agency] considers appropriate—
- (a) for prohibiting or regulating the washing or cleaning in any controlled waters of things of a description specified in the byelaws;
 - (b) for prohibiting or regulating the keeping or use on any controlled waters of vessels of a description specified in the byelaws which are provided with water closets or other sanitary appliances.
- (2) In this paragraph—
- “controlled waters” has the same meaning as in Part III of this Act; and
- “sanitary appliance”, in relation to a vessel, means any appliance which—
- (a) not being a sink, bath or shower bath, is designed to permit polluting matter to pass into the water where the vessel is situated; and
 - (b) is prescribed for the purposes of this paragraph.

Textual Amendments

F820 Words in Sch. 25 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

Byelaws for flood defence and drainage purposes

- 5 (1) The [^{F820}appropriate agency] may make such byelaws in relation to any particular locality or localities as it considers necessary [^{F821}for any of Purposes 1 to 4.
- (1A) Purpose 1 is to secure the efficient working of a drainage system.
- (1B) Purpose 2 is to regulate the effects on the environment of a drainage system.
- (1C) Purpose 3 is to secure the effectiveness of flood risk management work within the meaning of section 165.
- (1D) Purpose 4 is to secure the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).]
- (2) Without prejudice to the generality of sub-paragraph (1) above and subject to sub-paragraph (3) below, the [^{F820}appropriate agency] may, in particular, make byelaws for any of the following purposes, that is to say—
- (a) regulating the use and preventing the improper use of any watercourses, banks or works vested in the [^{F820}appropriate agency] or under its control or for preserving any such watercourses, banks or works from damage or destruction;
 - (b) regulating the opening of sluices and flood gates in connection with any such works as are mentioned in paragraph (a) above;

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- (c) preventing the obstruction of any watercourse vested in the [^{F820}appropriate agency] or under its control by the discharge into it of any liquid or solid matter or by reason of any such matter being allowed to flow or fall into it;
- (d) compelling the persons having control of any watercourse vested in the [^{F820}appropriate agency] or under its control, or of any watercourse flowing into any such watercourse, to cut the vegetable growths in or on the bank of the watercourse and, when cut, to remove them.

(3) No byelaw for any purpose specified in sub-paragraph (2)(a) above shall be valid if it would prevent reasonable facilities being afforded for enabling a watercourse to be used by stock for drinking purposes.

[^{F822}(3A) If, in any particular case,—

- (a) a marine licence is needed for the carrying on of any activity,
- (b) before that activity may be carried on, the consent of the [^{F820}appropriate agency] would also be required (apart from this sub-paragraph) by virtue of any byelaw under this paragraph, and
- (c) the [^{F820}appropriate agency] considers that, in view of the terms and conditions that will be included in the marine licence, the requirement for the consent of the [^{F820}appropriate agency] may be dispensed with, and issues a notice to that effect,

the requirement for the consent of the [^{F820}appropriate agency] does not apply in relation to the carrying on of that activity.

(3B) In sub-paragraph (3A) “marine licence” has the same meaning as in Part 4 of the Marine and Coastal Access Act 2009.]

(4) Notwithstanding anything in this Act, no byelaw made by the [^{F820}appropriate agency] under this paragraph shall conflict with or interfere with [^{F823}the operation of—

- (a) any byelaw made by a navigation authority, harbour authority or conservancy authority;
- (b) any byelaw made under section 129 [^{F824}, 129A, 129B or 132(1) or (1A)] of the Marine and Coastal Access Act 2009 (byelaws for [^{F825}marine conservation] in England);
- (c) any order made under section 134 [^{F826}, 134A, 134B or 136(1) or (1A)] of that Act (orders for [^{F827}marine conservation] in Wales).]

(5) In this paragraph “banks” [^{F828}, “drainage”] and “watercourse” have the same meanings as in Part IV of this Act.

Textual Amendments

F820 Words in Sch. 25 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

F821 Sch. 25 para. 5(1A)-(1D) and words substituted for Sch. 25 para. 5(1)(a)(b) (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 49** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

F822 Sch. 25 para. 5(3A)(3B) inserted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 84(2), 324(3)** (with **ss. 76-81, 111**); S.I. 2011/556, art. 3(2)(a)

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- F823** Sch. 25 para. 5(4)(a)-(c) substituted for words (12.1.2010 for specified purposes, 12.12.2014 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(2)(b)(i), **Sch. 11 para. 3**; S.I. 2014/3088, art. 2(b)
- F824** Words in Sch. 25 para. 5(4)(b) substituted (23.1.2021) by [Fisheries Act 2020 \(c. 22\)](#), s. 54(4)(d), **Sch. 10 para. 32(2)(a)** (with Sch. 4 para. 31)
- F825** Words in Sch. 25 para. 5(4)(b) substituted (23.1.2021) by [Fisheries Act 2020 \(c. 22\)](#), s. 54(4)(d), **Sch. 10 para. 32(2)(b)** (with Sch. 4 para. 31)
- F826** Words in Sch. 25 para. 5(4)(c) substituted (23.1.2021) by virtue of [Fisheries Act 2020 \(c. 22\)](#), s. 54(4)(d), **Sch. 10 para. 32(3)(a)** (with Sch. 4 para. 31)
- F827** Words in Sch. 25 para. 5(4)(c) substituted (23.1.2021) by [Fisheries Act 2020 \(c. 22\)](#), s. 54(4)(d), **Sch. 10 para. 32(3)(b)** (with Sch. 4 para. 31)
- F828** Word in Sch. 25 para. 5(5) inserted (30.3.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), **ss. 100(2), 107(7)** (see also S.I. 2006/2541, art. 2)

Modifications etc. (not altering text)

- C223** Sch. 25 para. 5 excluded (8.9.2022) by [The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 \(S.I. 2022/934\)](#), arts. 1, **3(2)(b)**

Byelaws for purposes of fisheries functions

- 6 (1) The [^{F820}appropriate agency] shall have power, [^{F829}in relation to the whole or any part or parts] of the area in relation to which it carries out its functions relating to fisheries under Part V of this Act, to make byelaws generally for the purposes of—
- (a) the better execution of the ^{M174}Salmon and Freshwater Fisheries Act 1975; and
 - (b) the better protection, preservation and improvement of any [^{F830}fisheries of fish to which this paragraph applies.]
- [^{F831}(1A) This paragraph applies to—
- (a) salmon, trout, eels, lampreys, smelt, shad and freshwater fish; and
 - (b) fish of such other description as may be specified for the purposes of this paragraph by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.]
- (2) ^{F832}..., the [^{F820}appropriate agency] shall have power, [^{F829}in relation to the whole or any part or parts] of the area mentioned in sub-paragraph (1) above, to make byelaws for any of the following purposes, that is to say—
- (a) prohibiting the taking or removal from any water, without lawful authority, of any fish [^{F833}to which this paragraph applies], whether alive or dead;
 - [^{F834}(aa) specifying close seasons or times for the taking of any fish to which this paragraph applies by such means as may be prescribed by the byelaws;]
 - (b) prohibiting or regulating—
 - (i) the taking of [^{F835}any fish to which this paragraph applies] of a size [^{F836}greater or] less than such as may be prescribed by the byelaw; or
 - (ii) the taking of fish [^{F837}to which this paragraph applies] by any means within such distance as is specified in the byelaw above or below any dam or any other obstruction, whether artificial or natural;
 - (c) prohibiting the use for taking [^{F838}fish to which this paragraph applies] of any instrument ^{F839}... in such waters and at such times as may be prescribed by the byelaws;

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- (d) specifying the nets and other instruments ^{F840}... which may be used for taking [^{F841}fish to which this paragraph applies], imposing requirements as to the use of such nets and other instruments and regulating the use, in connection with fishing with rod and line, of any lure or bait specified in the byelaw;
- (e) authorising the placing and use of fixed engines at such places, at such times and in such manner as may be prescribed by the byelaws; [^{F842}(including requiring fixed engines during close seasons or times to be removed or made incapable of taking or obstructing the passage of fish)]
- (f) imposing requirements as to the construction, design, material and dimensions of any such nets, instruments or engines as are mentioned in paragraphs (d) and (e) above, including in the case of nets the size of mesh;
- (g) requiring and regulating the attachment to ^{F843}... nets and instruments of marks, labels or numbers, or the painting of marks or numbers or the affixing of labels or numbers to boats, coracles or other vessels used in fishing;
- (h) prohibiting the carrying in any boat or vessel whilst being used in fishing for [^{F844}fish to which this paragraph applies] of any net [^{F845}which may not lawfully be used], or which is without the mark, label or number prescribed by the byelaws; and
- (i) prohibiting or regulating the carrying in a boat or vessel during [^{F846}any close season or time for any description of fish to which this paragraph applies of a net capable of taking fish of that description], other than a net commonly used in the area to which the byelaw applies for sea fishing and carried in a boat or vessel commonly used for that purpose.

^{F847}(3)

^{F848}(4)

- (5) The [^{F820}appropriate agency] shall have power, [^{F829}in relation to the whole or any part or parts] of the area mentioned in sub-paragraph (1) above, to make byelaws for the purpose of requiring persons to send to the [^{F820}appropriate agency] returns, in such form, giving such particulars and at such times as may be specified in the byelaws—
 - (a) of the period or periods during which they have fished for [^{F849}fish to which this paragraph applies],
 - (b) of whether they have taken any; and
 - (c) if they have, of what they have taken.

^{F850}(5A) A byelaw under this paragraph does not apply to a person (including an employee or agent of the [^{F820}appropriate agency]) to the extent that he is acting—

- (a) with the written authority of the [^{F820}appropriate agency]; and
- (b) in accordance with any conditions imposed by the [^{F820}appropriate agency] in relation to that authority.

(5B) For the avoidance of doubt, a byelaw under this paragraph may apply to an historic installation as to any other fixed engine.]

(6) Byelaws made under this paragraph may be made to apply to the whole or any part or parts of the year.

(7) Expressions used in this paragraph and in the ^{M175}Salmon and Freshwater Fisheries Act 1975 have the same meanings in this paragraph as in that Act.

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Textual Amendments

- F820** Words in Sch. 25 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 315\(b\)](#) (with Sch. 7)
- F829** Words in Sch. 25 para. 6(1) to (5) substituted (21.9.1995) by 1995 c. 25, s. 105, [Sch. 15 para. 26\(1\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1995/1983](#), [art. 3](#)
- F830** Words in Sch. 25 para. 6(1)(b) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(2\)](#), [324\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 14](#)
- F831** Sch. 25 para. 6(1A) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(3\)](#), [324\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 14](#)
- F832** Words in Sch. 25 para. 6(2) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(a\)](#), [Sch. 22 Pt. 5\(B\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. paras. 15\(i\)](#), [27\(b\)](#)
- F833** Words in Sch. 25 para. 6(2)(a) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(b\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F834** Sch. 25 para. 6(2)(aa) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(4\)](#), [324\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 14](#)
- F835** Words in Sch. 25 para. 6(2)(b)(i) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(c\)\(i\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F836** Words in Sch. 25 para. 6(2)(b)(i) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(5\)](#), [324\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 14](#)
- F837** Words in Sch. 25 para. 6(2)(b)(ii) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(c\)\(ii\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F838** Words in Sch. 25 para. 6(2)(c) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(d\)\(i\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F839** Words in Sch. 25 para. 6(2)(c) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(d\)\(ii\)](#), [Sch. 22 Pt. 5\(B\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. paras. 15\(i\)](#), [27\(b\)](#)
- F840** Words in Sch. 25 para. 6(2)(d) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(e\)\(i\)](#), [Sch. 22 Pt. 5\(B\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. paras. 15\(i\)](#), [27\(b\)](#)
- F841** Words in Sch. 25 para. 6(2)(d) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(e\)\(ii\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F842** Words in Sch. 25 para. 6(2)(e) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(6\)](#), [324\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 14](#)
- F843** Word in Sch. 25 para. 6(2)(g) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(f\)](#), [Sch. 22 Pt. 5\(B\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. paras. 15\(i\)](#), [27\(b\)](#)
- F844** Words in Sch. 25 para. 6(2)(h) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(g\)\(i\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F845** Words in Sch. 25 para. 6(2)(h) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(g\)\(ii\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F846** Words in Sch. 25 para. 6(2)(i) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(2\)\(h\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F847** Sch. 25 para. 6(3) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(7\)](#), [324\(3\)](#), [Sch. 22 Pt. 5\(B\)](#) (with s. [224\(10\)](#)); [S.I. 2009/3345](#), [art. 2](#), [Sch. paras. 14](#), [27\(b\)](#)
- F848** Sch. 25 para. 6(4) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(8\)](#), [324\(3\)](#), [Sch. 22 Pt. 5\(B\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. paras. 14](#), [27\(b\)](#)
- F849** Words in Sch. 25 para. 6(5) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. [324\(3\)](#), [Sch. 16 para. 24\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 15\(i\)](#)
- F850** Sch. 25 para. 6(5A)(5B) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 224\(9\)](#), [324\(3\)](#); [S.I. 2009/3345](#), [art. 2](#), [Sch. para. 14](#)

Modifications etc. (not altering text)

- C224** Sch. 25 para. 6 amended (27.8.1993) by 1993 c. 12, [ss. 40](#), [51\(2\)](#), [Sch. 3 Pt. 1 para. 9](#) (with s. [46](#)).

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Sch. 25 para. 6 excluded by [S.I. 1999/1746, arts. 1\(1\), 4\(1\)](#) (with [art. 2](#)) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by [S.I. 1998/3178, art. 3](#)))

C225 Sch. 25 para. 6 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](#))

C226 Sch. 25 para. 6 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 Pt. 7 paras. 1\(3\), 2](#) (with [regs. 1\(3\), 77-79, Sch. 4](#))

C227 Sch. 25 para. 6 excluded (8.9.2022) by [The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 \(S.I. 2022/934\), arts. 1, 3\(2\)\(b\)](#)

Marginal Citations

M174 1975 c. 51.

M175 1975 c. 51.

[^{F851} Fisheries byelaws for marine or aquatic environmental purposes]

Textual Amendments

F851 Sch. 25 para. 6A inserted (21.9.1995) by [1995 c. 25, s. 103\(3\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1995/1983, art. 3](#)

- ^{F852}6A(1) Any power to make byelaws conferred by paragraph 6 above may be exercised for marine or aquatic environmental purposes.
- (2) The power to make byelaws under paragraph 6 above by virtue of this paragraph is in addition to, and not in derogation from, the power to make byelaws under that paragraph otherwise than by virtue of this paragraph.
- (3) In this paragraph “marine or aquatic environmental purposes” means—
- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
 - (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal, or aquatic or waterside, environment.]

Textual Amendments

F852 Sch. 25 para. 6A inserted (21.9.1995) by [1995 c. 25, s. 103\(3\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1995/1983, art. 3](#)

Modifications etc. (not altering text)

C228 Sch. 25 para. 6A excluded (8.9.2022) by [The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 \(S.I. 2022/934\), arts. 1, 3\(2\)\(b\)](#)

Restrictions on powers to make byelaws for fisheries purposes

^{F853}7

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F853 Sch. 25 para. 7 repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 16 para. 25, [Sch. 22 Pt. 5\(B\)](#); S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)

SCHEDULE 26

Section 210.

PROCEDURE RELATING TO BYELAWS MADE BY THE [F854 APPROPRIATE AGENCY]

Textual Amendments

F854 Words in Sch. 26 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 315\(c\)](#) (with Sch. 7)

Modifications etc. (not altering text)

C229 Sch. 26 applied (with modifications) by S.I. 1999/1746, [arts. 1\(1\)](#), [4\(3\)](#) (with [art. 2](#)) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, [art. 3](#)))

C230 Sch. 26 applied (15.8.2002) by S.I. 2002/1998, [art. 17\(14\)](#) (with [art. 33](#))

Confirmation of byelaws

- 1 (1) No byelaw made by the [F855 appropriate agency] shall have effect until confirmed by the relevant Minister under this Schedule.
- (2) At least one month before it applies for the confirmation of any byelaw, the [F855 appropriate agency] shall—
 - (a) cause a notice of its intention to make the application to be published in the London Gazette and in such other manner as it considers appropriate for the purpose of bringing the proposed byelaw to the attention of persons likely to be affected by it; and
 - (b) cause copies of the notice to be served on any persons carrying out functions under any enactment who appear to it to be concerned.
- (3) For at least one month before an application is made by the [F855 appropriate agency] for the confirmation of any byelaw, a copy of it shall be deposited at one or more of the offices of the [F855 appropriate agency], including (if there is one) at an office in the area to which the byelaw would apply.
- (4) The [F855 appropriate agency] shall provide reasonable facilities for the inspection free of charge of a byelaw deposited under sub-paragraph (3) above.
- (5) Every person shall be entitled, on application to the [F855 appropriate agency], to be furnished free of charge with a printed copy of a byelaw so deposited.

Changes to legislation: *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F855 Words in Sch. 26 para. 2 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

Confirmation with or without modifications

- 2 (1) Subject to sub-paragraph (3) below, the relevant Minister, with or without a local inquiry, may refuse to confirm any byelaw submitted to him by the [^{F855}appropriate agency] for confirmation under this Schedule, or may confirm the byelaw either without or, if the [^{F855}appropriate agency] consents, with modifications.
- (2) The [^{F855}appropriate agency] shall, if so directed by the relevant Minister, cause notice of any proposed modifications to be given in accordance with his directions.
- (3) A byelaw made by the [^{F855}appropriate agency] under paragraph 4 of Schedule 25 to this Act shall be confirmed without a local inquiry only if—
- (a) no written objection to its confirmation has been received by the relevant Minister;
 - (b) every objection to its confirmation which has been so received has been withdrawn; or
 - (c) in the opinion of that Minister the person making the objection has no material interest in the controlled waters to which the byelaw relates;
- and in relation to any such byelaw sub-paragraph (1) above shall have effect with the substitution for the words “if the [^{F855}appropriate agency] consents” of the words “after consultation with the [^{F855}appropriate agency]”.

Textual Amendments

F855 Words in Sch. 26 para. 2 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

Commencement of byelaw

- 3 (1) The relevant Minister may fix the date on which any byelaw confirmed under this Schedule is to come into force.
- (2) If no date is so fixed in relation to a byelaw, it shall come into force at the end of the period of one month beginning with the date of confirmation.

Availability of confirmed byelaws

- 4 (1) Every byelaw made by the [^{F856}appropriate agency] and confirmed under this Schedule shall be printed and deposited at one or more of the offices of the [^{F856}appropriate agency], including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.

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- (2) Every person shall be entitled, on application to the [F856 appropriate agency] and on payment of such reasonable sum as the [F856 appropriate agency] may determine, to be furnished with a copy of any byelaw so deposited by the [F856 appropriate agency].

Textual Amendments

F856 Words in Sch. 26 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

Revocation of byelaws

- 5 If it appears to the relevant Minister that the revocation of a byelaw is necessary or expedient, he may—
- (a) after giving notice to the [F856 appropriate agency] and considering any representations or objections made by the [F856 appropriate agency]; and
 - (b) if required by the [F856 appropriate agency], after holding a local inquiry, revoke that byelaw.

Textual Amendments

F856 Words in Sch. 26 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

Proof of byelaws

- 6 The production of a printed copy of a byelaw purporting to be made by the [F856 appropriate agency] upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by the [F856 appropriate agency];
 - (b) that the copy is a true copy of the byelaw;
 - (c) that on a specified date the byelaw was confirmed under this Schedule; and
 - (d) the date, if any, fixed under paragraph 3 above for the coming into force of the byelaw,
- shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

Textual Amendments

F856 Words in Sch. 26 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

Meaning of “the relevant Minister”

- 7 In this Schedule “the relevant Minister”—
- (a) in relation to byelaws which—

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- (i) are made by virtue of paragraph 5 of Schedule 25 to this Act or by virtue of section 136(8) of the ^{M176}Water Act 1989 as read with the savings in paragraphs 1 and 5 of Schedule 2 to the ^{M177}Water Consolidation (Consequential Provisions) Act 1991 (transfer of land drainage functions under local statutory provisions); and
- (ii) have effect in [^{F857}a flood risk management region ^{F858}... in England],
- means the Minister;
- (b) in relation to byelaws made by virtue of paragraph 6 of that Schedule 25 or by virtue of any provision amended by Schedule 17 to the Water Act 1989 (fisheries functions of the [^{F859}Agency]), means the Secretary of State or the Minister; and
- (c) in relation to any other byelaws, means the Secretary of State.

[^{F860}For the purposes of this paragraph “flood risk management region” means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010.]

Textual Amendments

- F857** Words in Sch. 26 para. 7(a)(ii) substituted (14.7.2014) by [Water Act 2014 \(c. 21\), s. 94\(2\)\(r\)](#), **Sch. 10 para. 15(a)**
- F858** Words in Sch. 26 para. 7 omitted (14.7.2017) by virtue of [Environment \(Wales\) Act 2016 \(anaw 3\), s. 88\(3\)\(c\)](#), **Sch. 2 para. 20(6)**; S.I. 2017/714, art. 2
- F859** Word in Sch. 26 para. 7 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120](#), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F860** Words in Sch. 26 para. 7 inserted (14.7.2014) by [Water Act 2014 \(c. 21\), s. 94\(2\)\(r\)](#), **Sch. 10 para. 15(b)**

Marginal Citations

- M176** 1989 c. 15.
- M177** 1991 c. 60.

[^{F861}SCHEDULE 27

Section 210(3)

EMERGENCY FISHERIES BYELAWS

Textual Amendments

- F861** Sch. 27 inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\), ss. 225\(2\), 324\(3\)](#); S.I. 2009/3345, art. 2, Sch. para. 14

Emergency fisheries byelaws

- 1 (1) In this Schedule, “emergency fisheries byelaw” means a byelaw made under paragraph 6 of Schedule 25 to this Act (fisheries) in the circumstances in subparagraph (2) below.
- (2) The circumstances are that—

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- (a) the [^{F862}appropriate agency] considers that, because of any event or likely event, harm is occurring or is likely to occur to—
 - (i) any fish to which paragraph 6 of Schedule 25 to this Act applies or to the spawn, gametes or food of any such fish, or
 - (ii) the marine or coastal, or aquatic or waterside, environment,
 - (b) the [^{F862}appropriate agency] considers that the byelaw would prevent or limit that harm, or would be reasonably likely to do so,
 - (c) the [^{F862}appropriate agency] considers that for that purpose there is a need for the byelaw to come into force as a matter of urgency, and
 - (d) the event or the likelihood of the event could not reasonably have been foreseen.
- (3) Schedule 26 to this Act (procedure relating to byelaws made by the [^{F862}appropriate agency]) does not apply in relation to an emergency fisheries byelaw.
- (4) In sub-paragraph (2)(a), the reference to harm to the marine or coastal, or aquatic or waterside, environment is to—
- (a) harm to the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including their geological or physiographical features) or to any features of archaeological or historic interest in such areas, or
 - (b) harm to flora or fauna which are dependent on or associated with the marine or coastal, or aquatic or waterside, environment.

Textual Amendments

F862 Words in Sch. 27 para. 1 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

Commencement

- 2 An emergency fisheries byelaw comes into force—
- (a) on the date specified in the byelaw, or
 - (b) if no date is so specified, on the day after that on which it is made.

Notification of the appropriate national authority

- 3 The [^{F863}appropriate agency] must, within 24 hours of making an emergency fisheries byelaw—
- (a) send a copy of the byelaw to the appropriate national authority, and
 - (b) explain to the appropriate national authority why the byelaw is being made as an emergency fisheries byelaw.

Textual Amendments

F863 Words in Sch. 27 paras. 3-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

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Publication

- 4 The [^{F863}appropriate agency] must publish notice of the making of an emergency fisheries byelaw (including a copy of the byelaw)—
- (a) in the London Gazette;
 - (b) where the byelaw has effect in Wales, in the Welsh language in such manner as the [^{F863}appropriate agency] thinks appropriate;
 - (c) in such other manner as it thinks appropriate for the purpose of bringing the byelaw to the attention of persons likely to be affected by it.

Textual Amendments

F863 Words in Sch. 27 paras. 3-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

Amendment and revocation

- 5 (1) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw would better serve to prevent or limit the harm referred to in paragraph 1(2)(a) above if it were amended, the authority must amend it accordingly.
- (2) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw is no longer needed in order to prevent or limit the harm referred to in paragraph 1(2)(a) above, the authority must revoke it.
- (3) The [^{F863}appropriate agency] must publish notice of an amendment or revocation under this paragraph as specified in paragraph 4(a) to (c) above.

Textual Amendments

F863 Words in Sch. 27 paras. 3-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

Expiry and extension

- 6 (1) Subject to paragraph 7 below, an emergency fisheries byelaw expires (unless earlier revoked)—
- (a) in accordance with provision made by the byelaw, or
 - (b) if the byelaw does not contain provision for its expiry, at the end of the period of twelve months beginning with the day on which it comes into force.
- (2) A byelaw may not under sub-paragraph (1)(a) above remain in force for longer than the period of twelve months beginning with the day on which it comes into force.
- 7 (1) The [^{F864}appropriate agency] may, at any time before an emergency fisheries byelaw expires, apply to the appropriate national authority for it to be extended.
- (2) On such an application, the appropriate national authority may extend the byelaw at any time before its expiry, provided the authority is satisfied that—
- (a) the byelaw is still needed to prevent or limit the harm referred to in paragraph 1(2)(a) above, and

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- (b) the need for the extension could not reasonably have been avoided by the [^{F864}appropriate agency].
- (3) A byelaw may be extended under sub-paragraph (2) above for such period not exceeding six months as the appropriate national authority may specify.
- (4) A byelaw may not be extended under sub-paragraph (2) above on more than one occasion.

Textual Amendments

F864 Words in Sch. 27 paras. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

Availability

- 8 (1) Every emergency fisheries byelaw shall be printed and deposited at one or more of the offices of the [^{F864}appropriate agency], including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.
- (2) Every person shall be entitled, on application to the [^{F864}appropriate agency] and on payment of such reasonable sum as the [^{F864}appropriate agency] may determine, to be furnished with a copy of any emergency fisheries byelaw so deposited by the [^{F864}appropriate agency].

Textual Amendments

F864 Words in Sch. 27 paras. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

Proof

- 9 The production of a printed copy of an emergency fisheries byelaw purporting to be made by the [^{F864}appropriate agency] upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by the [^{F864}appropriate agency], and
- (b) that the copy is a true copy of the byelaw,
- shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

Textual Amendments

F864 Words in Sch. 27 paras. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

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“Appropriate national authority”

- 10 In this Schedule “appropriate national authority” has the same meaning as in the Salmon and Freshwater Fisheries Act 1975.]

TABLE OF DERIVATIONS

- 1 Note: The following abbreviations are used in this Table:—

1945 =	The Water Act 1945 (c. 42)
1963 =	The Water Resources Act 1963 (c. 38)
1965 =	The Science and Technology Act 1965 (c. 4)
1973 =	The Water Act 1973 (c. 37)
1975 =	The Salmon and Freshwater Fisheries Act 1975 (c. 51)
1976 =	The Land Drainage Act 1976 (c. 70)
1977 =	The Criminal Law Act 1977 (c. 45)
1980(LG) =	The Local Government, Planning and Land Act 1980 (c. 65)
1981 =	The Water Act 1981 (c. 12)
1982(CJA) =	The Criminal Justice Act 1982 (c. 43)
1983 =	The Water Act 1983 (c. 23)
1984 =	The Telecommunications Act 1984 (c. 12)
1985(LG) =	The Local Government Act 1985 (c. 51)
1986(GA) =	The Gas Act 1986 (c. 44)
1989 =	The Water Act 1989 (c. 15)
1989(EA) =	The Electricity Act 1989 (c. 29)
1990 =	The Environmental Protection Act 1990 (c. 43)
1991(NR) =	The New Roads and Street Works Act 1991 (c. 22)
R: (followed by a number) =	The recommendation so numbered as set out in the Appendix to the Report of the Law Commission (Cm. 1483).

- 2 Transfer of functions orders (“TFOs”), where applicable in relation to a provision re-enacted in the Bill, are specified at the appropriate place in column 2 of the Table.

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- 3 General provisions contained in section 32 of the Magistrates’ Courts Act 1980 (c. 43) and section 46 of the Criminal Justice Act 1982 (c. 48) provide, respectively, for the maximum fine on summary conviction of an either way offence to be the statutory maximum and for a reference to the amount of the maximum fine to which a person is liable in respect of a summary offence to become a reference to a level on the standard scale. Where the effect of one of these enactments is consolidated it is not referred to separately in column 2 of this Table.

Provision of Act	Derivation
1	1989 s. 1.
2	1963 s. 126(3) & (4); 1989 s. 1(1), 8(4) & (5), 136(7) & (8), 141(4) & (7), 142(1) & 143(1), 189(1) (definition of “function”) & Sch 13 paras 23(3) & 27.
3	1989 s. 188.
4	1989 s. 144 & 145(1)(a) & (b), (2) & (3).
5	1989 s. 146; Sch 12 paras 4(7) & 6(4).
6	1989 s. 3.
7	1989 s. 2.
8	1989 s. 141(1)(b) & (c), (2) & (3).
9	1989 ss. 136(6) & (7) & 137(1)–(2).
10	1989 s. 137(3), (7), (10) & (11) & 138(1) & (8).
11	1989 ss. 137(11) & 138(2)–(7) & (9).
12	1976 s. 4; 1989 s. 139(1) and Sch 15 paras 1 & 2. TFO: SI 1978/272 Sch 3, para 7(2); R: 6.
13	1976 s. 5(1)–(6) & (8); 1985(LG) Sch 7 para 2 & SI 1986/208 Sch 1 Pt II para 2; 1989 Sch 15 paras 1 & 3.
14	1976 s. 5(7); 1989 ss. 137(8) & 139(3) & Sch 15 para 1.
15	1989 s. 7(6) & (7).
16	1989 ss. 8(1)–(3), (5)–(7) & 152(8).
17	1989 s. 9; 1990 Sch 9 para 17(2).
18	1989 s. 10; 1990 Sch 9 para 17(3).
19	1989 s. 125.
20	1989 s. 126.
21	1963 ss. 19(1), (3)–(7) & 135(1)(part) & (5); 1973 Sch 8 para 85; 1989 s. 127; 1989(EA) Sch 16 para 10; TFOs:

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	SI 1965/145 Sch 1; SI 1970/1537 Art 2(1); SI 1970/1681 Sch 3 para 9(1); SI 1974/692 Sch 1 Pt III; SI 1983/1127 Art 2(3).
22	1963 s. 19(2) & (6); 1989 s. 127(2) & (5).
23	1963 s. 22; 1973 s. 9; 1989 Sch 13 paras 1 and 4.
24	1963 ss. 23, 49 & 128(1); 1976 (c. 44) s. 5(8); 1989 Sch 13 paras 1 & 5 & Sch 25 para 2.
25	1963 ss. 36(1)–(3), (5) & (6), 48, 49 & 128(1); 1976 (c. 44) s. 5(8); 1989 Sch 13 paras 1, 12 & 16 & Sch 25 para 2.
26	1963 s. 24(6) & 36(4).
27	1963 s. 24(1)–(3) & (5) & 26(1)(b); 1989 Sch 13 para 6.
28	1963 ss. 24(2)(proviso) & 55; 1973 s. 9; 1989 Sch 13 para 1.
29	1963 s. 24(4), (5) & (10); 1973 Sch 8 para 78.
30	1963 s. 78(1)–(3) & (7); 1973 s. 9; 1989 Sch 13 paras 1 & 20.
31	1963 s. 78(4)–(6).
32	1963 s. 24(7)–(9); 1973 s. 9; 1989 Sch 13 para 1.
33	1963 ss. 25 & 134(4); 1973 s. 9; 1989 Sch 13 paras 1 & 7.
34	1963 s. 54(1)–(3) & (5).
35	1963 s. 27; 1968 (c. 35) s. 1; 1973 s. 9; 1989 Sch 13 para 1.
36	1963 s. 37(3); 1973 s. 9; 1989 Sch 13 para 1.
37	1963 ss. 28 & 37(5); 1973 s. 9; 1989 Sch 13 paras 1 & 8.
38	1963 ss. 28(3) (part), 29(3) & (8) & 37(5); 1973 s. 9; 1989 Sch 13 para 1.
39	1963 ss. 26(1) & (2), 29(2) & (7)(a), 36(6), 37(5) & 135(5); 1973 s. 9; 1989 Sch 13 paras 1 & 9(1).
40	1963 ss. 29(4)–(6) & (7)(b) & 37(5); 1973 s. 9; 1989 Sch 13 paras 1 & 9(2).

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41	1963 s. 38(1) & (2); 1973 s. 9 & Sch 8 para 79; 1989 Sch 13 paras 1 & 13.
42	1963 ss. 38(3) & (4) & 41(1)–(4) & (7)–(9); 1973 s. 9; 1989 Sch 13 paras 1 & 14(2).
43	1963 ss. 39(1), (2) & (4) & 40; 1973 s. 9; 1989 Sch 13 para 1.
44	1963 ss. 39(3)–(6), 40 & 41(1), (5) & (7)–(9); 1989 Sch 13 paras 1 & 14(1).
45	1963 s. 54(2), (3) & (5).
46	1963 s. 30(1)–(3) & (5)–(7) & 54(4); 1973 s. 9; 1989 Sch 13 paras 1 & 10.
47	1963 ss. 30(4), 31(4) & 37(1).
48	1963 ss. 26(1)(a), 31(1) & (3) & 37(2).
49	1963 s. 32(1), (2), (6) & (7); 1973 s. 9; 1989 Sch 13 paras 1 & 11.
50	1963 s. 32(3), (4), (6) & (7); 1973 s. 9; 1989 Sch 13 para 1.
51	1963 s. 42; 1973 s. 9; 1989 Sch 13 para 1.
52	1963 s. 43(1)–(5) & (9); 1973 s. 9; 1989 Sch 13 para 1.
53	1963 s. 43(5)–(8); 1973 s. 9; 1989 Sch 13 para 1.
54	1963 s. 44; 1973 s. 9; 1989 Sch 13 para 1.
55	1963 s. 47(1)–(3) & (11); 1973 s. 9; 1989 Sch 13 para 1.
56	1963 s. 47(3)–(5); 1973 s. 9; 1989 Sch 13 para 1.
57	1963 s. 45; 1973 s. 9; 1989 Sch 13 paras 1 & 15.
58	1963 s. 64; 1989 Sch 13 para 19.
59	1963 s. 54(2) & (5).
60	1963 s. 50; 1973 s. 9; 1989 Sch 13 para 1.
61	1963 ss. 46 & 47(6); 1973 s. 9; 1989 Sch 13 para 1.
62	1963 ss. 47(7)–(10) & 71(3); 1973 s. 9; 1989 Sch 13 para 1.

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63	1963 s. 51; 1973 s. 9; 1989 Sch 13 para 1.
64	1963 ss. 43(1) & 52; 1973 s. 9; 1989 Sch 13 para 1.
65	Introduces Sch 7
66	1963 s. 131(1), (2) & (8) & 134(4); 1989 Sch 13 para 29; TFOs: SI 1965/319; SI 1970/1681.
67	1963 s. 132; 1989 Sch 13 para 30.
68	1963 ss. 116 & 134(4) & (6); TFOs: SI 1965/319 Sch 3 para 2.
69	1963 s. 117; 1973 s. 9; 1989 Sch 13 para 1.
70	1963 s. 135(8); IA s. 17.
71	1963 ss. 133(2)–(4), 134(4) & (6) & 135(1).
72	1963 ss. 105, 134(4) & (6) & 135(1), (3), (6) & (7); 1973 Sch 8 para 86; 1989 Sch 13 para 31(1)(e) & (3).
73	1989 ss. 131(1), (2) & (8) & 132(1), (2) & (9).
74	1989 ss. 131(3)–(4) & (9) & 133(7)(b) & (c).
75	1989 ss. 132(3), (4), (6), (7) & (10) & 133(7)(b) & (c).
76	1989 ss. 131(5)–(7) & 132(5).
77	1963 s. 128(2); 1989 ss. 133(1)–(4) & 135(1) & Sch 13 para 28.
78	1989 ss. 132(8) & 133(5), (6) & (7)(a); 1991(NR) Sch 8 para 116(2).
79	1989 ss. 131(8), 132(9) & 133(8) & Sch 14 para 4.
80	1989 s. 134.
81	1989 s. 135(2).
82	1989 s. 104.
83	1989 s. 105.
84	1989 s. 106.
85	1989 s. 107(1) & (6); 1990 s. 145(1).
86	1989 s. 107(2)–(4).
87	1989 s. 107(5) & 108(7) & (8).

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88	1989 s. 108(1) & (9) & 113(1) & Sch 19 para 8(7); 1990 Sch 15 para 29.
89	1989 ss. 108(2)–(6) & 124(1).
90	1989 s. 109.
91	1989 Sch 12 para 8.
92	1989 s. 110.
93	1989 s. 111(1)–(3) & (5).
94	1989 s. 112(1), (4)–(7) & (9).
95	1989 s. 112(2), (3) & (9).
96	1989 s. 111(4) & 112(8).
97	1989 s. 116.
98	1989 s. 123.
99	1989 s. 113(2) & (3).
100	1989 s. 122.
101	1989 s. 121(2).
102	1989 s. 171.
103	Introduces Sch 13.
104	1989 ss. 103(1), (2) (part) & (4) to (6) & 124.
105	1976 s. 113; 1989 s. 136(1).
106	1989 s. 136(3)–(5) & (9).
107	1976 ss. 8(1), 18, 24(2) & (3), 26; 1989 Sch 15 paras 1 & 9(1).
108	1976 ss. 10(1), (3) & (4), 94, 109(1), (5) (b) & (6) & 116(1); 1989 Sch 15 para 1; SI 1991/983; TFO: SI 1978/272 Sch 3 para 7(5) & (8).
109	1976 s. 29(1), (2), (4), (6) & (7); 1989 Sch 15 para 1.
110	1976 ss. 29(2A), (3), (5) & (9) & 109(1) & (2); 1989 Sch 15 paras 1, 13 & 35; TFO: SI 1978/272 Sch 3 para 7(3).
111	1976 s. 23(2)–(5); 1984 Sch 4 para 66(1); 1989 Sch 15 paras 1 & 8; TFO: SI 1978/272 Sch 3 para 7(4) & (6).
112	1976 s. 95; TFO: SI 1978/272 Sch 3 para 7.
113	1976 s. 8(2) & (3) 114(1) & 116; 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(5).

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114	1989 s. 141(1)(a).
115	1975 s. 28(3)–(6) & Sch 3 paras 7–9 & 13; 1989 Sch 17 paras 1 & 7(7)(a) & (14)(a) & (b); TFO: SI 1978/272 Sch 3 para 6.
116	1989 s. 171.
117	1989 Sch 1 para 15(1)–(3) & (5).
118	1989 Sch 1 para 15(4) & 16.
119	1963 s. 88 & 1989 Sch 1 para 15(4) & Sch 13 para 1.
120	1963 s. 91 & 135(1) & (2); 1989 Sch 13 paras 1, 24 & 31; TFOs: SI 1976/1775; SI 1979/571 Art 3(5); SI 1981/238 Arts 2 & 3(4); R: 16.
121	1989 Sch 1 para 21.
122	1989 Sch 1 para 22.
123	1989 s. 129(1)–(3) & (7)–(9).
124	1989 s. 129(3)–(6).
125	1963 s. 60(5A) & (6); 1973 s. 9 & Sch 8 para 80(3); 1989 Sch 13 paras 1 & 18(2) & (3).
126	1963 ss. 60(1)–(5), 116 & 117; 1973 s. 9 & Sch 8 para 80(1); 1989 Sch 13 paras 1 & 18(1); TFOs: SI 1965/319 Sch 3 para 2 & SI 1970/1681.
127	1963 s. 63(1)–(3), (8), (10) & (11); 1973 s. 9; 1989 Sch 13 para 1.
128	1963 s. 63(4)–(6); 1973 s. 9; 1989 Sch 13 para 1.
129	1963 ss. 63(7), 116 & 117.
130	1963 s. 131(6) & (7); 1973 s. 9; 1989 Sch 13 para 1; TFOs: SI 1965/319; SI 1970/1681.
131	1989 Sch 12 para 9(1)–(3), (7) & (8).
132	1989 Sch 12 para 9(3)–(6).
133	1989 Sch 25 para 80(1).
134	1976 ss. 48 & 89(2); SI 1978/319 Sch para 2; 1989 Sch 15 paras 1 & 20; SI 1990/214 reg 2.
135	1976 s. 49 & 109(1) & (2); SI 1978/319 Sch para 3; 1989 Sch 15 paras 1 &

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	21. SI 1990/214 regs 3 & 4; TFO: SI 1978/272 Sch 3 para 7(5).
136	SI 1990/214 reg 3.
137	1976 ss. 50(1)–(4) & (9) & 116(4); 1989 Sch 15 paras 1 & 22; TFO: SI 1978/272 Sch 3 para 7(5).
138	1976 ss. 51 & 109(1) & (3); SI 1978/319 Sch para 4; 1989 Sch 15 paras 1 & 23.
139	1976 s. 84(1)–(3) & (5); 1989 Sch 15 para 1; SI 1990/72 reg 3A(1); SI 1991/523 reg 3.
140	1976 s. 84(5)–(8); 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(4).
141	1976 s. 85; 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(4).
142	1975 s. 28(3)(a) & (b); 1989 Sch 17 para 7(7)(a).
143	1976 s. 88(1), (2) & (5); 1989 Sch 15 paras 1 & 29.
144	1989 ss. 145(1)(c) & 189(1).
145	1976 ss. 89(1) & 116(1); SI 1978/319 Sch para 6; 1989 Sch 15 paras 1 & 30.
146	1989 Sch 1 para 17.
147	1976 s. 90(1)–(5); 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(3).
148	1976 ss. 32(5) & 92; 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(3).
149	1976 s. 90(6) & (7); 1989 Sch 15 paras 1 & 31; TFO: SI 1978/272 Sch 3 para 7(3).
150	1989 s. 170(7) & (8).
151	1989 Sch 1 para 18.
152	1989 Sch 1 para 19.
153	1989 s. 184 & Sch 1 para 20.
154	1989 s. 151.
155	1976 ss. 36 & 116; 1989 Sch 15 paras 1 & 16; TFO SI 1978/272 Sch 3 para 7(3).
156	1975 Sch 3 paras 37 and 38; 1989 Sch 17 paras 1 and 7(14)((e) & (f)).
157	1989 s. 152.

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158	1963 ss. 81 & 135(1); 1972 (c. 61) s. 18(6); 1973 s. 9; 1989 Sch 13 paras 1 & 22.
159	1989 s. 154(1) & (5) & Sch 19 paras 1 & 2(1), (2) & (8).
160	1989 Sch 19 paras 1 & 4(1), (4) & (5).
161	1989 ss. 115, 122 & 124.
162	1989 s. 154(1), (3) & (4) & Sch 19 paras 1(2), 2(1)(c) & (d) & 4(1)(c) & (d).
163	1989 Sch 19 para 8(1), (5), (6) & (8); R: 17.
164	1989 s. 176 & Sch 19 para 9(1) & (3)–(8) & Sch 26 para 43.
165	1976 ss. 8(2), 17, 22, 23(1), 90(7) & 116(4); 1989 Sch 15 paras 1 & 5.
166	1976 s. 32; 1989 Sch 15 paras 1 & 14.
167	1976 s. 33(1)–(3) & (5); 1989 Sch 15 para 1; 1990 Sch 15 para 18.
168	1975 Sch 3 para 37; 1989 ss. 155 & 157(1) & Sch 17 para 7(4)(e).
169	1989 s. 147(1), (2) & (4).
170	1989 Sch 19 para 10(1)–(3).
171	1989 s. 156(1)–(5).
172	1989 s. 147(1), (2) & (4).
173	Introduces Sch 20.
174	1989 s. 180.
175	1989 s. 153(2) & (6).
176	1989 s. 167.
177	Introduces Sch 21.
178	Introduces Sch 22.
179	1989 s. 160(4)–(7) & (9).
180	1976 s. 106; 1989 Sch 15 para 1.
181	1975 s. 38; 1976 s. 115; 1989 Sch 17 para 1 & Sch 19 para 7.
182	1989 s. 159.
183	1976 s. 111; 1979 (c. 46) Sch 4 para 16; 1989 s. 163; 1990 (c. 11) Sch 2 para 81(2).

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184	1989 s. 157(2) & (3).
185	1976 s. 24(1) & 26(12); 1989 Sch 15 para 1.
186	1989 Sch 19 paras 1 & 11.
187	1989 s. 150.
188	1989 s. 143(2).
189	1963 s. 53; 1973 s. 9; 1989 Sch 13 paras 1 & 17.
190	1989 s. 117 & 121; 1990 Sch 15 para 30.
191	1989 Sch 19 para 9(2) & (8).
192	1989 s. 103(2) & (3).
193	1976 s. 9(1), (7), (8), (10) & (11); 1989 Sch 15 paras 1 & 4 & Sch 26 para 38; TFO: SI 1978/272 Sch 3 para 7(5).
194	1976 s. 9(3), (5) & (6); 1989 Sch 15 paras 1 & 4; TFO: SI 1978/272 Sch 3 para 7(5).
195	1989 s. 165.
196	1989 s. 149.
197	1989 s. 130.
198	1945 s. 7(1)–(5) & (7); 1965 Sch 2; 1977 Sch 1.
199	1963 s. 78(2)–(3) & (7); 1973 s. 9; 1989 Sch 13 paras 1 & 20.
200	1963 s. 17; 1973 s. 9; 1982(CJA) s. 38; 1989 Sch 13 paras 1 & 3.
201	1963 s. 114; 1973 s. 9; 1982(CJA) s. 38; 1989 Sch 13 para 1.
202	1989 ss. 118 & 121.
203	1989 s. 119.
204	1989 s. 174; R: 11.
205	1945 ss. 7(6) & (7) & 48(6); 1949 (c. 11) s. 1(1); 1977 Sch 1; TFOs: SI 1951/142 Sch; SI 1951/1900 art 1; SI 1965/319 Sch 3; SI 1970/1681 Sch 1.
206	1945 s. 45; 1963 s. 115; 1989 s. 175.
207	1989 s. 170(1)–(6) & (9).
208	1981 s. 6; 1986(GA) Sch 7 para 2(6); 1989 Sch 25 para 63; 1989(EA) Sch 16

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	para 1(5); 1990 (c. 11) Sch 2 para 46; 1991(NR) Sch 8 para 106.
209	1963 s. 31(5); 1989 s. 148.
210	1975 s. 28(6) & (8); 1989 s. 186 & Sch 17 para 7(7)(b).
211	1963 ss. 79(8) & (9) & 135(8); 1975 s. 28(7) & Sch 4 Pt I para 1(2); 1976 s. 34(4) & (5); 1977 Sch 6; 1982(CJA) s. 38; 1989 ss. 114(2), 121, 122 & 158(4) (d).
212	1975 Sch 3 paras 17 & 18; 1989 Sch 17 para 1; TFO: SI 1978/272 Sch 3 para 6.
213	1963 s. 109(1); 1973 s. 9; 1989 s. 120 & Sch 13 para 1; TFOs: SI 1965/319 Sch 3 para 2; SI 1978/272 Sch 3 para 2(7).
214	1976 s. 96; 1982(CJA) s. 38; 1986 (c. 63) s. 42; TFO: SI 1978/272 Sch para 7.
215	1963 s. 109(2); 1989 s. 181 & Sch 13 para 26 & Sch 17 para 7(16).
216	1963 s. 118(1) & (2); 1973 s. 9; 1989 Sch 13 para 1.
217	1963 s. 118(3) & (4); 1989 ss. 121(1) & 177; R: 13.
218	1989 ss. 182 & 189(1) (definition of “services”).
219	1963 s. 134; 1989 ss. 185 & 189(1) (definition of “prescribed”).
220	1945 s. 56; 1963 s. 120; 1989 s. 187 & Sch 25 para 7(10); R: 14.
221	1945 s. 59(1) (definition of “owner”); 1963(L) Sch 14 para 10; 1963 ss. 2, 19(7), 120(5) & 135; 1976 ss. 32(5) & 116; 1981 s. 6(7)(b); 1985(LG) Sch 7 para 9; 1989 ss. 124, 127(6), 130(8), 135(1), 189 & 191(6) & Sch 13 paras 2 & 31 & Sch 15 para 38; 1990 (c. 11) Sch 2 para 81(1); 1991(NR) Sch 8 para 116(3). R: 6, 15, 16 & 20.
222	1963 s. 123(1) & (5); 1976 s. 115; 1989 s. 192; 1990 (c. 11) Sch 2 para 81(3).
223	1963 s. 123(1) & (5).
224	1989 s. 193.

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225	1989 ss. 141(6) & 194.
Sch 1	1963 s. 120(5); 1976 s. 35; 1989 Sch 1, Pt I, paras. 1-10 & 14 & Sch 15 para 1.
Sch 2	1963 ss. 82, 106, 133(2)–(4), 134(4) & 135(1) & (2) & Sch 10; 1973 s. 9 & Sch 8 para 83; 1989 Sch 13 paras 1, 23, 25 & 33; TFOs: SI 1976/1775 Sch 3 para 7; SI 1979/571 Art 3(5); SI 1981/238 Arts 2 & 3(4); R: 16.
Sch 3	1989 Sch 16.
Sch 4	1976 Sch 1; 1982 (c. 32) Sch 5 para 7; 1983 Sch 4 paras 5 & 6; 1985 (c. 65) Sch 8, para 29; 1989 Sch 15 paras 1 & 39; TFO: SI 1978/272 Sch 3 para 7(5).
Sch 5	1963 s. 135(1) & Sch 7; 1973 s. 9; 1989 Sch 13 paras 1 and 32; 1989(EA) Sch 16 para 10; TFOs: SI 1970/1681 Sch 3 para 9(1); 1983/1127 Art 2(3).
Sch 6	1963 ss. 25(5)–(8) & 135(1) & Sch 7; 1973 s. 9; 1989 Sch 13 paras 1 and 32; 1989(EA) Sch 16 para 10; TFOs: SI 1965/145 Sch 1; SI 1970/1537 art 2(1); SI 1970/1681 Sch 3 para 9; SI 1974/692 Sch 1 Pt III; SI 1983/1127 Art 2(3); R: 4.
Sch 7	1963 ss. 46(3) & 50(4) & (5); 1989 Sch 26 paras 30–33.
Sch 8	1989 Sch 14 paras. 1–3.
Sch 9	1989 s. 135(1) & Sch 14 paras. 5–8.
Sch 10	1989 s. 176 & Sch 12 paras 1–7.
Sch 11	1989 Sch 7.
Sch 12	1989 Sch 11.
Sch 13	1989 Sch 26 Pt III.
Sch 14	1976 s. 10(2) & (3) & 109(5)(b) and Sch 3 paras 1–4 and 9–14; TFO: SI 1978/272 Sch 3 para 7(12).
Sch 15	1976 ss. 52–61; 1989 Sch 15 paras 1, 24 & 25; SI 1978/319 Sch 5 para 5; SI 1990/214 Reg 5; TFO: SI 1978/272 Sch 3 para 7(5).
Sch 16	1976 ss. 50(4)–(8) & 109(6); 1989 Sch 15 para 1; SI 1991/983; TFO: SI 1978/272 Sch 3 para 7(5).

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Sch 17	1976 ss. 88(3) & (4) & 109(1), (4) & (5) & Sch 3 paras 5 to 8.
Sch 18	1989 Sch 18.
Sch 19	1989 Sch 20.
Sch 20	1989 ss. 147(3), 156(6) 178 & 179 & Sch 19 para 10(4) & (5); 1991(NR) Sch 8 para 116(4).
Sch 21	1976 ss. 17(5) & 33(4); 1989 Sch 15 para 1 & Sch 19 paras 2(4)–(6), 6 & 8(2)–(4).
Sch 22	1976 ss. 29(8) & 112; 1984 Sch 4 para 66(2); 1984 (c. 32) Sch 6 para 12; 1986 (c. 31) Sch 2 para 5; 1986 (c. 44) Sch 7 para 25; 1987 (c. 3) Sch 1 para 32; 1989 s. 160(1)–(3), (6) & (8) & Sch 15 para 37 & Sch 19 paras 2(9) & 3; 1989 (c. 29) Sch 16 paras 21 & 37; 1991(NR) Sch 8 para 116(4); R: 17.
Sch 23	1989 Sch 21.
Sch 24	1989 s. 174(2)(d) & (3).
Sch 25	1963 s. 79(3)–(6); 1973 s. 9; 1975 Sch 3 paras 14–16 & 19–36; 1976 s. 34; 1986 (c.62) s. 33(3); 1989 ss. 114, 158, Sch 13 para 21, Sch 15 para 15(1) & Sch 17 para 7(14)(c) & (d); R: 5.
Sch 26	1989 Sch 24.

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[View outstanding changes](#)

Changes and effects yet to be applied to :

- s. 29 modified by [S.I. 2006/641 reg. 15](#) (This amendment comes into force on the date on which section 7(3) of the Water Act 2003 (c. 37) comes into force, see reg. 1(2). That provision is not yet in force)
- s. 88(1)(b) repealed by [1999 c. 24 Sch. 3](#)
- s. 110(1) words substituted by [2010 c. 29 Sch. 2 para. 42](#)
- s. 204(2)(a) words repealed by [1999 c. 24 Sch. 3](#)
- s. 204(3)(a) words repealed by [1999 c. 24 Sch. 3](#)
- s. 205(6) words substituted for para. (a)(b) by [2003 c. 44 Sch. 32 para. 160](#)
- Sch. 13 para. 4(2)(a)(b) amended by [1995 c. 25 Sch. 22 para. 186\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 22 para. 186 repealed (6.4.2010 immediately after the coming into force of S.I. 2009/3381) by S.I. 2010/675, reg. 1, Sch. 28)
- Sch. 13 para. 4(3) amended by [1995 c. 25 Sch. 22 para. 186\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 22 para. 186 repealed (6.4.2010 immediately after the coming into force of S.I. 2009/3381) by S.I. 2010/675, reg. 1, Sch. 28)
- Sch. 13 para. 4(4)(a) amended by [1995 c. 25 Sch. 22 para. 186\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 22 para. 186 repealed (6.4.2010 immediately after the coming into force of S.I. 2009/3381) by S.I. 2010/675, reg. 1, Sch. 28)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2018/1147

of 10 August 2018

establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council

(notified under document C(2018) 5070)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) ⁽¹⁾, and in particular Article 13(5) thereof,

Whereas:

- (1) Best available techniques (BAT) conclusions are the reference for setting permit conditions for installations covered by Chapter II of Directive 2010/75/EU and competent authorities should set emission limit values which ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the BAT conclusions.
- (2) The forum composed of representatives of Member States, the industries concerned and non-governmental organisations promoting environmental protection, established by Commission Decision of 16 May 2011 ⁽²⁾, provided the Commission on 19 December 2017 with its opinion on the proposed content of the BAT reference document for waste treatment. That opinion is publicly available.
- (3) The BAT conclusions set out in the Annex to this Decision are the key element of that BAT reference document.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 75(1) of Directive 2010/75/EU,

HAS ADOPTED THIS DECISION:

Article 1

The best available techniques (BAT) conclusions for waste treatment, as set out in the Annex, are adopted.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 August 2018.

For the Commission

Karmenu VELLA

Member of the Commission

⁽¹⁾ OJ L 334, 17.12.2010, p. 17.

⁽²⁾ Commission Decision of 16 May 2011 establishing a forum for the exchange of information pursuant to Article 13 of Directive 2010/75/EU on industrial emissions (OJ C 146, 17.5.2011, p. 3).

ANNEX

BEST AVAILABLE TECHNIQUES (BAT) CONCLUSIONS FOR WASTE

SCOPE

These BAT conclusions concern the following activities specified in Annex I to Directive 2010/75/EU, namely:

- 5.1. Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving one or more of the following activities:
 - (a) biological treatment;
 - (b) physico-chemical treatment;
 - (c) blending or mixing prior to submission to any of the other activities listed in points 5.1 and 5.2 of Annex I to Directive 2010/75/EU;
 - (d) repackaging prior to submission to any of the other activities listed in points 5.1 and 5.2 of Annex I to Directive 2010/75/EU;
 - (e) solvent reclamation/regeneration;
 - (f) recycling/reclamation of inorganic materials other than metals or metal compounds;
 - (g) regeneration of acids or bases;
 - (h) recovery of components used for pollution abatement;
 - (i) recovery of components from catalysts;
 - (j) oil re-refining or other reuses of oil;
- 5.3. (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day involving one or more of the following activities, and excluding activities covered by Council Directive 91/271/EEC ⁽¹⁾:
 - (i) biological treatment;
 - (ii) physico-chemical treatment;
 - (iii) pre-treatment of waste for incineration or co-incineration;
 - (iv) treatment of ashes;
 - (v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.
- (b) Recovery, or a mix of recovery and disposal, of non-hazardous waste with a capacity exceeding 75 tonnes per day involving one or more of the following activities, and excluding activities covered by Directive 91/271/EEC:
 - (i) biological treatment;
 - (ii) pre-treatment of waste for incineration or co-incineration;
 - (iii) treatment of ashes;
 - (iv) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.

When the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for this activity shall be 100 tonnes per day.

- 5.5. Temporary storage of hazardous waste not covered under point 5.4 of Annex I to Directive 2010/75/EU pending any of the activities listed in points 5.1, 5.2, 5.4 and 5.6 of Annex I to Directive 2010/75/EU with a total capacity exceeding 50 tonnes, excluding temporary storage, pending collection, on the site where the waste is generated.
- 6.11. Independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation undertaking activities covered under points 5.1, 5.3 or 5.5 as listed above.

⁽¹⁾ Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991, p. 40).

Referring to independently operated treatment of waste water not covered by Directive 91/271/EEC above, these BAT conclusions also cover the combined treatment of waste water from different origins if the main pollutant load originates from the activities covered under points 5.1, 5.3 or 5.5 as listed above.

These BAT conclusions do not address the following:

- Surface impoundment.
- Disposal or recycling of animal carcasses or of animal waste covered by the activity description in point 6.5 of Annex I to Directive 2010/75/EU when this is covered by the BAT conclusions on the slaughterhouses and animal by-products industries (SA).
- On-farm processing of manure when this is covered by the BAT conclusions for the intensive rearing of poultry or pigs (IRPP).
- Direct recovery (i.e. without pretreatment) of waste as a substitute for raw materials in installations carrying out activities covered by other BAT conclusions, e.g.:
 - Direct recovery of lead (e.g. from batteries), zinc or aluminium salts or recovery of the metals from catalysts. This may be covered by the BAT conclusions for the non-ferrous metals industries (NFM).
 - Processing of paper for recycling. This may be covered by the BAT conclusions for the production of pulp, paper and board (PP).
 - Use of waste as fuel/raw material in cement kilns. This may be covered by the BAT conclusions for the production of cement, lime and magnesium oxide (CLM).
- Waste (co-)incineration, pyrolysis and gasification. This may be covered by the BAT conclusions for waste incineration (WI) or the BAT conclusions for large combustion plants (LCP).
- Landfill of waste. This is covered by Council Directive 1999/31/EC⁽¹⁾. In particular, underground permanent and long-term storage (≥ 1 year before disposal, ≥ 3 years before recovery) are covered by Directive 1999/31/EC.
- *In situ* remediation of contaminated soil (i.e. unexcavated soil).
- Treatment of slags and bottom ashes. This may be covered by the BAT conclusions for waste incineration (WI) and/or the BAT conclusions for large combustion plants (LCP).
- Smelting of scrap metals and metal-bearing materials. This may be covered by the BAT conclusions for non-ferrous metals industries (NFM), the BAT conclusions for iron and steel production (IS), and/or the BAT conclusions for the smitheries and foundries industry (SF).
- Regeneration of spent acids and alkalis when this is covered by the BAT conclusions for ferrous metals processing.
- Combustion of fuels when it does not generate hot gases which come into direct contact with the waste. This may be covered by the BAT conclusions for large combustion plants (LCP) or by Directive (EU) 2015/2193 of the European Parliament and of the Council⁽²⁾.

Other BAT conclusions and reference documents which could be relevant for the activities covered by these BAT conclusions are the following:

- Economics and cross-media effects (ECM);
- Emissions from storage (EFS);
- Energy efficiency (ENE);
- Monitoring of emissions to air and water from IED installations (ROM);
- Production of cement, lime and magnesium oxide (CLM);
- Common waste water and waste gas treatment/management systems in the chemical sector (CWW);
- Intensive rearing of poultry or pigs (IRPP).

These BAT conclusions apply without prejudice to the relevant provisions of EU legislation, e.g. the waste hierarchy.

⁽¹⁾ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

⁽²⁾ Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1).

DEFINITIONS

For the purposes of these BAT conclusions, the following **definitions** apply:

Term used	Definition
General terms	
Channelled emissions	Emissions of pollutants into the environment through any kind of duct, pipe, stack, etc. This also includes emissions from open-top biofilters.
Continuous measurement	Measurement using an 'automated measuring system' permanently installed on site.
Declaration of cleanliness	Written document provided by the waste producer/holder certifying that the empty waste packaging concerned (e.g. drums, containers) is clean with respect to the acceptance criteria.
Diffuse emissions	Non-channelled emissions (e.g. of dust, organic compounds, odour) which can result from 'area' sources (e.g. tanks) or 'point' sources (e.g. pipe flanges). This also includes emissions from open-air windrow composting.
Direct discharge	Discharge to a receiving water body without further downstream waste water treatment.
Emissions factors	Numbers that can be multiplied by known data such as plant/process data or throughput data to estimate emissions.
Existing plant	A plant that is not a new plant.
Flaring	High-temperature oxidation to burn combustible compounds of waste gases from industrial operations with an open flame. Flaring is primarily used for burning off flammable gas for safety reasons or during non-routine operating conditions.
Fly ashes	Particles from the combustion chamber or formed within the flue-gas stream, that are transported in the flue-gas.
Fugitive emissions	Diffuse emissions from 'point' sources.
Hazardous waste	Hazardous waste as defined in point 2 of Article 3 of Directive 2008/98/EC.
Indirect discharge	Discharge which is not a direct discharge.
Liquid biodegradable waste	Waste of biological origin with a relatively high water content (e.g. fat separator contents, organic sludges, catering waste).
Major plant upgrade	A major change in the design or technology of a plant with major adjustments or replacements of the process and/or abatement technique(s) and associated equipment.
Mechanical biological treatment (MBT)	Treatment of mixed solid waste combining mechanical treatment with biological treatment such as aerobic or anaerobic treatment.
New plant	A plant first permitted at the site of the installation following the publication of these BAT conclusions or a complete replacement of a plant following the publication of these BAT conclusions.
Output	The treated waste exiting the waste treatment plant.

Term used	Definition
Pasty waste	Sludge which is not free-flowing.
Periodic measurement	Measurement at specified time intervals using manual or automated methods.
Recovery	Recovery as defined in Article 3(15) of Directive 2008/98/EC.
Re-refining	Treatments carried out on waste oil to transform it to base oil.
Regeneration	Treatments and processes mainly designed to make the treated materials (e.g. spent activated carbon or spent solvent) suitable again for a similar use.
Sensitive receptor	Area which needs special protection, such as: <ul style="list-style-type: none"> — residential areas; — areas where human activities are carried out (e.g. neighbouring workplaces, schools, daycare centres, recreational areas, hospitals or nursing homes).
Surface impoundment	Placement of liquid or sludgy discards into pits, ponds, lagoons, etc.
Treatment of waste with calorific value	Treatment of waste wood, waste oil, waste plastics, waste solvents, etc. to obtain a fuel or to allow a better recovery of its calorific value.
VFCs	Volatile (hydro)fluorocarbons: VOCs consisting of fluorinated (hydro)carbons, in particular chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs).
VHCs	Volatile hydrocarbons: VOCs consisting entirely of hydrogen and carbon (e.g. ethane, propane, iso-butane, cyclopentane).
VOC	Volatile organic compound as defined in Article 3(45) of Directive 2010/75/EU.
Waste holder	Waste holder as defined in Article 3(6) of Directive 2008/98/EC of the European Parliament and of the Council (1).
Waste input	The incoming waste to be treated in the waste treatment plant.
Water-based liquid waste	Waste consisting of aqueous liquids, acids/alkalis or pumpable sludges (e.g. emulsions, waste acids, aqueous marine waste) which is not liquid biodegradable waste.
Pollutants/parameters	
AOX	Adsorbable organically bound halogens, expressed as Cl, include adsorbable organically bound chlorine, bromine and iodine.
Arsenic	Arsenic, expressed as As, includes all inorganic and organic arsenic compounds, dissolved or bound to particles.
BOD	Biochemical oxygen demand. Amount of oxygen needed for the biochemical oxidation of organic and/or inorganic matter in five (BOD ₅) or in seven (BOD ₇) days.
Cadmium	Cadmium, expressed as Cd, includes all inorganic and organic cadmium compounds, dissolved or bound to particles.

Term used	Definition
CFCs	Chlorofluorocarbons: VOCs consisting of carbon, chlorine and fluorine.
Chromium	Chromium, expressed as Cr, includes all inorganic and organic chromium compounds, dissolved or bound to particles.
Hexavalent chromium	Hexavalent chromium, expressed as Cr(VI), includes all chromium compounds where the chromium is in the oxidation state +6.
COD	Chemical oxygen demand. Amount of oxygen needed for the total chemical oxidation of the organic matter to carbon dioxide. COD is an indicator for the mass concentration of organic compounds.
Copper	Copper, expressed as Cu, includes all inorganic and organic copper compounds, dissolved or bound to particles.
Cyanide	Free cyanide, expressed as CN ⁻ .
Dust	Total particulate matter (in air).
HOI	Hydrocarbon oil index. The sum of compounds extractable with a hydrocarbon solvent (including long-chain or branched aliphatic, alicyclic, aromatic or alkyl-substituted aromatic hydrocarbons).
HCl	All inorganic gaseous chlorine compounds, expressed as HCl.
HF	All inorganic gaseous fluorine compounds, expressed as HF.
H ₂ S	Hydrogen sulphide. Carbonyl sulphide and mercaptans are not included.
Lead	Lead, expressed as Pb, includes all inorganic and organic lead compounds, dissolved or bound to particles.
Mercury	Mercury, expressed as Hg, includes elementary mercury and all inorganic and organic mercury compounds, gaseous, dissolved or bound to particles.
NH ₃	Ammonia.
Nickel	Nickel, expressed as Ni, includes all inorganic and organic nickel compounds, dissolved or bound to particles.
Odour concentration	Number of European Odour Units (ou _E) in one cubic metre at standard conditions measured by dynamic olfactometry according to EN 13725.
PCB	Polychlorinated biphenyl.
Dioxin-like PCBs	Polychlorinated biphenyls as listed in Commission Regulation (EC) No 199/2006 ⁽²⁾ .
PCDD/F	Polychlorinated dibenzo- <i>p</i> -dioxin/furan(s).
PFOA	Perfluorooctanoic acid.
PFOS	Perfluorooctanesulphonic acid.
Phenol index	The sum of phenolic compounds, expressed as phenol concentration and measured according to EN ISO 14402.

Term used	Definition
TOC	Total organic carbon, expressed as C (in water), includes all organic compounds.
Total N	Total nitrogen, expressed as N, includes free ammonia and ammonium nitrogen (NH ₄ -N), nitrite nitrogen (NO ₂ -N), nitrate nitrogen (NO ₃ -N) and organically bound nitrogen.
Total P	Total phosphorus, expressed as P, includes all inorganic and organic phosphorus compounds, dissolved or bound to particles
TSS	Total suspended solids. Mass concentration of all suspended solids (in water), measured via filtration through glass fibre filters and gravimetry.
TVOC	Total volatile organic carbon, expressed as C (in air).
Zinc	Zinc, expressed as Zn, includes all inorganic and organic zinc compounds, dissolved or bound to particles.

(¹) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

(²) Commission Regulation (EC) No 199/2006 of 3 February 2006 amending Regulation (EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs as regards dioxins and dioxin-like PCBs (OJ L 32, 4.2.2006, p. 34).

For the purposes of these BAT conclusions, the following **acronyms** apply:

Acronym	Definition
EMS	Environmental management system
EoLVs	End-of-life vehicles (as defined in Article 2(2) of Directive 2000/53/EC of the European Parliament and of the Council (¹))
HEPA	High-efficiency particle air (filter)
IBC	Intermediate bulk container
LDAR	Leak detection and repair
LEV	Local exhaust ventilation system
POP	Persistent organic pollutant (as listed in Regulation (EC) No 850/2004 of the European Parliament and of the Council (²))
WEEE	Waste electrical and electronic equipment (as defined in Article 3(1) of Directive 2012/19/EU of the European Parliament and of the Council (³))

(¹) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34).

(²) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7).

(³) Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).

GENERAL CONSIDERATIONS

Best Available Techniques

The techniques listed and described in these BAT conclusions are neither prescriptive nor exhaustive. Other techniques may be used that ensure at least an equivalent level of environmental protection.

Unless otherwise stated, the BAT conclusions are generally applicable.

Emission levels associated with the best available techniques (BAT-AELs) for emissions to air

Unless stated otherwise, emission levels associated with the best available techniques (BAT-AELs) for emissions to air given in these BAT conclusions refer to concentrations (mass of emitted substances per volume of waste gas) under the following standard conditions: dry gas at a temperature of 273,15 K and a pressure of 101,3 kPa, without correction for oxygen content, and expressed in $\mu\text{g}/\text{Nm}^3$ or mg/Nm^3 .

For averaging periods of BAT-AELs for emissions to air, the following **definitions** apply.

Type of measurement	Averaging period	Definition
Continuous	Daily average	Average over a period of one day based on valid hourly or half-hourly averages.
Periodic	Average over the sampling period	Average value of three consecutive measurements of at least 30 minutes each ⁽¹⁾ .

⁽¹⁾ For any parameter where, due to sampling or analytical limitations, a 30-minute measurement is inappropriate, a more suitable measurement period may be employed (e.g. for the odour concentration). For PCDD/F or dioxin-like PCBs, one sampling period of 6 to 8 hours is used.

Where continuous measurement is used, the BAT-AELs may be expressed as daily averages.

Emission levels associated with the best available techniques (BAT-AELs) for emissions to water

Unless stated otherwise, emission levels associated with the best available techniques (BAT-AELs) for emissions to water given in these BAT conclusions refer to concentrations (mass of emitted substances per volume of water), expressed in $\mu\text{g}/\text{l}$ or mg/l .

Unless stated otherwise, averaging periods associated with the BAT-AELs refer to either of the following two cases:

- in the case of continuous discharge, daily average values, i.e. 24-hour flow-proportional composite samples;
- in the case of batch discharge, average values over the release duration taken as flow-proportional composite samples, or, provided that the effluent is appropriately mixed and homogeneous, a spot sample taken before discharge.

Time-proportional composite samples can be used provided that sufficient flow stability is demonstrated.

All BAT-AELs for emissions to water apply at the point where the emission leaves the installation.

Abatement efficiency

The calculation of the average abatement efficiency referred to in these BAT conclusions (see Table 6.1) does not include, for COD and TOC, initial treatment steps aiming at separating the bulk organic content from the water-based liquid waste, such as evapo-condensation, emulsion breaking or phase separation.

1. GENERAL BAT CONCLUSIONS

1.1. Overall environmental performance

BAT 1. In order to improve the overall environmental performance, BAT is to implement and adhere to an environmental management system (EMS) that incorporates all of the following features:

- I. commitment of the management, including senior management;
- II. definition, by the management, of an environmental policy that includes the continuous improvement of the environmental performance of the installation;

- III. planning and establishing the necessary procedures, objectives and targets, in conjunction with financial planning and investment;
- IV. implementation of procedures paying particular attention to:
 - (a) structure and responsibility,
 - (b) recruitment, training, awareness and competence,
 - (c) communication,
 - (d) employee involvement,
 - (e) documentation,
 - (f) effective process control,
 - (g) maintenance programmes,
 - (h) emergency preparedness and response,
 - (i) safeguarding compliance with environmental legislation;
- V. checking performance and taking corrective action, paying particular attention to:
 - (a) monitoring and measurement (see also the JRC Reference Report on Monitoring of emissions to air and water from IED installations – ROM),
 - (b) corrective and preventive action,
 - (c) maintenance of records,
 - (d) independent (where practicable) internal or external auditing in order to determine whether or not the EMS conforms to planned arrangements and has been properly implemented and maintained;
- VI. review, by senior management, of the EMS and its continuing suitability, adequacy and effectiveness;
- VII. following the development of cleaner technologies;
- VIII. consideration for the environmental impacts from the eventual decommissioning of the plant at the stage of designing a new plant, and throughout its operating life;
- IX. application of sectoral benchmarking on a regular basis;
- X. waste stream management (see BAT 2);
- XI. an inventory of waste water and waste gas streams (see BAT 3);
- XII. residues management plan (see description in Section 6.5);
- XIII. accident management plan (see description in Section 6.5);
- XIV. odour management plan (see BAT 12);
- XV. noise and vibration management plan (see BAT 17).

Applicability

The scope (e.g. level of detail) and nature of the EMS (e.g. standardised or non-standardised) will generally be related to the nature, scale and complexity of the installation, and the range of environmental impacts it may have (determined also by the type and amount of wastes processed).

BAT 2. In order to improve the overall environmental performance of the plant, BAT is to use all of the techniques given below.

	Technique	Description
a.	Set up and implement waste characterisation and pre-acceptance procedures	These procedures aim to ensure the technical (and legal) suitability of waste treatment operations for a particular waste prior to the arrival of the waste at the plant. They include procedures to collect information about the waste input and may include waste sampling and characterisation to achieve sufficient knowledge of the waste composition. Waste pre-acceptance procedures are risk-based considering, for example, the hazardous properties of the waste, the risks posed by the waste in terms of process safety, occupational safety and environmental impact, as well as the information provided by the previous waste holder(s).
b.	Set up and implement waste acceptance procedures	Acceptance procedures aim to confirm the characteristics of the waste, as identified in the pre-acceptance stage. These procedures define the elements to be verified upon the arrival of the waste at the plant as well as the waste acceptance and rejection criteria. They may include waste sampling, inspection and analysis. Waste acceptance procedures are risk-based considering, for example, the hazardous properties of the waste, the risks posed by the waste in terms of process safety, occupational safety and environmental impact, as well as the information provided by the previous waste holder(s).
c.	Set up and implement a waste tracking system and inventory	A waste tracking system and inventory aim to track the location and quantity of waste in the plant. It holds all the information generated during waste pre-acceptance procedures (e.g. date of arrival at the plant and unique reference number of the waste, information on the previous waste holder(s), pre-acceptance and acceptance analysis results, intended treatment route, nature and quantity of the waste held on site including all identified hazards), acceptance, storage, treatment and/or transfer off site. The waste tracking system is risk-based considering, for example, the hazardous properties of the waste, the risks posed by the waste in terms of process safety, occupational safety and environmental impact, as well as the information provided by the previous waste holder(s).
d.	Set up and implement an output quality management system	This technique involves setting up and implementing an output quality management system, so as to ensure that the output of the waste treatment is in line with the expectations, using for example existing EN standards. This management system also allows the performance of the waste treatment to be monitored and optimised, and for this purpose may include a material flow analysis of relevant components throughout the waste treatment. The use of a material flow analysis is risk-based considering, for example, the hazardous properties of the waste, the risks posed by the waste in terms of process safety, occupational safety and environmental impact, as well as the information provided by the previous waste holder(s).
e.	Ensure waste segregation	Waste is kept separated depending on its properties in order to enable easier and environmentally safer storage and treatment. Waste segregation relies on the physical separation of waste and on procedures that identify when and where wastes are stored.

Technique		Description
f.	Ensure waste compatibility prior to mixing or blending of waste	Compatibility is ensured by a set of verification measures and tests in order to detect any unwanted and/or potentially dangerous chemical reactions between wastes (e.g. polymerisation, gas evolution, exothermal reaction, decomposition, crystallisation, precipitation) when mixing, blending or carrying out other treatment operations. The compatibility tests are risk-based considering, for example, the hazardous properties of the waste, the risks posed by the waste in terms of process safety, occupational safety and environmental impact, as well as the information provided by the previous waste holder(s).
g.	Sort incoming solid waste	Sorting of incoming solid waste ⁽¹⁾ aims to prevent unwanted material from entering subsequent waste treatment process(es). It may include: <ul style="list-style-type: none"> — manual separation by means of visual examinations; — ferrous metals, non-ferrous metals or all-metals separation; — optical separation, e.g. by near-infrared spectroscopy or X-ray systems; — density separation, e.g. by air classification, sink-float tanks, vibration tables; — size separation by screening/sieving.

⁽¹⁾ Sorting techniques are described in Section 6.4

BAT 3. In order to facilitate the reduction of emissions to water and air, BAT is to establish and to maintain an inventory of waste water and waste gas streams, as part of the environmental management system (see BAT 1), that incorporates all of the following features:

- (i) information about the characteristics of the waste to be treated and the waste treatment processes, including:
 - (a) simplified process flow sheets that show the origin of the emissions;
 - (b) descriptions of process-integrated techniques and waste water/waste gas treatment at source including their performances;
- (ii) information about the characteristics of the waste water streams, such as:
 - (a) average values and variability of flow, pH, temperature, and conductivity;
 - (b) average concentration and load values of relevant substances and their variability (e.g. COD/TOC, nitrogen species, phosphorus, metals, priority substances/micropollutants);
 - (c) data on bioeliminability (e.g. BOD, BOD to COD ratio, Zahn-Wellens test, biological inhibition potential (e.g. inhibition of activated sludge)) (see BAT 52);
- (iii) information about the characteristics of the waste gas streams, such as:
 - (a) average values and variability of flow and temperature;
 - (b) average concentration and load values of relevant substances and their variability (e.g. organic compounds, POPs such as PCBs);
 - (c) flammability, lower and higher explosive limits, reactivity;
 - (d) presence of other substances that may affect the waste gas treatment system or plant safety (e.g. oxygen, nitrogen, water vapour, dust).

Applicability

The scope (e.g. level of detail) and nature of the inventory will generally be related to the nature, scale and complexity of the installation, and the range of environmental impacts it may have (determined also by the type and amount of wastes processed).

BAT 4. In order to reduce the environmental risk associated with the storage of waste, BAT is to use all of the techniques given below.

Technique		Description	Applicability
a.	Optimised storage location	This includes techniques such as: <ul style="list-style-type: none"> — the storage is located as far as technically and economically possible from sensitive receptors, watercourses, etc.; — the storage is located in such a way so as to eliminate or minimise the unnecessary handling of wastes within the plant (e.g. the same wastes are handled twice or more or the transport distances on site are unnecessarily long). 	Generally applicable to new plants.
b.	Adequate storage capacity	Measures are taken to avoid accumulation of waste, such as: <ul style="list-style-type: none"> — the maximum waste storage capacity is clearly established and not exceeded taking into account the characteristics of the wastes (e.g. regarding the risk of fire) and the treatment capacity; — the quantity of waste stored is regularly monitored against the maximum allowed storage capacity; — the maximum residence time of waste is clearly established. 	Generally applicable.
c.	Safe storage operation	This includes measures such as: <ul style="list-style-type: none"> — equipment used for loading, unloading and storing waste is clearly documented and labelled; — wastes known to be sensitive to heat, light, air, water, etc. are protected from such ambient conditions; — containers and drums are fit for purpose and stored securely. 	
d.	Separate area for storage and handling of packaged hazardous waste	When relevant, a dedicated area is used for storage and handling of packaged hazardous waste.	

BAT 5. In order to reduce the environmental risk associated with the handling and transfer of waste, BAT is to set up and implement handling and transfer procedures.

Description

Handling and transfer procedures aim to ensure that wastes are safely handled and transferred to the respective storage or treatment. They include the following elements:

- handling and transfer of waste are carried out by competent staff;
- handling and transfer of waste are duly documented, validated prior to execution and verified after execution;

- measures are taken to prevent, detect and mitigate spills;
- operation and design precautions are taken when mixing or blending wastes (e.g. vacuuming dusty/powdery wastes).

Handling and transfer procedures are risk-based considering the likelihood of accidents and incidents and their environmental impact.

1.2. Monitoring

BAT 6. For relevant emissions to water as identified by the inventory of waste water streams (see BAT 3), BAT is to monitor key process parameters (e.g. waste water flow, pH, temperature, conductivity, BOD) at key locations (e.g. at the inlet and/or outlet of the pretreatment, at the inlet to the final treatment, at the point where the emission leaves the installation).

BAT 7. BAT is to monitor emissions to water with at least the frequency given below, and in accordance with EN standards. If EN standards are not available, BAT is to use ISO, national or other international standards that ensure the provision of data of an equivalent scientific quality.

Substance/parameter	Standard(s)	Waste treatment process	Minimum monitoring frequency ⁽¹⁾ ⁽²⁾	Monitoring associated with
Adsorbable organically bound halogens (AOX) ⁽³⁾ ⁽⁴⁾	EN ISO 9562	Treatment of water-based liquid waste	Once every day	BAT 20
Benzene, toluene, ethylbenzene, xylene (BTEX) ⁽³⁾ ⁽⁴⁾	EN ISO 15680	Treatment of water-based liquid waste	Once every month	
Chemical oxygen demand (COD) ⁽⁵⁾ ⁽⁶⁾	No EN standard available	All waste treatments except treatment of water-based liquid waste	Once every month	
		Treatment of water-based liquid waste	Once every day	
Free cyanide (CN ⁻) ⁽³⁾ ⁽⁴⁾	Various EN standards available (i.e. EN ISO 14403-1 and -2)	Treatment of water-based liquid waste	Once every day	
Hydrocarbon oil index (HOI) ⁽⁴⁾	EN ISO 9377-2	Mechanical treatment in shredders of metal waste	Once every month	
		Treatment of WEEE containing VFCs and/or VHCs		
		Re-refining of waste oil		
		Physico-chemical treatment of waste with calorific value		
		Water washing of excavated contaminated soil		
		Treatment of water-based liquid waste	Once every day	

Substance/parameter	Standard(s)	Waste treatment process	Minimum monitoring frequency ⁽¹⁾ ⁽²⁾	Monitoring associated with
Arsenic (As), Cadmium (Cd), Chromium (Cr), Copper (Cu), Nickel (Ni), Lead (Pb), Zinc (Zn) ⁽³⁾ ⁽⁴⁾	Various EN standards available (e.g. EN ISO 11885, EN ISO 17294-2, EN ISO 15586)	Mechanical treatment in shredders of metal waste	Once every month	
		Treatment of WEEE containing VFCs and/or VHCs		
		Mechanical biological treatment of waste		
		Re-refining of waste oil		
		Physico-chemical treatment of waste with calorific value		
		Physico-chemical treatment of solid and/or pasty waste		
		Regeneration of spent solvents		
		Water washing of excavated contaminated soil		
		Treatment of water-based liquid waste	Once every day	
Manganese (Mn) ⁽³⁾ ⁽⁴⁾		Treatment of water-based liquid waste	Once every day	
Hexavalent chromium (Cr(VI)) ⁽³⁾ ⁽⁴⁾	Various EN standards available (i.e. EN ISO 10304-3, EN ISO 23913)	Treatment of water-based liquid waste	Once every day	
Mercury (Hg) ⁽³⁾ ⁽⁴⁾	Various EN standards available (i.e. EN ISO 17852, EN ISO 12846)	Mechanical treatment in shredders of metal waste	Once every month	
		Treatment of WEEE containing VFCs and/or VHCs		
		Mechanical biological treatment of waste		
		Re-refining of waste oil		
		Physico-chemical treatment of waste with calorific value		
		Physico-chemical treatment of solid and/or pasty waste		
		Regeneration of spent solvents		
		Water washing of excavated contaminated soil		
		Treatment of water-based liquid waste	Once every day	

Substance/parameter	Standard(s)	Waste treatment process	Minimum monitoring frequency ⁽¹⁾ ⁽²⁾	Monitoring associated with
PFOA ⁽³⁾	No EN standard available	All waste treatments	Once every six months	
PFOS ⁽³⁾				
Phenol index ⁽⁶⁾	EN ISO 14402	Re-refining of waste oil	Once every month	
		Physico-chemical treatment of waste with calorific value		
		Treatment of water-based liquid waste	Once every day	
Total nitrogen (Total N) ⁽⁶⁾	EN 12260, EN ISO 11905-1	Biological treatment of waste	Once every month	
		Re-refining of waste oil		
		Treatment of water-based liquid waste	Once every day	
Total organic carbon (TOC) ⁽⁵⁾ ⁽⁶⁾	EN 1484	All waste treatments except treatment of water-based liquid waste	Once every month	
		Treatment of water-based liquid waste	Once every day	
Total phosphorus (Total P) ⁽⁶⁾	Various EN standards available (i.e. EN ISO 15681-1 and -2, EN ISO 6878, EN ISO 11885)	Biological treatment of waste	Once every month	
		Treatment of water-based liquid waste	Once every day	
Total suspended solids (TSS) ⁽⁶⁾	EN 872	All waste treatments except treatment of water-based liquid waste	Once every month	
		Treatment of water-based liquid waste	Once every day	

⁽¹⁾ Monitoring frequencies may be reduced if the emission levels are proven to be sufficiently stable.

⁽²⁾ In the case of batch discharge less frequent than the minimum monitoring frequency, monitoring is carried out once per batch.

⁽³⁾ The monitoring only applies when the substance concerned is identified as relevant in the waste water inventory mentioned in BAT 3.

⁽⁴⁾ In the case of an indirect discharge to a receiving water body, the monitoring frequency may be reduced if the downstream waste water treatment plant abates the pollutants concerned.

⁽⁵⁾ Either TOC or COD is monitored. TOC is the preferred option, because its monitoring does not rely on the use of very toxic compounds.

⁽⁶⁾ The monitoring applies only in the case of a direct discharge to a receiving water body.

BAT 8. BAT is to monitor channelled emissions to air with at least the frequency given below, and in accordance with EN standards. If EN standards are not available, BAT is to use ISO, national or other international standards that ensure the provision of data of an equivalent scientific quality.

Substance/Parameter	Standard(s)	Waste treatment process	Minimum monitoring frequency ⁽¹⁾	Monitoring associated with
Brominated flame retardants ⁽²⁾	No EN standard available	Mechanical treatment in shredders of metal waste	Once every year	BAT 25

Substance/Parameter	Standard(s)	Waste treatment process	Minimum monitoring frequency ⁽¹⁾	Monitoring associated with
CFCs	No EN standard available	Treatment of WEEE containing VFCs and/or VHCs	Once every six months	BAT 29
Dioxin-like PCBs	EN 1948-1, -2, and -4 ⁽³⁾	Mechanical treatment in shredders of metal waste ⁽²⁾	Once every year	BAT 25
		Decontamination of equipment containing PCBs	Once every three months	BAT 51
Dust	EN 13284-1	Mechanical treatment of waste	Once every six months	BAT 25
		Mechanical biological treatment of waste		BAT 34
		Physico-chemical treatment of solid and/or pasty waste		BAT 41
		Thermal treatment of spent activated carbon, waste catalysts and excavated contaminated soil		BAT 49
		Water washing of excavated contaminated soil		BAT 50
HCl	EN 1911	Thermal treatment of spent activated carbon, waste catalysts and excavated contaminated soil ⁽²⁾	Once every six months	BAT 49
		Treatment of water-based liquid waste ⁽²⁾		BAT 53
HF	No EN standard available	Thermal treatment of spent activated carbon, waste catalysts and excavated contaminated soil ⁽²⁾	Once every six months	BAT 49
Hg	EN 13211	Treatment of WEEE containing mercury	Once every three months	BAT 32
H ₂ S	No EN standard available	Biological treatment of waste ⁽⁴⁾	Once every six months	BAT 34
Metals and metalloids except mercury (e.g. As, Cd, Co, Cr, Cu, Mn, Ni, Pb, Sb, Se, Tl, V) ⁽²⁾	EN 14385	Mechanical treatment in shredders of metal waste	Once every year	BAT 25
NH ₃	No EN standard available	Biological treatment of waste ⁽⁴⁾	Once every six months	BAT 34
		Physico-chemical treatment of solid and/or pasty waste ⁽²⁾	Once every six months	BAT 41
		Treatment of water-based liquid waste ⁽²⁾		BAT 53

Substance/Parameter	Standard(s)	Waste treatment process	Minimum monitoring frequency ⁽¹⁾	Monitoring associated with
Odour concentration	EN 13725	Biological treatment of waste ⁽⁵⁾	Once every six months	BAT 34
PCDD/F ⁽²⁾	EN 1948-1, -2 and -3 ⁽³⁾	Mechanical treatment in shredders of metal waste	Once every year	BAT 25
TVOC	EN 12619	Mechanical treatment in shredders of metal waste	Once every six months	BAT 25
		Treatment of WEEE containing VFCs and/or VHCs	Once every six months	BAT 29
		Mechanical treatment of waste with calorific value ⁽²⁾	Once every six months	BAT 31
		Mechanical biological treatment of waste	Once every six months	BAT 34
		Physico-chemical treatment of solid and/or pasty waste ⁽²⁾	Once every six months	BAT 41
		Re-refining of waste oil		BAT 44
		Physico-chemical treatment of waste with calorific value		BAT 45
		Regeneration of spent solvents		BAT 47
		Thermal treatment of spent activated carbon, waste catalysts and excavated contaminated soil		BAT 49
		Water washing of excavated contaminated soil		BAT 50
		Treatment of water-based liquid waste ⁽²⁾		BAT 53
Decontamination of equipment containing PCBs ⁽⁶⁾	Once every three months	BAT 51		

⁽¹⁾ Monitoring frequencies may be reduced if the emission levels are proven to be sufficiently stable.

⁽²⁾ The monitoring only applies when the substance concerned is identified as relevant in the waste gas stream based on the inventory mentioned in BAT 3.

⁽³⁾ Instead of EN 1948-1, sampling may also be carried out according to CEN/TS 1948-5.

⁽⁴⁾ The odour concentration may be monitored instead.

⁽⁵⁾ The monitoring of NH₃ and H₂S can be used as an alternative to the monitoring of the odour concentration.

⁽⁶⁾ The monitoring only applies when solvent is used for cleaning the contaminated equipment.

BAT 9. BAT is to monitor diffuse emissions of organic compounds to air from the regeneration of spent solvents, the decontamination of equipment containing POPs with solvents, and the physico-chemical treatment of solvents for the recovery of their calorific value, at least once per year using one or a combination of the techniques given below.

Technique		Description
a	Measurement	Sniffing methods, optical gas imaging, solar occultation flux or differential absorption. See descriptions in Section 6.2.
b	Emissions factors	Calculation of emissions based on emissions factors, periodically validated (e.g. once every two years) by measurements.
c	Mass balance	Calculation of diffuse emissions using a mass balance considering the solvent input, channelled emissions to air, emissions to water, the solvent in the process output, and process (e.g. distillation) residues.

BAT 10. BAT is to periodically monitor odour emissions.

Description

Odour emissions can be monitored using:

- EN standards (e.g. dynamic olfactometry according to EN 13725 in order to determine the odour concentration or EN 16841-1 or -2 in order to determine the odour exposure);
- when applying alternative methods for which no EN standards are available (e.g. estimation of odour impact), ISO, national or other international standards that ensure the provision of data of an equivalent scientific quality.

The monitoring frequency is determined in the odour management plan (see BAT 12).

Applicability

The applicability is restricted to cases where an odour nuisance at sensitive receptors is expected and/or has been substantiated.

BAT 11. BAT is to monitor the annual consumption of water, energy and raw materials as well as the annual generation of residues and waste water, with a frequency of at least once per year.

Description

Monitoring includes direct measurements, calculation or recording, e.g. using suitable meters or invoices. The monitoring is broken down at the most appropriate level (e.g. at process or plant/installation level) and considers any significant changes in the plant/installation.

1.3. Emissions to air

BAT 12. In order to prevent or, where that is not practicable, to reduce odour emissions, BAT is to set up, implement and regularly review an odour management plan, as part of the environmental management system (see BAT 1), that includes all of the following elements:

- a protocol containing actions and timelines;
- a protocol for conducting odour monitoring as set out in BAT 10;
- a protocol for response to identified odour incidents, e.g. complaints;
- an odour prevention and reduction programme designed to identify the source(s); to characterise the contributions of the sources; and to implement prevention and/or reduction measures.

Applicability

The applicability is restricted to cases where an odour nuisance at sensitive receptors is expected and/or has been substantiated.

BAT 13. In order to prevent or, where that is not practicable, to reduce odour emissions, BAT is to use one or a combination of the techniques given below.

Technique	Description	Applicability
a. Minimising residence times	Minimising the residence time of (potentially) odorous waste in storage or in handling systems (e.g. pipes, tanks, containers), in particular under anaerobic conditions. When relevant, adequate provisions are made for the acceptance of seasonal peak volumes of waste.	Only applicable to open systems.
b. Using chemical treatment	Using chemicals to destroy or to reduce the formation of odorous compounds (e.g. to oxidise or to precipitate hydrogen sulphide).	Not applicable if it may hamper the desired output quality.
c. Optimising aerobic treatment	In the case of aerobic treatment of water-based liquid waste, it may include: <ul style="list-style-type: none"> — use of pure oxygen; — removal of scum in tanks; — frequent maintenance of the aeration system. In the case of aerobic treatment of waste other than water-based liquid waste, see BAT 36.	Generally applicable.

BAT 14. In order to prevent or, where that is not practicable, to reduce diffuse emissions to air, in particular of dust, organic compounds and odour, BAT is to use an appropriate combination of the techniques given below.

Depending on the risk posed by the waste in terms of diffuse emissions to air, BAT 14d is especially relevant.

Technique	Description	Applicability
a. Minimising the number of potential diffuse emission sources	This includes techniques such as: <ul style="list-style-type: none"> — appropriate design of piping layout (e.g. minimising pipe run length, reducing the number of flanges and valves, using welded fittings and pipes); — favouring the use of gravity transfer rather than using pumps; — limiting the drop height of material; — limiting traffic speed; — using wind barriers. 	Generally applicable.

	Technique	Description	Applicability
b.	Selection and use of high-integrity equipment	<p>This includes techniques such as:</p> <ul style="list-style-type: none"> — valves with double packing seals or equally efficient equipment; — high-integrity gaskets (such as spiral wound, ring joints) for critical applications; — pumps/compressors/agitators fitted with mechanical seals instead of packing; — magnetically driven pumps/compressor/agitators; — appropriate service hose access ports, piercing pliers, drill heads, e.g. when degassing WEEE containing VFCs and/or VHCs. 	Applicability may be restricted in the case of existing plants due to operability requirements.
c.	Corrosion prevention	<p>This includes techniques such as:</p> <ul style="list-style-type: none"> — appropriate selection of construction materials; — lining or coating of equipment and painting of pipes with corrosion inhibitors. 	Generally applicable.
d.	Containment, collection and treatment of diffuse emissions	<p>This includes techniques such as:</p> <ul style="list-style-type: none"> — storing, treating and handling waste and material that may generate diffuse emissions in enclosed buildings and/or enclosed equipment (e.g. conveyor belts); — maintaining the enclosed equipment or buildings under an adequate pressure; — collecting and directing the emissions to an appropriate abatement system (see Section 6.1) via an air extraction system and/or air suction systems close to the emission sources. 	<p>The use of enclosed equipment or buildings may be restricted by safety considerations such as the risk of explosion or oxygen depletion.</p> <p>The use of enclosed equipment or buildings may also be constrained by the volume of waste.</p>
e.	Dampening	Dampening potential sources of diffuse dust emissions (e.g. waste storage, traffic areas, and open handling processes) with water or fog.	Generally applicable.
f.	Maintenance	<p>This includes techniques such as:</p> <ul style="list-style-type: none"> — ensuring access to potentially leaky equipment; — regularly controlling protective equipment such as lamellar curtains, fast-action doors. 	Generally applicable.

Technique		Description	Applicability
g.	Cleaning of waste treatment and storage areas	This includes techniques such as regularly cleaning the whole waste treatment area (halls, traffic areas, storage areas, etc.), conveyor belts, equipment and containers.	Generally applicable.
h.	Leak detection and repair (LDAR) programme	See Section 6.2. When emissions of organic compounds are expected, a LDAR programme is set up and implemented using a risk-based approach, considering in particular the design of the plant and the amount and nature of the organic compounds concerned.	Generally applicable.

BAT 15. BAT is to use flaring only for safety reasons or for non-routine operating conditions (e.g. start-ups, shutdowns) by using both of the techniques given below.

Technique		Description	Applicability
a.	Correct plant design	This includes the provision of a gas recovery system with sufficient capacity and the use of high-integrity relief valves.	Generally applicable to new plants. A gas recovery system may be retrofitted in existing plants.
b.	Plant management	This includes balancing the gas system and using advanced process control.	Generally applicable.

BAT 16. In order to reduce emissions to air from flares when flaring is unavoidable, BAT is to use both of the techniques given below.

Technique		Description	Applicability
a.	Correct design of flaring devices	Optimisation of height and pressure, assistance by steam, air or gas, type of flare tips, etc., to enable smokeless and reliable operation and to ensure the efficient combustion of excess gases.	Generally applicable to new flares. In existing plants, applicability may be restricted, e.g. due to maintenance time availability.
b.	Monitoring and recording as part of flare management	This includes continuous monitoring of the quantity of gas sent to flaring. It may include estimations of other parameters (e.g. composition of gas flow, heat content, ratio of assistance, velocity, purge gas flow rate, pollutant emissions (e.g. NO _x , CO, hydrocarbons), noise). The recording of flaring events usually includes the duration and number of events and allows for the quantification of emissions and the potential prevention of future flaring events.	Generally applicable.

1.4. Noise and vibrations

BAT 17. In order to prevent or, where that is not practicable, to reduce noise and vibration emissions, BAT is to set up, implement and regularly review a noise and vibration management plan, as part of the environmental management system (see BAT 1), that includes all of the following elements:

- I. a protocol containing appropriate actions and timelines;
- II. a protocol for conducting noise and vibration monitoring;
- III. a protocol for response to identified noise and vibration events, e.g. complaints;
- IV. a noise and vibration reduction programme designed to identify the source(s), to measure/estimate noise and vibration exposure, to characterise the contributions of the sources and to implement prevention and/or reduction measures.

Applicability

The applicability is restricted to cases where a noise or vibration nuisance at sensitive receptors is expected and/or has been substantiated.

BAT 18. In order to prevent or, where that is not practicable, to reduce noise and vibration emissions, BAT is to use one or a combination of the techniques given below.

Technique		Description	Applicability
a.	Appropriate location of equipment and buildings	Noise levels can be reduced by increasing the distance between the emitter and the receiver, by using buildings as noise screens and by relocating building exits or entrances.	For existing plants, the relocation of equipment and building exits or entrances may be restricted by a lack of space or excessive costs.
b.	Operational measures	This includes techniques such as: (i) inspection and maintenance of equipment; (ii) closing of doors and windows of enclosed areas, if possible; (iii) equipment operation by experienced staff; (iv) avoidance of noisy activities at night, if possible; (v) provisions for noise control during maintenance, traffic, handling and treatment activities.	Generally applicable.
c.	Low-noise equipment	This may include direct drive motors, compressors, pumps and flares.	
d.	Noise and vibration control equipment	This includes techniques such as: (i) noise reducers; (ii) acoustic and vibrational insulation of equipment; (iii) enclosure of noisy equipment; (iv) soundproofing of buildings.	Applicability may be restricted by a lack of space (for existing plants).

	Technique	Description	Applicability
e.	Noise attenuation	Noise propagation can be reduced by inserting obstacles between emitters and receivers (e.g. protection walls, embankments and buildings).	Applicable only to existing plants, as the design of new plants should make this technique unnecessary. For existing plants, the insertion of obstacles may be restricted by a lack of space. For mechanical treatment in shredders of metal wastes, it is applicable within the constraints associated with the risk of deflagration in shredders.

1.5. Emissions to water

BAT 19. In order to optimise water consumption, to reduce the volume of waste water generated and to prevent or, where that is not practicable, to reduce emissions to soil and water, BAT is to use an appropriate combination of the techniques given below.

	Technique	Description	Applicability
a.	Water management	Water consumption is optimised by using measures which may include: <ul style="list-style-type: none"> — water-saving plans (e.g. establishment of water efficiency objectives, flow diagrams and water mass balances); — optimising the use of washing water (e.g. dry cleaning instead of hosing down, using trigger control on all washing equipment); — reducing the use of water for vacuum generation (e.g. use of liquid ring pumps with high boiling point liquids). 	Generally applicable.
b.	Water recirculation	Water streams are recirculated within the plant, if necessary after treatment. The degree of recirculation is limited by the water balance of the plant, the content of impurities (e.g. odorous compounds) and/or the characteristics of the water streams (e.g. nutrient content).	Generally applicable.
c.	Impermeable surface	Depending on the risks posed by the waste in terms of soil and/or water contamination, the surface of the whole waste treatment area (e.g. waste reception, handling, storage, treatment and dispatch areas) is made impermeable to the liquids concerned.	Generally applicable.

	Technique	Description	Applicability
d.	Techniques to reduce the likelihood and impact of overflows and failures from tanks and vessels	<p>Depending on the risks posed by the liquids contained in tanks and vessels in terms of soil and/or water contamination, this includes techniques such as:</p> <ul style="list-style-type: none"> — overflow detectors; — overflow pipes that are directed to a contained drainage system (i.e. the relevant secondary containment or another vessel); — tanks for liquids that are located in a suitable secondary containment; the volume is normally sized to accommodate the loss of containment of the largest tank within the secondary containment; — isolation of tanks, vessels and secondary containment (e.g. closing of valves). 	Generally applicable.
e.	Roofing of waste storage and treatment areas	Depending on the risks posed by the waste in terms of soil and/or water contamination, waste is stored and treated in covered areas to prevent contact with rainwater and thus minimise the volume of contaminated run-off water.	Applicability may be constrained when high volumes of waste are stored or treated (e.g. mechanical treatment in shredders of metal waste).
f.	Segregation of water streams	Each water stream (e.g. surface run-off water, process water) is collected and treated separately, based on the pollutant content and on the combination of treatment techniques. In particular, uncontaminated waste water streams are segregated from waste water streams that require treatment.	<p>Generally applicable to new plants.</p> <p>Generally applicable to existing plants within the constraints associated with the layout of the water collection system.</p>
g.	Adequate drainage infrastructure	<p>The waste treatment area is connected to drainage infrastructure.</p> <p>Rainwater falling on the treatment and storage areas is collected in the drainage infrastructure along with washing water, occasional spillages, etc. and, depending on the pollutant content, recirculated or sent for further treatment.</p>	<p>Generally applicable to new plants.</p> <p>Generally applicable to existing plants within the constraints associated with the layout of the water drainage system.</p>
h.	Design and maintenance provisions to allow detection and repair of leaks	<p>Regular monitoring for potential leakages is risk-based, and, when necessary, equipment is repaired.</p> <p>The use of underground components is minimised. When underground components are used, and depending on the risks posed by the waste contained in those components in terms of soil and/or water contamination, secondary containment of underground components is put in place.</p>	<p>The use of above-ground components is generally applicable to new plants. It may be limited however by the risk of freezing.</p> <p>The installation of secondary containment may be limited in the case of existing plants.</p>

Technique	Description	Applicability
i. Appropriate buffer storage capacity	<p>Appropriate buffer storage capacity is provided for waste water generated during other than normal operating conditions using a risk-based approach (e.g. taking into account the nature of the pollutants, the effects of downstream waste water treatment, and the receiving environment).</p> <p>The discharge of waste water from this buffer storage is only possible after appropriate measures are taken (e.g. monitor, treat, reuse).</p>	<p>Generally applicable to new plants.</p> <p>For existing plants, applicability may be limited by space availability and by the layout of the water collection system.</p>

BAT 20. In order to reduce emissions to water, BAT is to treat waste water using an appropriate combination of the techniques given below.

Technique (!)	Typical pollutants targeted	Applicability
<i>Preliminary and primary treatment, e.g.</i>		
a. Equalisation	All pollutants	Generally applicable.
b. Neutralisation	Acids, alkalis	
c. Physical separation, e.g. screens, sieves, grit separators, grease separators, oil-water separation or primary settlement tanks	Gross solids, suspended solids, oil/grease	
<i>Physico-chemical treatment, e.g.</i>		
d. Adsorption	Adsorbable dissolved non-biodegradable or inhibitory pollutants, e.g. hydrocarbons, mercury, AOX	Generally applicable.
e. Distillation/rectification	Dissolved non-biodegradable or inhibitory pollutants that can be distilled, e.g. some solvents	
f. Precipitation	Precipitable dissolved non-biodegradable or inhibitory pollutants, e.g. metals, phosphorus	
g. Chemical oxidation	Oxidisable dissolved non-biodegradable or inhibitory pollutants, e.g. nitrite, cyanide	

Technique ⁽¹⁾		Typical pollutants targeted	Applicability
h.	Chemical reduction	Reducible dissolved non-biodegradable or inhibitory pollutants, e.g. hexavalent chromium (Cr(VI))	
i.	Evaporation	Soluble contaminants	
j.	Ion exchange	Ionic dissolved non-biodegradable or inhibitory pollutants, e.g. metals	
k.	Stripping	Purgeable pollutants, e.g. hydrogen sulphide (H ₂ S), ammonia (NH ₃), some adsorbable organically bound halogens (AOX), hydrocarbons	
<i>Biological treatment, e.g.</i>			
l.	Activated sludge process	Biodegradable organic compounds	Generally applicable.
m.	Membrane bioreactor		
<i>Nitrogen removal</i>			
n.	Nitrification/denitrification when the treatment includes a biological treatment	Total nitrogen, ammonia	Nitrification may not be applicable in the case of high chloride concentrations (e.g. above 10 g/l) and when the reduction of the chloride concentration prior to nitrification would not be justified by the environmental benefits. Nitrification is not applicable when the temperature of the waste water is low (e.g. below 12 °C).
<i>Solids removal, e.g.</i>			
o.	Coagulation and flocculation	Suspended solids and particulate-bound metals	Generally applicable.
p.	Sedimentation		
q.	Filtration (e.g. sand filtration, microfiltration, ultrafiltration)		
r.	Flotation		

⁽¹⁾ The descriptions of the techniques are given in Section 6.3.

Table 6.1

BAT-associated emission levels (BAT-AELs) for direct discharges to a receiving water body

Substance/Parameter	BAT-AEL ⁽¹⁾	Waste treatment process to which the BAT-AEL applies
Total organic carbon (TOC) ⁽²⁾	10-60 mg/l	— All waste treatments except treatment of water-based liquid waste
	10-100 mg/l ⁽³⁾ ⁽⁴⁾	— Treatment of water-based liquid waste
Chemical oxygen demand (COD) ⁽²⁾	30-180 mg/l	— All waste treatments except treatment of water-based liquid waste
	30-300 mg/l ⁽³⁾ ⁽⁴⁾	— Treatment of water-based liquid waste
Total suspended solids (TSS)	5-60 mg/l	— All waste treatments
Hydrocarbon oil index (HOI)	0,5-10 mg/l	<ul style="list-style-type: none"> — Mechanical treatment in shredders of metal waste — Treatment of WEEE containing VFCs and/or VHCs — Re-refining of waste oil — Physico-chemical treatment of waste with calorific value — Water washing of excavated contaminated soil — Treatment of water-based liquid waste
Total nitrogen (Total N)	1-25 mg/l ⁽⁵⁾ ⁽⁶⁾	<ul style="list-style-type: none"> — Biological treatment of waste — Re-refining of waste oil
	10-60 mg/l ⁽⁵⁾ ⁽⁶⁾ ⁽⁷⁾	— Treatment of water-based liquid waste
Total phosphorus (Total P)	0,3-2 mg/l	— Biological treatment of waste
	1-3 mg/l ⁽⁴⁾	— Treatment of water-based liquid waste
Phenol index	0,05-0,2 mg/l	<ul style="list-style-type: none"> — Re-refining of waste oil — Physico-chemical treatment of waste with calorific value
	0,05-0,3 mg/l	— Treatment of water-based liquid waste
Free cyanide (CN) ⁽⁸⁾	0,02-0,1 mg/l	— Treatment of water-based liquid waste
Adsorbable organically bound halogens (AOX) ⁽⁸⁾	0,2-1 mg/l	— Treatment of water-based liquid waste

Substance/Parameter	BAT-AEL ⁽¹⁾	Waste treatment process to which the BAT-AEL applies	
Arsenic (expressed as As)	0,01-0,05 mg/l	<ul style="list-style-type: none"> — Mechanical treatment in shredders of metal waste — Treatment of WEEE containing VFCs and/or VHCs — Mechanical biological treatment of waste — Re-refining of waste oil — Physico-chemical treatment of waste with calorific value — Physico-chemical treatment of solid and/or pasty waste — Regeneration of spent solvents — Water washing of excavated contaminated soil 	
Cadmium (expressed as Cd)	0,01-0,05 mg/l		
Chromium (expressed as Cr)	0,01-0,15 mg/l		
Copper (expressed as Cu)	0,05-0,5 mg/l		
Lead (expressed as Pb)	0,05-0,1 mg/l ⁽⁹⁾		
Nickel (expressed as Ni)	0,05-0,5 mg/l		
Mercury (expressed as Hg)	0,5-5 µg/l		
Zinc (expressed as Zn)	0,1-1 mg/l ⁽¹⁰⁾		
Metals and metalloids ⁽⁸⁾	Arsenic (expressed as As)	0,01-0,1 mg/l	— Treatment of water-based liquid waste
	Cadmium (expressed as Cd)	0,01-0,1 mg/l	
	Chromium (expressed as Cr)	0,01-0,3 mg/l	
	Hexavalent chromium (expressed as Cr(VI))	0,01-0,1 mg/l	
	Copper (expressed as Cu)	0,05-0,5 mg/l	
	Lead (expressed as Pb)	0,05-0,3 mg/l	
	Nickel (expressed as Ni)	0,05-1 mg/l	
	Mercury (expressed as Hg)	1-10 µg/l	
	Zinc (expressed as Zn)	0,1-2 mg/l	

⁽¹⁾ The averaging periods are defined in the General considerations.

⁽²⁾ Either the BAT-AEL for COD or the BAT-AEL for TOC applies. TOC monitoring is the preferred option because it does not rely on the use of very toxic compounds.

⁽³⁾ The upper end of the range may not apply:

- when the abatement efficiency is $\geq 95\%$ as a rolling yearly average and the waste input shows the following characteristics: TOC > 2 g/l (or COD > 6 g/l) as a daily average and a high proportion of refractory organic compounds (i.e. which are difficult to biodegrade); or
- in the case of high chloride concentrations (e.g. above 5 g/l in the waste input).

⁽⁴⁾ The BAT-AEL may not apply to plants treating drilling muds/cuttings.

⁽⁵⁾ The BAT-AEL may not apply when the temperature of the waste water is low (e.g. below 12 °C).

⁽⁶⁾ The BAT-AEL may not apply in the case of high chloride concentrations (e.g. above 10 g/l in the waste input).

⁽⁷⁾ The BAT-AEL only applies when biological treatment of waste water is used.

⁽⁸⁾ The BAT-AELs only apply when the substance concerned is identified as relevant in the waste water inventory mentioned in BAT 3.

⁽⁹⁾ The upper end of the range is 0,3 mg/l for mechanical treatment in shredders of metal waste.

⁽¹⁰⁾ The upper end of the range is 2 mg/l for mechanical treatment in shredders of metal waste.

The associated monitoring is given in BAT 7.

Table 6.2

BAT-associated emission levels (BAT-AELs) for indirect discharges to a receiving water body

Substance/Parameter		BAT-AEL ⁽¹⁾ ⁽²⁾	Waste treatment process to which the BAT-AEL applies
Hydrocarbon oil index (HOI)		0,5-10 mg/l	<ul style="list-style-type: none"> — Mechanical treatment in shredders of metal waste — Treatment of WEEE containing VFCs and/or VHCs — Re-refining of waste oil — Physico-chemical treatment of waste with calorific value — Water washing of excavated contaminated soil — Treatment of water-based liquid waste
Free cyanide (CN) ⁽³⁾		0,02-0,1 mg/l	— Treatment of water-based liquid waste
Adsorbable organically bound halogens (AOX) ⁽³⁾		0,2-1 mg/l	— Treatment of water-based liquid waste
Metals and metalloids ⁽³⁾	Arsenic (expressed as As)	0,01-0,05 mg/l	<ul style="list-style-type: none"> — Mechanical treatment in shredders of metal waste — Treatment of WEEE containing VFCs and/or VHCs — Mechanical biological treatment of waste — Re-refining of waste oil — Physico-chemical treatment of waste with calorific value — Physico-chemical treatment of solid and/or pasty waste — Regeneration of spent solvents — Water washing of excavated contaminated soil
	Cadmium (expressed as Cd)	0,01-0,05 mg/l	
	Chromium (expressed as Cr)	0,01-0,15 mg/l	
	Copper (expressed as Cu)	0,05-0,5 mg/l	
	Lead (expressed as Pb)	0,05-0,1 mg/l ⁽⁴⁾	
	Nickel (expressed as Ni)	0,05-0,5 mg/l	
	Mercury (expressed as Hg)	0,5-5 µg/l	
	Zinc (expressed as Zn)	0,1-1 mg/l ⁽⁵⁾	
	Arsenic (expressed as As)	0,01-0,1 mg/l	
Cadmium (expressed as Cd)	0,01-0,1 mg/l		
Chromium (expressed as Cr)	0,01-0,3 mg/l		

Substance/Parameter	BAT-AEL ⁽¹⁾ ⁽²⁾	Waste treatment process to which the BAT-AEL applies
Hexavalent chromium (expressed as Cr(VI))	0,01-0,1 mg/l	
Copper (expressed as Cu)	0,05-0,5 mg/l	
Lead (expressed as Pb)	0,05-0,3 mg/l	
Nickel (expressed as Ni)	0,05-1 mg/l	
Mercury (expressed as Hg)	1-10 µg/l	
Zinc (expressed as Zn)	0,1-2 mg/l	

⁽¹⁾ The averaging periods are defined in the General considerations.

⁽²⁾ The BAT-AELs may not apply if the downstream waste water treatment plant abates the pollutants concerned, provided this does not lead to a higher level of pollution in the environment.

⁽³⁾ The BAT-AELs only apply when the substance concerned is identified as relevant in the waste water inventory mentioned in BAT 3.

⁽⁴⁾ The upper end of the range is 0,3 mg/l for mechanical treatment in shredders of metal waste.

⁽⁵⁾ The upper end of the range is 2 mg/l for mechanical treatment in shredders of metal waste.

The associated monitoring is given in BAT 7.

1.6. Emissions from accidents and incidents

BAT 21. In order to prevent or limit the environmental consequences of accidents and incidents, BAT is to use all of the techniques given below, as part of the accident management plan (see BAT 1).

Technique	Description
a. Protection measures	These include measures such as: <ul style="list-style-type: none"> — protection of the plant against malevolent acts; — fire and explosion protection system, containing equipment for prevention, detection, and extinction; — accessibility and operability of relevant control equipment in emergency situations.
b. Management of incidental/accidental emissions	Procedures are established and technical provisions are in place to manage (in terms of possible containment) emissions from accidents and incidents such as emissions from spillages, firefighting water, or safety valves.
c. Incident/accident registration and assessment system	This includes techniques such as: <ul style="list-style-type: none"> — a log/diary to record all accidents, incidents, changes to procedures and the findings of inspections; — procedures to identify, respond to and learn from such incidents and accidents.

1.7. Material efficiency

BAT 22. In order to use materials efficiently, BAT is to substitute materials with waste.

Description

Waste is used instead of other materials for the treatment of wastes (e.g. waste alkalis or waste acids are used for pH adjustment, fly ashes are used as binders).

Applicability

Some applicability limitations derive from the risk of contamination posed by the presence of impurities (e.g. heavy metals, POPs, salts, pathogens) in the waste that substitutes other materials. Another limitation is the compatibility of the waste substituting other materials with the waste input (see BAT 2).

1.8. Energy efficiency

BAT 23. In order to use energy efficiently, BAT is to use both of the techniques given below.

Technique		Description
a.	Energy efficiency plan	An energy efficiency plan entails defining and calculating the specific energy consumption of the activity (or activities), setting key performance indicators on an annual basis (for example, specific energy consumption expressed in kWh/tonne of waste processed) and planning periodic improvement targets and related actions. The plan is adapted to the specificities of the waste treatment in terms of process(es) carried out, waste stream(s) treated, etc.
b.	Energy balance record	An energy balance record provides a breakdown of the energy consumption and generation (including exportation) by the type of source (i.e. electricity, gas, conventional liquid fuels, conventional solid fuels, and waste). This includes: <ul style="list-style-type: none"> (i) information on energy consumption in terms of delivered energy; (ii) information on energy exported from the installation; (iii) energy flow information (e.g. Sankey diagrams or energy balances) showing how the energy is used throughout the process. The energy balance record is adapted to the specificities of the waste treatment in terms of process(es) carried out, waste stream(s) treated, etc.

1.9. Reuse of packaging

BAT 24. In order to reduce the quantity of waste sent for disposal, BAT is to maximise the reuse of packaging, as part of the residues management plan (see BAT 1).

Description

Packaging (drums, containers, IBCs, pallets, etc.) is reused for containing waste, when it is in good condition and sufficiently clean, depending on a compatibility check between the substances contained (in consecutive uses). If necessary, packaging is sent for appropriate treatment prior to reuse (e.g. reconditioning, cleaning).

Applicability

Some applicability restrictions derive from the risk of contamination of the waste posed by the reused packaging.

2. BAT CONCLUSIONS FOR THE MECHANICAL TREATMENT OF WASTE

Unless otherwise stated, the BAT conclusions presented in Section 2 apply to the mechanical treatment of waste when it is not combined with biological treatment, and in addition to the general BAT conclusions in Section 1.

2.1. General BAT conclusions for the mechanical treatment of waste

2.1.1. Emissions to air

BAT 25. In order to reduce emissions to air of dust, and of particulate-bound metals, PCDD/F and dioxin-like PCBs, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

	Technique	Description	Applicability
a.	Cyclone	See Section 6.1. Cyclones are mainly used as preliminary separators for coarse dust.	Generally applicable.
b.	Fabric filter	See Section 6.1.	May not be applicable to exhaust air ducts directly connected to the shredder when the effects of deflagration on the fabric filter cannot be mitigated (e.g. by using pressure relief valves).
c.	Wet scrubbing	See Section 6.1.	Generally applicable.
d.	Water injection into the shredder	The waste to be shredded is damped by injecting water into the shredder. The amount of water injected is regulated in relation to the amount of waste being shredded (which may be monitored via the energy consumed by the shredder motor). The waste gas that contains residual dust is directed to cyclone(s) and/or a wet scrubber.	Only applicable within the constraints associated with local conditions (e.g. low temperature, drought).

Table 6.3

BAT-associated emission level (BAT-AEL) for channelled dust emissions to air from the mechanical treatment of waste

Parameter	Unit	BAT-AEL (Average over the sampling period)
Dust	mg/Nm ³	2-5 ⁽¹⁾

⁽¹⁾ When a fabric filter is not applicable, the upper end of the range is 10 mg/Nm³.

The associated monitoring is given in BAT 8.

2.2. BAT conclusions for the mechanical treatment in shredders of metal waste

Unless otherwise stated, the BAT conclusions presented in this section apply to the mechanical treatment in shredders of metal waste, in addition to BAT 25.

2.2.1. Overall environmental performance

BAT 26. In order to improve the overall environmental performance, and to prevent emissions due to accidents and incidents, BAT is to use BAT 14g and all of the techniques given below:

- (a) implementation of a detailed inspection procedure for baled waste before shredding;

- (b) removal of dangerous items from the waste input stream and their safe disposal (e.g. gas cylinders, non-depolluted EoLVs, non-depolluted WEEE, items contaminated with PCBs or mercury, radioactive items);
- (c) treatment of containers only when accompanied by a declaration of cleanliness.

2.2.2. Deflagrations

BAT 27. In order to prevent deflagrations and to reduce emissions when deflagrations occur, BAT is to use technique a. and one or both of the techniques b. and c. given below.

Technique	Description	Applicability
a. Deflagration management plan	<p>This includes:</p> <ul style="list-style-type: none"> — a deflagration reduction programme designed to identify the source(s), and to implement measures to prevent deflagration occurrences, e.g. inspection of waste input as described in BAT 26a, removal of dangerous items as described in BAT 26b; — a review of historical deflagration incidents and remedies and the dissemination of deflagration knowledge; — a protocol for response to deflagration incidents. 	Generally applicable.
b. Pressure relief dampers	Pressure relief dampers are installed to relieve pressure waves coming from deflagrations that would otherwise cause major damage and subsequent emissions.	
c. Pre-shredding	Use of a low-speed shredder installed upstream of the main shredder	<p>Generally applicable for new plants, depending on the input material.</p> <p>Applicable for major plant upgrades where a significant number of deflagrations have been substantiated.</p>

2.2.3. Energy efficiency

BAT 28. In order to use energy efficiently, BAT is to keep the shredder feed stable.

Description

The shredder feed is equalised by avoiding disruption or overload of the waste feed which would lead to unwanted shutdowns and start-ups of the shredder.

2.3. BAT conclusions for the treatment of WEEE containing VFCs and/or VHCs

Unless otherwise stated, the BAT conclusions presented in this section apply to the treatment of WEEE containing VFCs and/or VHCs, in addition to BAT 25.

2.3.1. Emissions to air

BAT 29. In order to prevent or, where that is not practicable, to reduce emissions of organic compounds to air, BAT is to apply BAT 14d, BAT 14h and to use technique a. and one or both of the techniques b. and c. given below.

Technique		Description
a.	Optimised removal and capture of refrigerants and oils	All refrigerants and oils are removed from the WEEE containing VFCs and/or VHCs and captured by a vacuum suction system (e.g. achieving refrigerant removal of at least 90 %). Refrigerants are separated from oils and the oils are degassed. The amount of oil remaining in the compressor is reduced to a minimum (so that the compressor does not drip).
b.	Cryogenic condensation	Waste gas containing organic compounds such as VFCs/VHCs is sent to a cryogenic condensation unit where they are liquefied (see description in Section 6.1). The liquefied gas is stored in pressurised vessels for further treatment.
c.	Adsorption	Waste gas containing organic compounds such as VFCs/VHCs is led into adsorption systems (see description in Section 6.1). The spent activated carbon is regenerated by means of heated air pumped into the filter to desorb the organic compounds. Subsequently, the regeneration waste gas is compressed and cooled in order to liquefy the organic compounds (in some cases by cryogenic condensation). The liquefied gas is then stored in pressurised vessels. The remaining waste gas from the compression stage is usually led back into the adsorption system in order to minimise VFC/VHC emissions.

Table 6.4

BAT-associated emission levels (BAT-AELs) for channelled TVOC and CFC emissions to air from the treatment of WEEE containing VFCs and/or VHCs

Parameter	Unit	BAT-AEL (Average over the sampling period)
TVOC	mg/Nm ³	3-15
CFCs	mg/Nm ³	0,5-10

The associated monitoring is given in BAT 8.

2.3.2. Explosions

BAT 30. In order to prevent emissions due to explosions when treating WEEE containing VFCs and/or VHCs, BAT is to use either of the techniques given below.

Technique		Description
a.	Inert atmosphere	By injecting inert gas (e.g. nitrogen), the oxygen concentration in enclosed equipment (e.g. in enclosed shredders, crushers, dust and foam collectors) is reduced (e.g. to 4 vol-%).
b.	Forced ventilation	By using forced ventilation, the hydrocarbon concentration in enclosed equipment (e.g. in enclosed shredders, crushers, dust and foam collectors) is reduced to < 25 % of the lower explosive limit.

2.4. BAT conclusions for the mechanical treatment of waste with calorific value

In addition to BAT 25, the BAT conclusions presented in this section apply to the mechanical treatment of waste with calorific value covered by points 5.3(a)(iii) and 5.3(b)(ii) of Annex I to Directive 2010/75/EU.

2.4.1. Emissions to air

BAT 31. In order to reduce emissions to air of organic compounds, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1.
b.	Biofilter	
c.	Thermal oxidation	
d.	Wet scrubbing	

Table 6.5

BAT-associated emission level (BAT-AEL) for channelled TVOC emissions to air from the mechanical treatment of waste with calorific value

Parameter	Unit	BAT-AEL (Average over the sampling period)
TVOC	mg/Nm ³	10-30 ⁽¹⁾

⁽¹⁾ The BAT-AEL only applies when organic compounds are identified as relevant in the waste gas stream, based on the inventory mentioned in BAT 3.

The associated monitoring is given in BAT 8.

2.5. BAT conclusions for the mechanical treatment of WEEE containing mercury

Unless otherwise stated, the BAT conclusions presented in this section apply to the mechanical treatment of WEEE containing mercury, in addition to BAT 25.

2.5.1. Emissions to air

BAT 32. In order to reduce mercury emissions to air, BAT is to collect mercury emissions at source, to send them to abatement and to carry out adequate monitoring.

Description

This includes all of the following measures:

- equipment used to treat WEEE containing mercury is enclosed, under negative pressure and connected to a local exhaust ventilation (LEV) system;
- waste gas from the processes is treated by dedusting techniques such as cyclones, fabric filters, and HEPA filters, followed by adsorption on activated carbon (see Section 6.1);
- the efficiency of the waste gas treatment is monitored;
- mercury levels in the treatment and storage areas are measured frequently (e.g. once every week) to detect potential mercury leaks.

Table 6.6

BAT-associated emission level (BAT-AEL) for channelled mercury emissions to air from the mechanical treatment of WEEE containing mercury

Parameter	Unit	BAT-AEL (Average over the sampling period)
Mercury (Hg)	µg/Nm ³	2-7

The associated monitoring is given in BAT 8.

3. BAT CONCLUSIONS FOR THE BIOLOGICAL TREATMENT OF WASTE

Unless otherwise stated, the BAT conclusions presented in Section 3 apply to the biological treatment of waste, and in addition to the general BAT conclusions in Section 1. The BAT conclusions in Section 3 do not apply to the treatment of water-based liquid waste.

3.1. General BAT conclusions for the biological treatment of waste

3.1.1. Overall environmental performance

BAT 33. In order to reduce odour emissions and to improve the overall environmental performance, BAT is to select the waste input.

Description

The technique consists of carrying out the pre-acceptance, acceptance and sorting of the waste input (see BAT 2) so as to ensure the suitability of the waste input for the waste treatment, e.g. in terms of nutrient balance, moisture or toxic compounds which may reduce the biological activity.

3.1.2. Emissions to air

BAT 34. In order to reduce channelled emissions to air of dust, organic compounds and odorous compounds, including H₂S and NH₃, BAT is to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1.
b.	Biofilter	See Section 6.1. A pretreatment of the waste gas before the biofilter (e.g. with a water or acid scrubber) may be needed in the case of a high NH ₃ content (e.g. 5-40 mg/Nm ³) in order to control the media pH and to limit the formation of N ₂ O in the biofilter. Some other odorous compounds (e.g. mercaptans, H ₂ S) can cause acidification of the biofilter media and necessitate the use of a water or alkaline scrubber for pretreatment of the waste gas before the biofilter.
c.	Fabric filter	See Section 6.1. The fabric filter is used in the case of mechanical biological treatment of waste.
d.	Thermal oxidation	See Section 6.1.
e.	Wet scrubbing	See Section 6.1. Water, acid or alkaline scrubbers are used in combination with a biofilter, thermal oxidation or adsorption on activated carbon.

Table 6.7

BAT-associated emission levels (BAT-AELs) for channelled NH₃, odour, dust and TVOC emissions to air from the biological treatment of waste

Parameter	Unit	BAT-AEL (Average over the sampling period)	Waste treatment process
NH ₃ ⁽¹⁾ ⁽²⁾	mg/Nm ³	0,3-20	All biological treatments of waste
Odour concentration ⁽¹⁾ ⁽²⁾	ou _E /Nm ³	200-1 000	
Dust	mg/Nm ³	2-5	Mechanical biological treatment of waste
TVOC	mg/Nm ³	5-40 ⁽³⁾	

⁽¹⁾ Either the BAT-AEL for NH₃ or the BAT-AEL for the odour concentration applies.

⁽²⁾ This BAT-AEL does not apply to the treatment of waste mainly composed of manure.

⁽³⁾ The lower end of the range can be achieved by using thermal oxidation.

The associated monitoring is given in BAT 8.

3.1.3. Emissions to water and water usage

BAT 35. In order to reduce the generation of waste water and to reduce water usage, BAT is to use all of the techniques given below.

Technique	Description	Applicability
a. Segregation of water streams	Leachate seeping from compost piles and windrows is segregated from surface run-off water (see BAT 19f).	Generally applicable to new plants. Generally applicable to existing plants within the constraints associated with the layout of the water circuits.
b. Water recirculation	Recirculating process water streams (e.g. from dewatering of liquid digestate in anaerobic processes) or using as much as possible other water streams (e.g. water condensate, rinsing water, surface run-off water). The degree of recirculation is limited by the water balance of the plant, the content of impurities (e.g. heavy metals, salts, pathogens, odorous compounds) and/or the characteristics of the water streams (e.g. nutrient content).	Generally applicable.
c. Minimisation of the generation of leachate	Optimising the moisture content of the waste in order to minimise the generation of leachate.	Generally applicable.

3.2. BAT conclusions for the aerobic treatment of waste

Unless otherwise stated, the BAT conclusions presented in this section apply to the aerobic treatment of waste, and in addition to the general BAT conclusions for the biological treatment of waste in Section 3.1.

3.2.1. Overall environmental performance

BAT 36. In order to reduce emissions to air and to improve the overall environmental performance, BAT is to monitor and/or control the key waste and process parameters.

Description

Monitoring and/or control of key waste and process parameters, including:

- waste input characteristics (e.g. C to N ratio, particle size);
- temperature and moisture content at different points in the windrow;
- aeration of the windrow (e.g. via the windrow turning frequency, O₂ and/or CO₂ concentration in the windrow, temperature of air streams in the case of forced aeration);
- windrow porosity, height and width.

Applicability

Monitoring of the moisture content in the windrow is not applicable to enclosed processes when health and/or safety issues have been identified. In that case, the moisture content can be monitored before loading the waste into the enclosed composting stage and adjusted when it exits the enclosed composting stage.

3.2.2. Odour and diffuse emissions to air

BAT 37. In order to reduce diffuse emissions to air of dust, odour and bioaerosols from open-air treatment steps, BAT is to use one or both of the techniques given below.

	Technique	Description	Applicability
a.	Use of semipermeable membrane covers	Active composting windrows are covered by semipermeable membranes.	Generally applicable.
b.	Adaptation of operations to the meteorological conditions	<p>This includes techniques such as the following:</p> <ul style="list-style-type: none"> — Taking into account weather conditions and forecasts when undertaking major outdoor process activities. For instance, avoiding formation or turning of windrows or piles, screening or shredding in the case of adverse meteorological conditions in terms of emissions dispersion (e.g. the wind speed is too low or too high, or the wind blows in the direction of sensitive receptors). — Orientating windrows, so that the smallest possible area of composting mass is exposed to the prevailing wind, to reduce the dispersion of pollutants from the windrow surface. The windrows and piles are preferably located at the lowest elevation within the overall site layout. 	Generally applicable.

3.3. BAT conclusions for the anaerobic treatment of waste

Unless otherwise stated, the BAT conclusions presented in this section apply to the anaerobic treatment of waste, and in addition to the general BAT conclusions for the biological treatment of waste in Section 3.1.

3.3.1. Emissions to air

BAT 38. In order to reduce emissions to air and to improve the overall environmental performance, BAT is to monitor and/or control the key waste and process parameters.

Description

Implementation of a manual and/or automatic monitoring system to:

- ensure a stable digester operation;
- minimise operational difficulties, such as foaming, which may lead to odour emissions;
- provide sufficient early warning of system failures which may lead to a loss of containment and explosions.

This includes monitoring and/or control of key waste and process parameters, e.g.:

- pH and alkalinity of the digester feed;
- digester operating temperature;
- hydraulic and organic loading rates of the digester feed;
- concentration of volatile fatty acids (VFA) and ammonia within the digester and digestate;
- biogas quantity, composition (e.g. H₂S) and pressure;
- liquid and foam levels in the digester.

3.4. BAT conclusions for the mechanical biological treatment (MBT) of waste

Unless otherwise stated, the BAT conclusions presented in this section apply to MBT, and in addition to the general BAT conclusions for the biological treatment of waste in Section 3.1.

The BAT conclusions for the aerobic treatment (Section 3.2) and anaerobic treatment (Section 3.3) of waste apply, when relevant, to the mechanical biological treatment of waste.

3.4.1. Emissions to air

BAT 39. In order to reduce emissions to air, BAT is to use both of the techniques given below.

Technique		Description	Applicability
a.	Segregation of the waste gas streams	Splitting of the total waste gas stream into waste gas streams with a high pollutant content and waste gas streams with a low pollutant content, as identified in the inventory mentioned in BAT 3.	Generally applicable to new plants. Generally applicable to existing plants within the constraints associated with the layout of the air circuits.
b.	Recirculation of waste gas	Recirculation of waste gas with a low pollutant content in the biological process followed by waste gas treatment adapted to the concentration of pollutants (see BAT 34). The use of waste gas in the biological process may be limited by the waste gas temperature and/or the pollutant content. It may be necessary to condense the water vapour contained in the waste gas before reuse. In this case, cooling is necessary, and the condensed water is recirculated when possible (see BAT 35) or treated before discharge.	

4. BAT CONCLUSIONS FOR THE PHYSICO-CHEMICAL TREATMENT OF WASTE

Unless otherwise stated, the BAT conclusions presented in Section 4 apply to the physico-chemical treatment of waste, and in addition to the general BAT conclusions in Section 1.

4.1. BAT conclusions for the physico-chemical treatment of solid and/or pasty waste

4.1.1. Overall environmental performance

BAT 40. In order to improve the overall environmental performance, BAT is to monitor the waste input as part of the waste pre-acceptance and acceptance procedures (see BAT 2).

Description

Monitoring the waste input, e.g. in terms of:

- content of organics, oxidising agents, metals (e.g. mercury), salts, odorous compounds;
- H₂ formation potential upon mixing of flue-gas treatment residues, e.g. fly ashes, with water.

4.1.2. Emissions to air

BAT 41. In order to reduce emissions of dust, organic compounds and NH₃ to air, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1.
b.	Biofilter	
c.	Fabric filter	
d.	Wet scrubbing	

Table 6.8

BAT-associated emission level (BAT-AEL) for channelled emissions of dust to air from the physico-chemical treatment of solid and/or pasty waste

Parameter	Unit	BAT-AEL (Average over the sampling period)
Dust	mg/Nm ³	2-5

The associated monitoring is given in BAT 8.

4.2. BAT conclusions for the re-refining of waste oil

4.2.1. Overall environmental performance

BAT 42. In order to improve the overall environmental performance, BAT is to monitor the waste input as part of the waste pre-acceptance and acceptance procedures (see BAT 2).

Description

Monitoring of the waste input in terms of content of chlorinated compounds (e.g. chlorinated solvents or PCBs).

BAT 43. In order to reduce the quantity of waste sent for disposal, BAT is to use one or both of the techniques given below.

Technique		Description
a.	Material recovery	Using the organic residues from vacuum distillation, solvent extraction, thin film evaporators, etc. in asphalt products, etc.
b.	Energy recovery	Using the organic residues from vacuum distillation, solvent extraction, thin film evaporators, etc. to recover energy.

4.2.2. Emissions to air

BAT 44. In order to reduce emissions of organic compounds to air, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1.
b.	Thermal oxidation	See Section 6.1. This includes when the waste gas is sent to a process furnace or a boiler.
c.	Wet scrubbing	See Section 6.1.

The BAT-AEL set in Section 4.5 applies.

The associated monitoring is given in BAT 8.

4.3. BAT conclusions for the physico-chemical treatment of waste with calorific value

4.3.1. Emissions to air

BAT 45. In order to reduce emissions of organic compounds to air, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1
b.	Cryogenic condensation	
c.	Thermal oxidation	
d.	Wet scrubbing	

The BAT-AEL set in Section 4.5 applies.

The associated monitoring is given in BAT 8.

4.4. BAT conclusions for the regeneration of spent solvents

4.4.1. Overall environmental performance

BAT 46. In order to improve the overall environmental performance of the regeneration of spent solvents, BAT is to use one or both of the techniques given below.

Technique		Description	Applicability
a.	Material recovery	Solvents are recovered from the distillation residues by evaporation.	Applicability may be restricted when the energy demand is excessive with regards to the quantity of solvent recovered.
b.	Energy recovery	The residues from distillation are used to recover energy.	Generally applicable.

4.4.2. Emissions to air

BAT 47. In order to reduce emissions of organic compounds to air, BAT is to apply BAT 14d and to use a combination of the techniques given below.

Technique		Description	Applicability
a.	Recirculation of process off-gases in a steam boiler	The process off-gases from the condensers are sent to the steam boiler supplying the plant.	May not be applicable to the treatment of halogenated solvent wastes, in order to avoid generating and emitting PCBs and/or PCDD/F.
b.	Adsorption	See Section 6.1.	There may be limitations to the applicability of the technique due to safety reasons (e.g. activated carbon beds tend to self-ignite when loaded with ketones).
c.	Thermal oxidation	See Section 6.1.	May not be applicable to the treatment of halogenated solvent wastes, in order to avoid generating and emitting PCBs and/or PCDD/F.
d.	Condensation or cryogenic condensation	See Section 6.1.	Generally applicable.
e.	Wet scrubbing	See Section 6.1.	Generally applicable.

The BAT-AEL set in Section 4.5 applies.

The associated monitoring is given in BAT 8.

4.5. **BAT-AEL for emissions of organic compounds to air from the re-refining of waste oil, the physico-chemical treatment of waste with calorific value and the regeneration of spent solvents**

Table 6.9

BAT-associated emission level (BAT-AEL) for channelled emissions of TVOC to air from the re-refining of waste oil, the physico-chemical treatment of waste with calorific value and the regeneration of spent solvents

Parameter	Unit	BAT-AEL ⁽¹⁾ (Average over the sampling period)
TVOC	mg/Nm ³	5-30

⁽¹⁾ The BAT-AEL does not apply when the emission load is below 2 kg/h at the emission point provided that no CMR substances are identified as relevant in the waste gas stream, based on the inventory mentioned in BAT 3.

4.6. **BAT conclusions for the thermal treatment of spent activated carbon, waste catalysts and excavated contaminated soil**

4.6.1. Overall environmental performance

BAT 48. In order to improve the overall environmental performance of the thermal treatment of spent activated carbon, waste catalysts and excavated contaminated soil, BAT is to use all of the techniques given below.

Technique	Description	Applicability
a. Heat recovery from the furnace off-gas	Recovered heat may be used, for example, for preheating of combustion air or for the generation of steam, which is also used in the reactivation of the spent activated carbon.	Generally applicable.
b. Indirectly fired furnace	An indirectly fired furnace is used to avoid contact between the contents of the furnace and the flue-gases from the burner(s).	Indirectly fired furnaces are normally constructed with a metal tube and applicability may be restricted due to corrosion problems. There may be also economic restrictions for retrofitting existing plants.
c. Process-integrated techniques to reduce emissions to air	This includes techniques such as: — control of the furnace temperature and of the rotation speed of the rotary furnace; — choice of fuel; — use of a sealed furnace or operation of the furnace at a reduced pressure to avoid diffuse emissions to air.	Generally applicable.

4.6.2. Emissions to air

BAT 49. In order to reduce emissions of HCl, HF, dust and organic compounds to air, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Cyclone	See Section 6.1. The technique is used in combination with further abatement techniques.
b.	Electrostatic precipitator (ESP)	See Section 6.1.
c.	Fabric filter	
d.	Wet scrubbing	
e.	Adsorption	
f.	Condensation	
g.	Thermal oxidation ⁽¹⁾	

⁽¹⁾ Thermal oxidation is carried out with a minimum temperature of 1 100 °C and a two-second residence time for the regeneration of activated carbon used in industrial applications where refractory halogenated or other thermally resistant substances are likely to be present. In the case of activated carbon used for potable water- and food-grade applications, an afterburner with a minimum heating temperature of 850 °C and a two-second residence time is sufficient (see Section 6.1).

The associated monitoring is given in BAT 8.

4.7. **BAT conclusions for the water washing of excavated contaminated soil**

4.7.1. Emissions to air

BAT 50. In order to reduce emissions of dust and organic compounds to air from the storage, handling, and washing steps, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1.
b.	Fabric filter	
c.	Wet scrubbing	

The associated monitoring is given in BAT 8.

4.8. **BAT conclusions for the decontamination of equipment containing PCBs**

4.8.1. Overall environmental performance

BAT 51. In order to improve the overall environmental performance and to reduce channelled emissions of PCBs and organic compounds to air, BAT is to use all of the techniques given below.

Technique		Description
a.	Coating of the storage and treatment areas	This includes techniques such as: — resin coating applied to the concrete floor of the whole storage and treatment area.

Technique		Description
b.	Implementation of staff access rules to prevent dispersion of contamination	This includes techniques such as: <ul style="list-style-type: none"> — access points to storage and treatment areas are locked; — special qualification is required to access the area where the contaminated equipment is stored and handled; — separate ‘clean’ and ‘dirty’ cloakrooms to put on/remove individual protective outfit.
c.	Optimised equipment cleaning and drainage	This includes techniques such as: <ul style="list-style-type: none"> — external surfaces of the contaminated equipment are cleaned with anionic detergent; — emptying of the equipment with a pump or under vacuum instead of gravity emptying; — procedures are defined and used for filling, emptying and (dis)connecting the vacuum vessel; — a long period of drainage (at least 12 hours) is ensured to avoid any dripping of contaminated liquid during further treatment operations, after the separation of the core from the casing of an electrical transformer.
d.	Control and monitoring of emissions to air	This includes techniques such as: <ul style="list-style-type: none"> — the air of the decontamination area is collected and treated with activated carbon filters; — the exhaust of the vacuum pump mentioned in technique c. above is connected to an end-of-pipe abatement system (e.g. a high-temperature incinerator, thermal oxidation or adsorption on activated carbon); — the channelled emissions are monitored (see BAT 8); — the potential atmospheric deposition of PCBs is monitored (e.g. through physico-chemical measurements or biomonitoring).
e.	Disposal of waste treatment residues	This includes techniques such as: <ul style="list-style-type: none"> — porous, contaminated parts of the electrical transformer (wood and paper) are sent to high-temperature incineration; — PCBs in the oils are destroyed (e.g. dechlorination, hydrogenation, solvated electron processes, high-temperature incineration).
f.	Recovery of solvent when solvent washing is used	Organic solvent is collected and distilled to be reused in the process.

The associated monitoring is given in BAT 8.

5. BAT CONCLUSIONS FOR THE TREATMENT OF WATER-BASED LIQUID WASTE

Unless otherwise stated, the BAT conclusions presented in Section 5 apply to the treatment of water-based liquid waste, and in addition to the general BAT conclusions in Section 1.

5.1. Overall environmental performance

BAT 52. In order to improve the overall environmental performance, BAT is to monitor the waste input as part of the waste pre-acceptance and acceptance procedures (see BAT 2).

Description

Monitoring the waste input, e.g. in terms of:

- bioeliminability (e.g. BOD, BOD to COD ratio, Zahn-Wellens test, biological inhibition potential (e.g. inhibition of activated sludge));
- feasibility of emulsion breaking, e.g. by means of laboratory-scale tests.

5.2. Emissions to air

BAT 53. In order to reduce emissions of HCl, NH₃ and organic compounds to air, BAT is to apply BAT 14d and to use one or a combination of the techniques given below.

Technique		Description
a.	Adsorption	See Section 6.1.
b.	Biofilter	
c.	Thermal oxidation	
d.	Wet scrubbing	

Table 6.10

BAT-associated emission levels (BAT-AELs) for channelled emissions of HCl and TVOC to air from the treatment of water-based liquid waste

Parameter	Unit	BAT-AEL ⁽¹⁾ (Average over the sampling period)
Hydrogen chloride (HCl)	mg/Nm ³	1-5
TVOC		3-20 ⁽²⁾

⁽¹⁾ These BAT-AELs only apply when the substance concerned is identified as relevant in the waste gas stream, based on the inventory mentioned in BAT 3.

⁽²⁾ The upper end of the range is 45 mg/Nm³ when the emission load is below 0,5 kg/h at the emission point.

The associated monitoring is given in BAT 8.

6. DESCRIPTION OF TECHNIQUES**6.1. Channelled emissions to air**

Technique	Typical pollutant(s) abated	Description
Adsorption	Mercury, volatile organic compounds, hydrogen sulphide, odorous compounds	Adsorption is a heterogeneous reaction in which gas molecules are retained on a solid or liquid surface that prefers specific compounds to others and thus removes them from effluent streams. When the surface has adsorbed as much as it can, the adsorbent is replaced or the adsorbed content is desorbed as part of the regeneration of the adsorbent. When desorbed, the contaminants are usually at a higher concentration and can either be recovered or disposed of. The most common adsorbent is granular activated carbon.

Technique	Typical pollutant(s) abated	Description
Biofilter	Ammonia, hydrogen sulphide, volatile organic compounds, odorous compounds	<p>The waste gas stream is passed through a bed of organic material (such as peat, heather, compost, root, tree bark, softwood and different combinations) or some inert material (such as clay, activated carbon, and polyurethane), where it is biologically oxidised by naturally occurring microorganisms into carbon dioxide, water, inorganic salts and biomass.</p> <p>A biofilter is designed considering the type(s) of waste input. An appropriate bed material, e.g. in terms of water retention capacity, bulk density, porosity, structural integrity, is selected. Also important are an appropriate height and surface area of the filter bed. The biofilter is connected to a suitable ventilation and air circulation system in order to ensure a uniform air distribution through the bed and a sufficient residence time of the waste gas inside the bed.</p>
Condensation and cryogenic condensation	Volatile organic compounds	<p>Condensation is a technique that eliminates solvent vapours from a waste gas stream by reducing its temperature below its dew point. For cryogenic condensation, the operating temperature can be down to $-120\text{ }^{\circ}\text{C}$, but in practice it is often between $-40\text{ }^{\circ}\text{C}$ and $-80\text{ }^{\circ}\text{C}$ in the condensation device. Cryogenic condensation can cope with all VOCs and volatile inorganic pollutants, irrespective of their individual vapour pressures. The low temperatures applied allow for very high condensation efficiencies which make it well-suited as a final VOC emission control technique.</p>
Cyclone	Dust	<p>Cyclone filters are used to remove heavier particulates, which 'fall out' as the waste gases are forced into a rotating motion before they leave the separator.</p> <p>Cyclones are used to control particulate material, primarily PM_{10}.</p>
Electrostatic precipitator (ESP)	Dust	<p>Electrostatic precipitators operate such that particles are charged and separated under the influence of an electrical field. Electrostatic precipitators are capable of operating under a wide range of conditions. In a dry ESP, the collected material is mechanically removed (e.g. by shaking, vibration, compressed air), while in a wet ESP it is flushed with a suitable liquid, usually water.</p>
Fabric filter	Dust	<p>Fabric filters, often referred to as bag filters, are constructed from porous woven or felted fabric through which gases are passed to remove particles. The use of a fabric filter requires the selection of a fabric suitable for the characteristics of the waste gas and the maximum operating temperature.</p>

Technique	Typical pollutant(s) abated	Description
HEPA filter	Dust	HEPA filters (high-efficiency particle air filters) are absolute filters. The filter medium consists of paper or matted glass fibre with a high packing density. The waste gas stream is passed through the filter medium, where particulate matter is collected.
Thermal oxidation	Volatile organic compounds	The oxidation of combustible gases and odorants in a waste gas stream by heating the mixture of contaminants with air or oxygen to above its auto-ignition point in a combustion chamber and maintaining it at a high temperature long enough to complete its combustion to carbon dioxide and water.
Wet scrubbing	Dust, volatile organic compounds, gaseous acidic compounds (alkaline scrubber), gaseous alkaline compounds (acid scrubber)	The removal of gaseous or particulate pollutants from a gas stream via mass transfer to a liquid solvent, often water or an aqueous solution. It may involve a chemical reaction (e.g. in an acid or alkaline scrubber). In some cases, the compounds may be recovered from the solvent.

6.2. Diffuse emissions of organic compounds to air

Leak detection and repair (LDAR) programme	Volatile organic compounds	<p>A structured approach to reduce fugitive emissions of organic compounds by detection and subsequent repair or replacement of leaking components. Currently, sniffing (described by EN 15446) and optical gas imaging methods are available for the identification of leaks.</p> <p>Sniffing method: The first step is the detection using hand-held organic compound analysers measuring the concentration adjacent to the equipment (e.g. using flame ionisation or photo-ionisation). The second step consists of enclosing the component in an impermeable bag to carry out a direct measurement at the source of the emission. This second step is sometimes replaced by mathematical correlation curves derived from statistical results obtained from a large number of previous measurements made on similar components.</p> <p>Optical gas imaging methods: Optical imaging uses small lightweight hand-held cameras which enable the visualisation of gas leaks in real time, so that they appear as 'smoke' on a video recorder together with the normal image of the component concerned, to easily and rapidly locate significant organic compound leaks. Active systems produce an image with a back-scattered infrared laser light reflected on the component and its surroundings. Passive systems are based on the natural infrared radiation of the equipment and its surroundings.</p>
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Measurement of diffuse VOC emissions	Volatile organic compounds	<p>Sniffing and optical gas imaging methods are described under leak detection and repair programme.</p> <p>Full screening and quantification of emissions from the installation can be undertaken with an appropriate combination of complementary methods, e.g. Solar occultation flux (SOF) or Differential absorption LIDAR (DIAL) campaigns. These results can be used for trend evaluation over time, cross-checking and updating/validation of the ongoing LDAR programme.</p> <p>Solar occultation flux (SOF): The technique is based on the recording and spectrometric Fourier Transform analysis of a broadband infrared or ultraviolet/visible sunlight spectrum along a given geographical itinerary, crossing the wind direction and cutting through VOC plumes.</p> <p>Differential absorption LIDAR (DIAL): This is a laser-based technique using differential absorption LIDAR (light detection and ranging), which is the optical analogue of radio wave-based RADAR. The technique relies on the backscattering of laser beam pulses by atmospheric aerosols, and the analysis of the spectral properties of the returned light collected with a telescope.</p>
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6.3. Emissions to water

Technique	Typical pollutant(s) targeted	Description
Activated sludge process	Biodegradable organic compounds	<p>The biological oxidation of dissolved organic pollutants with oxygen using the metabolism of microorganisms. In the presence of dissolved oxygen (injected as air or pure oxygen), the organic components are transformed into carbon dioxide, water or other metabolites and biomass (i.e. the activated sludge). The microorganisms are maintained in suspension in the waste water and the whole mixture is mechanically aerated. The activated sludge mixture is sent to a separation facility from where the sludge is recycled to the aeration tank.</p>
Adsorption	Adsorbable dissolved non-biodegradable or inhibitory pollutants, e.g. hydrocarbons, mercury, AOX	<p>Separation method in which compounds (i.e. pollutants) in a fluid (i.e. waste water) are retained on a solid surface (typically activated carbon).</p>

Technique	Typical pollutant(s) targeted	Description
Chemical oxidation	Oxidisable dissolved non-biodegradable or inhibitory pollutants, e.g. nitrite, cyanide	Organic compounds are oxidised to less harmful and more easily biodegradable compounds. Techniques include wet oxidation or oxidation with ozone or hydrogen peroxide, optionally supported by catalysts or UV radiation. Chemical oxidation is also used to degrade organic compounds causing odour, taste and colour and for disinfection purposes.
Chemical reduction	Reducible dissolved non-biodegradable or inhibitory pollutants, e.g. hexavalent chromium (Cr(VI))	Chemical reduction is the conversion of pollutants by chemical reducing agents into similar but less harmful or hazardous compounds.
Coagulation and flocculation	Suspended solids and particulate-bound metals	Coagulation and flocculation are used to separate suspended solids from waste water and are often carried out in successive steps. Coagulation is carried out by adding coagulants with charges opposite to those of the suspended solids. Flocculation is carried out by adding polymers, so that collisions of microfloc particles cause them to bond to produce larger flocs. The flocs formed are subsequently separated by sedimentation, air flotation or filtration.
Distillation/rectification	Dissolved non-biodegradable or inhibitory pollutants that can be distilled, e.g. some solvents	Distillation is a technique to separate compounds with different boiling points by partial evaporation and recondensation. Waste water distillation is the removal of low-boiling contaminants from waste water by transferring them into the vapour phase. Distillation is carried out in columns, equipped with plates or packing material, and a downstream condenser.
Equalisation	All pollutants	Balancing of flows and pollutant loads by using tanks or other management techniques.
Evaporation	Soluble pollutants	The use of distillation (see above) to concentrate aqueous solutions of high-boiling substances for further use, processing or disposal (e.g. waste water incineration) by transferring water to the vapour phase. It is typically carried out in multi-stage units with increasing vacuum, to reduce the energy demand. The water vapours are condensed, to be reused or discharged as waste water.

Technique	Typical pollutant(s) targeted	Description
Filtration		The separation of solids from waste water by passing them through a porous medium, e.g. sand filtration, microfiltration and ultrafiltration.
Flotation	Suspended solids and particulate-bound metals	The separation of solid or liquid particles from waste water by attaching them to fine gas bubbles, usually air. The buoyant particles accumulate at the water surface and are collected with skimmers.
Ion exchange	Ionic dissolved non-biodegradable or inhibitory pollutants, e.g. metals	The retention of undesired or hazardous ionic constituents of waste water and their replacement by more acceptable ions using an ion exchange resin. The pollutants are temporarily retained and afterwards released into a regeneration or backwashing liquid.
Membrane bioreactor	Biodegradable organic compounds	A combination of activated sludge treatment and membrane filtration. Two variants are used: a) an external recirculation loop between the activated sludge tank and the membrane module; and b) immersion of the membrane module in the aerated activated sludge tank, where the effluent is filtered through a hollow fibre membrane, the biomass remaining in the tank.
Membrane filtration	Suspended solids and particulate-bound metals	Microfiltration (MF) and ultrafiltration (UF) are membrane filtration processes that retain and concentrate, on one side of the membrane, pollutants such as suspended particles and colloidal particles contained in waste waters.
Neutralisation	Acids, alkalis	The adjustment of the pH of waste water to a neutral level (approximately 7) by the addition of chemicals. Sodium hydroxide (NaOH) or calcium hydroxide (Ca(OH) ₂) may be used to increase the pH, whereas sulphuric acid (H ₂ SO ₄), hydrochloric acid (HCl) or carbon dioxide (CO ₂) may be used to decrease the pH. The precipitation of some pollutants may occur during neutralisation.
Nitrification/denitrification	Total nitrogen, ammonia	A two-step process that is typically incorporated into biological waste water treatment plants. The first step is aerobic nitrification where microorganisms oxidise ammonium (NH ₄ ⁺) to the intermediate nitrite (NO ₂ ⁻), which is then further oxidised to nitrate (NO ₃ ⁻). In the subsequent anoxic denitrification step, microorganisms chemically reduce nitrate to nitrogen gas.

Technique	Typical pollutant(s) targeted	Description
Oil-water separation	Oil/grease	The separation of oil and water and subsequent oil removal by gravity separation of free oil, using separation equipment or emulsion breaking (using emulsion breaking chemicals such as metal salts, mineral acids, adsorbents and organic polymers).
Sedimentation	Suspended solids and particulate-bound metals	The separation of suspended particles by gravitational settling.
Precipitation	Precipitable dissolved non-biodegradable or inhibitory pollutants, e.g. metals, phosphorus	The conversion of dissolved pollutants into insoluble compounds by adding precipitants. The solid precipitates formed are subsequently separated by sedimentation, air flotation or filtration.
Stripping	Purgeable pollutants, e.g. hydrogen sulphide (H ₂ S), ammonia (NH ₃), some adsorbable organically bound halogens (AOX), hydrocarbons	The removal of purgeable pollutants from the aqueous phase by a gaseous phase (e.g. steam, nitrogen or air) that is passed through the liquid. They are subsequently recovered (e.g. by condensation) for further use or disposal. The removal efficiency may be enhanced by increasing the temperature or reducing the pressure.

6.4. Sorting techniques

Technique	Description
Air classification	Air classification (or air separation, or aeraulic separation) is a process of approximate sizing of dry mixtures of different particle sizes into groups or grades at cut points ranging from 10 mesh to sub-mesh sizes. Air classifiers (also called windsifters) complement screens in applications requiring cut points below commercial screen sizes, and supplement sieves and screens for coarser cuts where the special advantages of air classification warrant it.
All-metal separator	Metals (ferrous and non-ferrous) are sorted by means of a detection coil, in which the magnetic field is influenced by metal particles, linked to a processor that controls the air jet for ejecting the materials that have been detected.
Electromagnetic separation of non-ferrous metals	Non-ferrous metals are sorted by means of eddy current separators. An eddy current is induced by a series of rare earth magnetic or ceramic rotors at the head of a conveyor that spins at high speed independently of the conveyor. This process induces temporary magnetic forces in non-magnetic metals of the same polarity as the rotor, causing the metals to be repelled away and then separated from the other feedstock.

Technique	Description
Manual separation	Material is manually separated by means of visual examination by staff on a picking line or on the floor, either to selectively remove a target material from a general waste stream or to remove contamination from an output stream to increase purity. This technique generally targets recyclables (glass, plastic, etc.) and any contaminants, hazardous materials and oversized materials such as WEEE.
Magnetic separation	Ferrous metals are sorted by means of a magnet which attracts ferrous metal materials. This can be carried out, for example, by an overband magnetic separator or a magnetic drum.
Near-infrared spectroscopy (NIRS)	Materials are sorted by means of a near-infrared sensor which scans the whole width of the belt conveyor and transmits the characteristic spectra of the different materials to a data processor which controls an air jet for ejecting the materials that have been detected. Generally NIRS is not suitable for sorting black materials.
Sink-float tanks	Solid materials are separated into two flows by exploiting the different material densities.
Size separation	Materials are sorted according to their particle size. This can be carried out by drum screens, linear and circular oscillating screens, flip-flop screens, flat screens, tumbler screens and moving grates.
Vibration table	Materials are separated according to their density and size, moving (in slurry in the case of wet tables or wet density separators) across an inclined table, which oscillates backwards and forwards.
X-ray systems	Material composites are sorted according to various material densities, halogen components, or organic components, with the aid of X-rays. The characteristics of the different materials are transmitted to a data processor which controls an air jet for ejecting the materials that have been detected.

6.5. Management techniques

Accident management plan	The accident management plan is part of the EMS (see BAT 1) and identifies hazards posed by the plant and the associated risks and defines measures to address these risks. It considers the inventory of pollutants present or likely to be present which could have environmental consequences if they escape.
Residues management plan	A residues management plan is part of the EMS (see BAT 1) and is a set of measures aiming to (1) minimise the generation of residues arising from the treatment of waste; (2) optimise the reuse, regeneration, recycling and/or recovery of energy of the residues, and (3) ensure the proper disposal of residues.

Containment systems for the prevention of pollution

Secondary, tertiary and other measures for industrial and commercial premises





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Where we are

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Containment systems for the prevention of pollution

*Secondary, tertiary and other measures
for industrial and commercial premises*

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Summary

This guidance has been developed to assist owners and operators of industrial and commercial facilities storing substances (inventories) that may be hazardous to the environment.

It provides guidance on identifying the hazards, assessing the risks and mitigating the potential consequences of a failure of the primary storage facility and/or the combustion of its contents. A three-tier risk assessment methodology is introduced with recommendations for different 'classes' of construction for each.

It is applicable to the containment of a wide range of inventories and to all sizes of site from small commercial premises with a single storage tank, through to large chemical or petrochemical sites. It also applies to warehouses storing hazardous inventories.

Guidance is provided on the design, and construction of new secondary containment systems and also the inspection, maintenance, repair, extension and upgrading of existing installations.

Containment systems for the prevention of pollution. Secondary, tertiary and other measures for industrial and commercial premises

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Foreword

The original CIRIA R164 *Design of containment systems for the prevention of water pollution from industrial incidents* (Mason *et al*, 1997) was written primarily for new construction. However, many of the principles have been applied to good effect on existing sites.

The guide has been revised and updated to reflect changes in legislation, construction design and practice and lessons learned from recent incidents (particularly Buncefield), near misses and inspections. Analysis of this and other incidents identifies several causes, future occurrences of which can be avoided by following the guidance in this document.

In updating the guide, it became clear that the inspection, maintenance, repair, extension or upgrading of containment systems (particularly in cases of change of use) represents a large proportion of the work currently being undertaken. The revision therefore includes a new section covering these issues, such as actions to take on existing facilities, to ensure they continue to perform satisfactorily.

The revised guide also differs from the original by excluding the model design calculations and placing greater emphasis on the need for structures to be professionally designed and constructed.

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Project steering group (PSG)

Following CIRIA's usual practice, the work was guided by a project steering group (PSG) comprising:

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Peter Davidson	UK Petroleum Industry Association
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Why you should read this guide

Following the good practice in this guide will help you minimise the pollution risks associated with your operations. However, it will also help with the management of risks and opportunities at corporate level that might include:

✓ **Penalties, liabilities and reputational issues**

Ineffective containment of pollutants can result not only in environmental harm but can also have a severe effect on the company concerned. In the past, fines imposed for pollution offences were trivial compared with the cost of installing protective measures. However fines have been increased significantly and in July 2010 five companies were fined a total of £9.5m for their part in the Buncefield catastrophe, a disaster that it is estimated had a total cost exceeding £1 billion.

✓ **Corporate governance**

Corporate governance demands that asset owners understand the value of their portfolio, including future maintenance and risks to operation. This is clearly applicable to the containment systems covered in this guidance.

✓ **Corporate social responsibility (CSR)**

While companies regard legal compliance as a major priority, leading organisations are now striving to improve their reputational image and are becoming more open in the publication of information relating to their environmental performance.

Lessons learned from past incidents and near misses have illustrated that many of the preventative measures are relatively straightforward to implement as illustrated on the following pages.

Lessons learned from incidents

This publication provides guidance on the measures that site operators can take to minimise the risk of pollution from leaking or burning substances stored on site. Many of these measures are relatively straightforward in terms of how sites are designed, operated and maintained. The examples from two key references shown in the following box illustrate some of the consequences that have arisen from not incorporating these measures.

Major accident to the environment (MATTE): UK case studies of incidents and near misses 1999–2010 (HSL, 2012)

- 1 Serious environmental harm is most frequently associated with release of liquids to ground and water, as opposed to aerial dispersion of pollutants.
- 2 There is a need to consider ... the quantities of firewater that are likely to be produced throughout the incident (not just first response), the rate at which runoff will be generated and how this will be successfully managed and retained.
- 3 Loss of liquid material to the environment via hitherto unknown pathways, or because of the availability of pathways due to a lack of impermeable barriers, was common to a number of cases:
 - a failings in oversight were underlying factors ... typically a failure to foresee and plan accordingly
 - b failure to adequately manage ageing plant continues to be highlighted as a significant underlying causal factor.

Buncefield: Why did it happen? The underlying causes of the explosion and fire at the Buncefield oil storage depot, Hemel Hempstead, Hertfordshire on 11 December 2005 (HSE, 2011)

- 1 The bunding at Buncefield had many flaws, which caused large volumes of fuel, foam and firefighting water to leak out of the bunds. Bunds were not impermeable and not fire resistant. The bunding was unable to handle the large volumes of firewater involved in the incident.
- 2 Generally, the concrete performed well in resisting the burning fuels but the bunds failed badly at the joints and walls where pipes penetrated them.
- 3 One of the bunds at Buncefield contained metal waterstops within joints. Even though this bund was exposed to a bund pool fire and tank fires, the joints performed well and did not leak significantly.
- 4 Other bunds had plastic waterstops with metal plates over the inside face of the joint. These joints also maintained their integrity as the plastic waterstop and other joint material was protected from thermal impact by the metal cover plate.
- 5 Three bunds performed particularly badly. The joints (floor and wall joints) did not contain waterstops. During the fire the sealant and other joint materials (which were not fire resistant) were badly damaged. Many of the joints leaked allowing fuel, foam and firewater to flow onto the site roadways.
- 6 One bund was constructed with tie bars penetrating through the bund and although they were plugged and grouted, they were unable to resist the impact of the fire. Holes opened up, which were further pathways for leakage of fuel, foam and firewater from the bund.
- 7 Many of the bunds had pipes penetrating through walls and floors, and failures at these points meant the bunds could no longer retain liquids. Broadly, there were three ways loss of integrity occurred:
 - i catastrophic failure of the walls at pipe penetrations, likely due to thermal expansion of the pipework
 - ii some of the product pipes leading from the tanks ruptured and leaked so that there was an escape of fuel via damaged pipes through the walls and out of pipes in unbunded areas
 - iii loss of seal between pipes and walls.
- 8 There was virtually no tertiary containment in place. Containment systems outside the bunding amounted only to the site's drainage systems, designed for rainwater and minor spills and losses of product, which would flow to interceptors and the site's effluent treatment plant. The drainage was not designed for any large-scale releases from bunds, such as those that occurred. Specific flaws included:
 - there was no kerbing or boundary wall/mound to keep liquids on site and direct them into drainage systems. Once released, liquids could flow anywhere
 - the capacity of the drains and the lagoon was too small
 - some of the drains were 'perforated' so that a 'back-up' of liquids would cause their release through underground perforations
 - the liner of the firewater lagoon was susceptible to fire damage and to damage from debris from the explosion
 - one lagoon was intended as a firewater supply, but was rendered useless as it received fuel draining from the site. It flooded the fire system pump house when it overflowed
 - there was a dependence on pumping liquids, which as a process is vulnerable to, for example:
 - inadequate pumping capacity
 - failure of pumps on loss of power
 - inability to use pumps following release of flammable vapour
 - some areas of unmade ground were not protected from liquids and one such area of the site included a soakaway
 - the effluent treatment plant included soakaways that were not identified in the safety reports or emergency plans.


Collectively these flaws allowed large volumes of fuel, foam and firewater to leave the site.

More information on the Buncefield incident can be found at: www.buncefieldinvestigation.gov.uk

Overview of this guidance

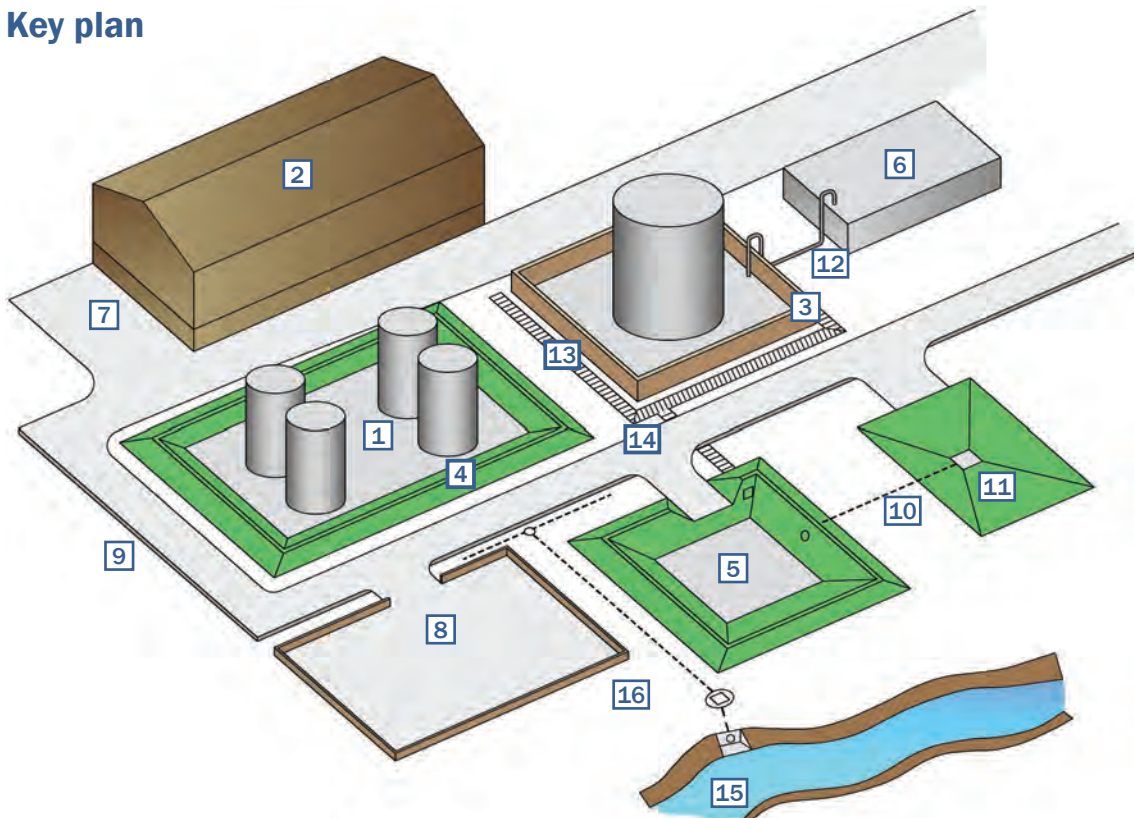
The guidance is divided into 12 chapters and grouped into three parts, summarised here:

Part	Chapter	Contents
1	1	Introduction
	2	Risk assessment and classification* of secondary and tertiary containment systems
	3	Containment options
	4	Containment system capacity
2	5	Existing installations
3	6	Introduction to bunds
	7	<i>In situ</i> reinforced concrete and masonry bunds
	8	Earth banked containment basins (lagoons), earth bunds and earth floors
	9	Containment tanks
	10	Transfer systems
	11	Sacrificial areas and temporary containment
	12	Repair and upgrading of existing containment facilities

* Note that the key recommendations contained in the guidance with respect to the 'class' of containment are indicated in the margin with the key icon: 

The **key plan** and accompanying text provides a summary of the contents of each chapter and gives examples of the scope of each chapter with reference to particular elements of an idealised facility. It is intended to be used as an aid to the reader in navigating the guidance.

Key plan



Key plan notes

Chapter 1: Introduction

The introduction sets out the scope of the guidance, provides an overview of the fundamental principles upon which it is based and includes a high-level summary of related guidance and legislation.

Chapter 2: Risk assessment and classification

At the core of the guidance is a risk assessment and classification methodology that determines the 'class' of containment required, ie class 1, 2 or 3. The class then determines the design and specification requirements for the secondary containment system.

Chapter 3: Containment options

This chapter defines primary, secondary and tertiary containment and a number of system types – local, remote and combined.

Examples:

- tanks, vessels and associated pipework [1] provide the primary containment. The primary containment may also be located within a warehouse [2]
- secondary containment can be provided by bunds constructed from reinforced concrete [3] or earth [4], by lagoons [5] or by tanks [6]. Warehouse walls can also be designed to provide secondary containment [7]
- tertiary containment can be provided by a number of means including lagoons [5], sacrificial areas such as car parks [8] and providing storage on the surface of roadways using containment kerbs [9]
- local containment is provided locally to the primary containment normally using a bund [4] [5]
- remote containment is provided away from the primary containment using, for example, a lagoon [5] or tank [6]. Transferring spilled inventory to the remote containment can be via a gravity drain [10] (as shown by the example of a loading bay [11]) or pumped
- combined containment uses both local containment and remote containment. The example shows a local containment (a bund [3]) with additional remote containment (a tank [6]) connected via a pumping main [12].

Chapter 4: System capacity

This chapter describes the process for determining the secondary and site-wide capacity of containment systems based on a combination of the inventory, an allowance for accumulated rainfall and, where appropriate, firefighting and/or cooling water.

Examples:

- secondary containment capacity requirement differs depending if a single tank in a bund [3] or multiple tanks in a bund [4]
- total site-wide capacity is a combination of all the containment capacity including bunds [3] [4], lagoons [5], tanks [6] and other sacrificial and temporary storage areas [8] [9].

Chapter 5: Assessment of existing installations

This guidance recommends that an operator is able to demonstrate that the 'class' of the installation is appropriate to the use to which it is being put. This part of the document provides advice on the classification, inspection, maintenance and modification of existing installations.

Chapter 6: Introduction to bunds

This chapter defines 'bunds' and for each class of containment provides a performance specification and recommendations and guidance on their design and construction.

Example:

- bunds include those constructed in concrete [3] and as earth embankments [4].

Chapter 7: In situ reinforced concrete and blockwork bunds

In situ built reinforced concrete and blockwork walls [3] are probably the most common form of bund construction. This chapter provides advice on the design and specification of this form of construction appropriate to each class of containment with emphasis is on the formation of joints and detailing of pipe penetrations where these cannot be avoided.

Chapter 8: Earth banked containment basins (lagoons) and earth bunds

Where the site topography and the ground and soil conditions are suitable, earth embankments can provide a cost effective means of providing both local secondary containment (earth bunds [4]) and remote secondary containment basins (lagoons [5]).

This chapter provides advice on assessing the suitability of a site, a performance specification and recommendations and guidance on their design and construction appropriate to the class of containment.

Chapter 9: Secondary containment tanks

Secondary containment tanks [6] usually form part of a remote containment system with, depending on the site topography, either a gravity or pumped [4] connection from a sump local to the primary containment, or from a local secondary containment system. The chapter discusses the factors that should be considered in specifying a secondary containment tank and reviews a number of tank types.

Chapter 10: Transfer systems

Transfer systems are the means for collecting and conveying spillage and contaminated water from the primary containment to a remote secondary and/or tertiary containment facility. The transfer system comprises the catchment area local to the primary containment and the conveyance system (pipes networks, culverts, open channels, pumps and pumping mains and even site roads) discharging to the remote secondary containment.

The chapter provides the performance requirements that components of a transfer system should meet to satisfy the overall system classification.

Examples:

- gravity system [10] draining a loading bay (catchment area) [4] to a remote secondary lagoon
- channel drainage [13] draining inventory overtopping (or due to failure of) failure secondary local containment [3] to a lagoon [5] providing (in this example) tertiary containment
- tertiary containment provided by pumping [12] inventory from secondary containment [3] to a tank [6]
- road [14] with high containment kerbs [9] draining inventory overtopping (or due to failure of) secondary containment [3] [4] [7] to a lagoon [5] or sacrificial storage area [8] providing tertiary containment
- during an incident, runoff from drained areas [14] must be prevented from reaching the outfall to river [15] via the surface water drainage system [16] by closing a pollution control valve [17].

Chapter 11: Sacrificial areas and temporary containment

The sacrificial areas are designed to soak up the contaminants by containing the spill within a depth of permeable soil or porous media. The method relies on interception of spills at the source and conveying the contaminated runoff to a remote area. Sites that may be designated for this purpose include car parks, landscaped areas, sports fields etc.

Temporary containment areas provide preventative measures for dealing with exceptional events that cannot be dealt with by the permanent facility and may form part of a site's emergency response procedures.

This chapter provides advice on the design of sacrificial areas and temporary containment.

Examples:

- spills drained by the roadway [16] to a sacrificial area provided by a car park [16]
- roadway [16] with high containment kerb [16] provides temporary storage. Spills prevent from reaching the river [16] via the surface water drainage system [16] by a pollution control valve [16].

Chapter 12: Repair and upgrading of existing installations

This chapter will provide advice on the repair and upgrading of existing installations with reference to other chapters in Part 3 as appropriate. Upgrading of an existing installation may be required following an assessment described by Chapter 5.

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Glossary

Absorption	A process in which one substance, usually a liquid or gas, permeates into, or is dissolved by, a liquid or solid.
Acid	A chemical substance that, in an aqueous solution, undergoes dissociation with the formation of hydrogen ions. An acidic solution has a pH below 7.0.
Alkali	A chemical substance that, in an aqueous solution, undergoes dissociation with the formation of hydroxide ions. An alkali solution has a pH of greater 7.0.
Annual exceedance probability	The probability of a flood event occurring in any year. The probability is expressed as a percentage. For example, a large flood, which may be calculated to have a one per cent chance to occur in any one year, is described as one per cent AEP.
Aquiclude	A saturated geologic unit that is incapable of transmitting significant quantities of water under ordinary hydraulic gradients.
As low as reasonably practicable (ALARP)	In the UK, a process of weighing a health, safety or environmental risk against the trouble, time and money needed to control the risk. It describes the level to which risks should be controlled. Practically, it calls for the same set of tests to be applied as with SFAIRP, however, the terms are not always interchangeable because of how the terms are cited in the relevant legislation (based on HSE ALARP 'at a glance', see <i>Useful websites</i> section).
Baseline survey	A study that looks at the characteristics of the subject at a particular time or under a particular set of conditions to establish a 'baseline'.
Benchmarking	Evaluate (something) by comparison with a standard.
Bioaccumulation	Accumulation of substances, such as pesticides, or other organic chemicals in an organism. Bioaccumulation occurs when an organism absorbs a toxic substance at a rate greater than that at which the substance is lost.
Biodegradation	The chemical dissolution of materials by bacteria or other biological means.
Biomagnification	The increase in concentration of a substance that occurs in a food chain as a consequence of persistence (cannot be broken down by environmental processes), accumulation through the food chain or the low (or non-existent) rate of internal degradation/excretion of the substance.
Biochemical oxygen demand	The amount of dissolved oxygen needed by aerobic biological organisms in a body of water to break down organic material present in a given water sample at certain temperature over a specific time period.
Borehole	The generalised term for any narrow shaft bored in the ground, either vertically or horizontally.
Bund	A facility (including walls and a base) built around an area where potentially polluting materials are handled, processed or stored. This is for the purposes of containing any unintended escape of material from that area until such time as remedial action can be taken. Bunds are usually structurally independent from the primary containment tank.
Characteristic value	Soil properties vary spatially. In the absence of a detailed soils investigation EC7 adopts the concept of a characteristic value, ie "a cautious estimate of the value", which is used for geotechnical design.
Combined sewer	A sewer that accepts both foul and surface water drainage.

Combustible	A substance that ignites and burns readily.
Competent authority	Body or bodies responsible for enforcing health, safety and environmental legislation.
Competent person/ personnel	A person who is appropriately qualified, trained and experienced for the task involved. They should also be authorised to undertake the task, for example, issued with the necessary permit to work.
Construction joints (in concrete)	A joint in concrete construction formed when placement of the concrete is interrupted for some reason. It may be the end of a day's work, or it may be that some other work needs to be completed before resuming the placement. Results in a 'surface' between freshly placed and (partly) cured concrete.
Contraction or shrinkage joints (in concrete)	Allows only for contraction or shrinkage of a slab or wall, as can be anticipated during the curing process.
Cost-benefit analysis	A defined methodology for valuing costs and benefits that enables consistent and transparent comparisons to be made between risk reduction measures to support the decision making process.
Cover-meter survey	A survey to locate reinforcement in a concrete structure and measure the depth to the reinforcement from the concrete surface.
Crack control joints	A partially-formed contraction joint, which aims to ensure that when the concrete does crack, it cracks in a predictable manner at a precise location.
Daywork joints	See <i>Construction joints</i> .
De-bonded dowels	Sleeved dowel bars placed in a movement joint to permit movement with adjacent bay without inducing stress in the structure.
Desiccation	The state of extreme dryness, or the process of extreme drying.
Design life	The time period over which a product or structure is expected to be in service and continue to function effectively.
Differential settlement	The unequal settling of a building or structures foundation (normally due to uneven settlement of the ground).
Dowelled joint	Dowels placed across a joint. A movement to permit loads to be transferred across the joint and prevent differential settlement of adjacent slabs.
Duty holder	Persons with specific duties under a specific set of regulations.
Ecotoxicological	The effects of toxic chemicals on biological organisms.
Effluent	Liquid waste or sewage.
Emulsify	The mixing of two or more liquids that are normally immiscible (non-mixable or un-blendable).
Evaporation	Vaporisation of a liquid that occurs from the surface of a liquid into a gaseous phase.
Evapotranspiration	The sum of evaporation and plant transpiration to the atmosphere.
Event effluent	The combination of inventory and any firefighting water and/or foam and rainwater arising from an event.
Expansion joints (in concrete)	Allow expansion and contraction of a concrete slab or wall without generating potentially damaging forces within the slab itself or the surrounding structures. Expansion joints are usually a complete 'gap' between adjacent bays, ie there is a definite break in the concrete and any reinforcing steel that may be present. Where adjacent bays are 'tied' together by means of dowel bars, these dowels are sleeved in one of the bays to allow expansion to take place without generating stresses within the slab.

Fire resistance	Intrinsic properties or added protection to resist the effects of fire (usually open flames, rather than high temperature alone).
Firefighting water	Water used to cool, extinguish or prevent the spread of fire during an incident. It is likely to become contaminated with product and firefighting foam as a consequence of its use in firefighting activities. Water that is used solely to cool storage tanks water sprays or deluge systems (often described as cooling water) is less likely to become contaminated with product.
Firefighting agents	Includes water-based firefighting agents such as foam. These agents are used to form an aqueous film over the inventory to prevent the escape of flammable vapours with the foam layer excluding oxygen and provides a cooling effect.
Flammable	A combustible substance (solid, liquid, gas or vapour), which is easily ignited in air. The term non-flammable refers to substances that are not easily ignited but does not necessarily indicate that they are non-combustible.
Foul drainage	Drainage system that conveys domestic sewerage.
Freeboard	An allowance in the form of increased height of a containment wall for additional capacity over and above the minimum design requirement.
Gap analysis	Determining and documenting the variance between a particular standard or requirement and the current status (see <i>Benchmarking</i> and <i>Baseline survey</i>).
Geomembrane	Typically a plastic sheet, designed for use in civil engineering/construction to prevent the movement of water or other fluids.
Geotextile	A thin sheet designed for use in civil engineering/construction to add strength or cohesion and/or maintain separation within constructed earthworks.
Good practice	In the context of this guidance the generic term for those standards for controlling risk which have been judged and recognised as satisfying the law.
Groundwater	The water beneath the earth's surface contained in soil pore spaces and in the fractures of rock formations.
Groundwater body	The principal reporting units for distinct volumes of groundwater within an aquifer or aquifers defined by the Water Framework Directive.
Gullies	In the context of this guidance a small chamber used to collecting runoff from a drained surface.
Hardstanding	Ground surfaced with a hard material for parking vehicles or storing materials.
Health and Safety Executive	UK government sponsored body responsible for implementing health and safety legislation at most installations subject to the requirements of this guidance.
Heave	Swelling of the sub-soils due to removal of overburden, increases in the water content of the soil or due to frost action.
Hydromorphology	The physical character of rivers shaped by the movement of water through the catchment.
Hypochlorite	An ion composed of chlorine and oxygen. Their primary applications are as bleaching, disinfection and water treatment agents but are also used for chlorination and oxidation reactions.
Ignition protected	An electrical component that is capable of operating in an explosive environment without igniting that environment.
Immiscible	Not capable of being mixed.
Interceptor	A device installed normally in a surface water drainage system to remove hydrocarbons and fats, and from runoff.

Inventory	In the context of this guide a generic term to describe the contents of the primary containment substances that may be flammable or hazardous to the environment.
ISO tanks	An ISO tank (or tank container) is a pressure vessel held within a 20-foot ISO frame that is used for the transportation and storage of bulk liquids. The 20-foot ISO frame ensures that tank containers can be transported using most modern inter-modal transportation options, including container ships, trucks and rail. A tank container built to the ISO standard making it suitable for different modes of transportation.
Kerb	Edge where a raised pavement meets an un-raised street or other roadway.
Kicker joints	A small upstand cast as part of a concrete base to allow the securing of wall shutters.
Lagoon	An excavated area able to retain liquids as a consequence of the excavated area being below the level of the surrounding area, rather than being retained within a raised area.
Leaching	The removal of soluble or other constituents from a substance by the action of a percolating liquid.
Limpet dam	A dam that affixes to a surface.
Liner	A designed, additional layer or layers that provide separation and liquid impermeability to a bunded area or structure.
Local containment	A form of secondary or tertiary containment designed to contain locally to the source, product or firewater from a loss of containment, eg a bund.
Major accident to the environment	Harm or damage to the environment above defined thresholds.
Maximum capacity	The maximum volume of liquid a storage tank can hold without loss of containment (from overflow or overflow), or damage to the tank structure (due to collision between an internal floating roof and other structures within the tank, or for some fluids, overstressing due to hydrostatic loading). This capacity is greater than the normal capacity and tank-rated capacity.
Multi-straked tanks	Tanks formed with precast or prestressed reinforced concrete wall panels restrained with an external hoop (post-tensioned). This is a common form of construction used to create slurry stores and filter beds at wastewater treatment works.
Non-destructive testing	Testing that does not require the destruction of the material/structure being tested (as opposed to destructive testing that does).
Normal capacity	Level to which a storage tank should be intentionally filled under routine process control. See <i>Maximum capacity</i> and <i>Tank-rated capacity</i> .
Organic compounds	Any member of a large class of gaseous, liquid, or solid chemical compounds whose molecules contain carbon.
Organochlorine solvents	An organic compound containing chlorine. Many derivatives are controversial because of the effects of these compounds on the environment and on human and animal health.
Overflow level	See <i>Maximum capacity</i> .
Overtopping	Flow of liquid over a structure within its path.
Penetration	Pipe or other duct or structure that passes through the wall or floor of a bunded or lined area.
Intumescent	A substance that swells as a result of heat exposure, increasing in volume and decreasing in density. Intumescent are typically used in passive fire protection.

Permeability	Measure of the movement of a fluid (liquid or gas) through a solid material applied to barriers (such as liners or bund walls) or bulk solids (such as soil). Typically measured in metres per second.
Pesticides	Substances used for preventing, destroying or mitigating any pest. They are a class of biocide, a chemical substance or microorganism that can deter, render harmless, or exert a controlling effect on any harmful organism by chemical or biological means.
pH	A measure of the acidity or alkalinity of a solution, numerically equal to 7 for neutral solutions, increasing with increasing alkalinity and decreasing with increasing acidity.
Photolysis	Chemical reaction in which a chemical compound is broken down by photons (light).
Primary containment	The most important means of preventing major incidents involving loss of inventory. It is achieved by the equipment that has direct contact with the inventory stored or transferred such as storage tanks, IBCs, drums, pipework, valves, pumps and associated management and control systems. It also includes equipment that prevents the loss of primary containment under abnormal conditions, such as high-level alarms linked to shut down systems.
Reinforcement	Commonly steel rods incorporated into concrete structures to enable them to withstand tensile and shear forces.
Remote containment	Form of secondary or tertiary containment that is distant from the area of the primary containment.
Risk	Product of likelihood and consequences of environmental impact, adverse human health, business interruption etc from a hazard. Also, may refer to a stated period of time.
Risk assessment	Process to determine the level of risk posed by a hazard.
Runoff	Movement of liquid over the surface of land in accordance with the topography.
Secondary containment	Minimises the consequences of a failure of the primary storage by preventing the uncontrolled spread of the inventory. Secondary containment is achieved by equipment that is external to and structurally independent of the primary storage, for example concrete or earth bunds around storage tanks, or the walls of a warehouse storing drums. Secondary containment may also provide storage capacity for firefighting and cooling water.
Settlement	Consolidation of a soil that results in a decrease in soil volume.
Sewage effluent	Liquid sewerage.
Slumping	A segment of a cliff, slope or embankment moving down-slope along a saturated shear-plane.
So far as is reasonably practicable (SFAIRP)	In the UK, a process of weighing a health, safety or environmental risk against the trouble, time and money needed to control the risk. It describes the level to which risks should be controlled. Practically, it calls for the same set of tests to be applied as with ALARP, however, the terms are not always interchangeable because of how they are cited in the relevant legislation.
Soakaway	A chamber or other below ground structure that aids the infiltration of runoff into the ground.
Source-pathway-receptor assessment	Risk assessment methodology where impacts to the environment are assessed on whether there is a source (eg a released product), a receptor (eg groundwater), and a pathway (eg a drain leading to a river) by which the source material could reach the receptor. See <i>Risk assessment</i> .

palling	The process of surface failure in which spall (flakes of a material that are broken off a larger solid body by a variety of mechanisms including corrosion and weathering) is shed.
Strake/straked tank	A section of a cylindrical tank. In a straked tank, strakes may be joined by welding or sealed to adjacent strakes with or without additional circumferential tension hoops.
Shell	The cylindrical section of the tank or vessel formed by 1 or more 'strakes'
Stormwater drainage	Drainage system that conveys runoff resulting from rainfall.
Subsidence	The motion of a surface as it moves downward relative to a datum.
Tank rated capacity	Theoretical fill level in a storage tank that is far enough below the maximum capacity to allow time to respond to final warning alarms and still prevent loss of containment.
Tertiary containment	Minimises the consequences of a failure in the primary and secondary containment systems. This is done by providing an additional level of protection preventing the uncontrolled spread of the inventory such as site drainage and sumps, diversion tanks and lagoons, containment kerbing to roadways and parking areas and impervious liners and/or flexible booms. Tertiary containment will be used when there is an event that causes the escape of liquids from the secondary containment through failure or overflow (eg bund joint failure, or firewater overflowing from a bund or escaping from building/warehouse during a prolonged fire).
Trade effluent	Any liquid waste, other than surface water and domestic sewage that is discharged from premises being used for a business, trade or industry.
Underdrains	An underground drain or trench with openings through which the water may percolate from the soil or ground above.
Waterbars	Preformed strip of durable impermeable material that is wholly or partially embedded in concrete bund walls and floors during construction or remediation. The strip is located across joints in the structure to provide a permanent liquid-tight seal during the whole range of joint movements.
Waterstops	See <i>Waterbars</i> .

Abbreviations and acronyms

ALARP	As low as reasonably practicable
AMN	All measures necessary
BAT	Best available techniques
BOD	Biochemical oxygen demand
CA	Competent Authority
CBA	Cost-benefit analysis
FMEA	Failure, mode and effect analysis
FTA	Fault tree analysis
FWMA	Flood and Water Management Act 2010
GHS	Globally harmonised system
HAZOP	Hazard and operability studies
HSE	Health and Safety Executive
IBCs	Intermediate bulk containers
MATTE	Major accident to the environment
NGOs	Non-government organisations
PPG(s)	Pollution prevention guidelines
QSRMC	Quality Scheme for Ready Mix Concrete
SDS	Safety data sheet
SFAIRP	So far as is reasonably practicable
TifALARP	Tolerable if as low as reasonably practicable
WFD	Water Framework Directive
WwTW	Wastewater treatment works

1 Introduction

This chapter provides:

- An introduction to this guide, its scope, and the issues excluded from the scope (Sections 1.1 and 1.2)
- The regulatory context for the guidance (Sections 1.3 and 1.4)
- A number of other drivers for producing the guidance (Section 1.5)
- A brief summary of key regulations and existing guidance (Section 1.6)
- Information on risk assessments (Section 1.7)

1.1 OBJECTIVES

This guidance has been developed to assist owners and operators of industrial and commercial facilities to identify and manage the risks associated with storing substances that may be flammable/combustible or hazardous to the environment. Throughout the remainder of this guidance these are referred to as 'inventory' for brevity.

It is applicable to the containment of a wide range of inventories with the potential to pollute land and water and to all sizes of site from small commercial premises, which may contain a single tank, through to large chemical or petrochemical sites. Experience has shown that many incidents occur in warehouses and other storage facilities, which are also covered here.

It advocates a risk-based approach to managing the storage of inventory. However, it is important to ensure that the risk assessment methodology used is appropriate to the regulatory regime within which a site or facility is operating and there will be instances where there are statutory requirements for containment, which must be complied with irrespective of the risk (eg The Control of Pollution (Oil Storage) (England) Regulations (OSR) 2001).

Guidance is also provided on the inspection, maintenance, repair, extension or, in cases of change of use, upgrading of existing containment systems.

The guidance deals principally with managing the potential consequences of a failure of the storage tank or vessel (the primary containment) and/or the combustion of its contents. **Secondary** containment is provided to prevent:

- the inventory,
- firefighting agents, and
- rainfall runoff that has come into contact with the inventory

reaching the wider environment.

As will be discussed in Chapter 4, where flammable inventory is stored, it is often impractical to provide sufficient secondary containment local to the primary containment to cater for the firefighting and cooling water that might be applied during an incident. **Tertiary** containment provides a further level of protection should the secondary containment be overwhelmed by firefighting and cooling water, or fail.

Primary, secondary and tertiary containment are more fully described in Box 1.1.

Primary containment or storage is the most important means of preventing major incidents involving loss of inventory. It is achieved by the equipment used to store or transfer it such as storage tanks, intermediate bulk containers (IBCs), drums, pipework, valves, pumps and associated management and control systems. It also includes equipment that prevents the loss of primary containment under abnormal conditions, such as high-level alarms linked to shut-down systems. While this guide does not cover primary storage, a summary of other documents providing this is given in Chapter 9.

Secondary containment minimises the consequences of a failure of the primary storage by preventing the uncontrolled spread of the inventory. Secondary containment is achieved by equipment that is external to and structurally independent of the primary storage, for example concrete or earth bunds around storage tanks, or the walls of a warehouse storing drums. Secondary containment may also provide storage capacity for firefighting and cooling water. The options for providing secondary containment are discussed in Part 3 of this guidance.

Tertiary containment minimises the consequences of a failure in the primary and secondary containment systems by providing an additional level of protection preventing the uncontrolled spread of the inventory. These include purpose built structures such as diversion tanks and lagoons, but can also use other measures such as containment kerbing to roadways and parking areas and impervious liners and/or flexible booms. Tertiary containment will be used when there is an event that causes the escape of liquids from the secondary containment through failure or overflow (eg bund joint failure, or firewater overflowing from a bund or escaping from building/warehouse during a prolonged fire).

1.2 EXCLUSIONS

The following issues are not covered in this guide:

Issue	Commentary
Primary containment	<ul style="list-style-type: none"> ■ details of the management and maintenance of primary containment systems (although the need for good management practices and the role of protective and warning devices to prevent or detect spillages is included) ■ good practice guidance for the design, manufacture, installation, operation, inspection and maintenance of chemical storage tank systems can be found in Cassie and Seale (2003).
Types of installation	<ul style="list-style-type: none"> ■ underground storage tanks ■ buried/mounded tank/vessels ■ off-shore installations.
Off-site activities	<ul style="list-style-type: none"> ■ the transportation of materials off site by road, rail, sea or air ■ spills from pipelines between industrial premises.
Stored inventory	<ul style="list-style-type: none"> ■ above ground tanks/vessels for the storage of liquid petroleum gas (LPG), and liquefied natural gas(LNG) and other cryogenic substances etc ■ above ground tanks/vessels for the storage of natural gas ■ radioactive substances, hazardous biological organisms or chemicals used in small quantities such as in research laboratories ■ sewage and sewage effluents, farm wastes and related materials.
Source/cause of pollution	<ul style="list-style-type: none"> ■ gradual or continuing pollution, eg leaching from contaminated land ■ abandoned sites ■ pollution as a consequence of atmospheric emissions.
Post-incident clean-up	<ul style="list-style-type: none"> ■ the recovery, recycling or disposal of contaminated chemicals, wash waters, effluents, contaminated fire waters etc (unless this affects the containment system design/selection) ■ monitoring, clean-up or treatment after the occurrence of an incident.

1.3 REGULATORY CONTEXT

1.3.1 Range of sites

This guidance reflects current good practice for the design and maintenance of containment systems for the prevention of pollution. It is intended for use by site managers, design engineers, contractors, regulators and others. Following these guidelines will help businesses manage their environmental responsibilities to prevent pollution and comply with the law.

The guide covers a range of commercial and industry sectors. While most of the principles of this guide can be applied across these sectors, each sector will operate under a specific set of regulatory regimes (see Section 1.5 – some being risk-based and others setting absolute requirements. It is recognised that this guide will be used in a wide variety of applications, which include the hundreds of sites falling under the Control of Major Accident Hazards Regulations (COMAH) 1999, the thousands of sites falling under the Environmental Permitting (England and Wales) Regulations (EPR) 2010 and related regulatory regimes and the tens of thousands of other sites that exist across the UK. The guide does not specify regulatory practice such as the approach to inspection and/or the focus on particular sectors or sites.

Where current policies and guidance are already in place, and are either more or less onerous or differ from the guidance provided here, this publication should be seen as providing supplementary information, rather than additional requirements, on design, inspection and maintenance of containment measures.

1.3.2 Risk

A key feature of this guide is a risk assessment framework and a three-tier classification system, referred to as **classes**, upon which different standards of containment construction or levels of performance are required in accordance with the three levels of risk. This three-tier approach has been applied on many COMAH, EPR and equivalent regulated sites and other unregulated sites. It is acknowledged that other approaches are available and can be used, however the operator should be able to demonstrate an equivalent approach to that set out here.

1.3.3 Existing sites

The guide provides owners and operators of existing sites with ways of identifying and mitigating any pollution risk inherent in their installations and how the adequacy of any newly acquired site may be assessed. Any gaps between the recommendations presented here (or other specific codes etc agreed between regulators and industry) and the situation at a specific site should be dealt with in a manner that satisfies the relevant legal requirements (including risk and cost-benefit factors in deciding whether to upgrade).

The application of this guidance to existing facilities should be based on risk, and any upgrades completed to reduce risk sufficiently to satisfy the law and to be in accordance with guidance under the relevant legislative regime. Upgrades may be subject to as low as reasonably practicable (ALARP) and/or best available techniques (BAT) ‘tests’ and supporting cost-benefit analyses (CBA) depending on the legislative regime (COMAH, EPR etc). It is, however, recognised that the costs of upgrading existing facilities might outweigh the environmental benefits, and therefore not be viable, or that other equally effective risk reduction measures to those suggested in this guidance may be implemented. Guidance on how to make such decisions is available for differing legislative regimes and can also be clarified by discussion with the regulators.

With the exception of sites where changes in use or extensions are proposed, existing requirements in terms of frequency of inspections, risk assessment updates stipulated by current regulations (or agreed in previous industry regulator negotiations) are not expected to change. However, existing sites may need to improve their records and their inspection and risk assessments if they are not currently adopting good practice. It is not anticipated that regulators will significantly alter their inspection strategies as a direct result of this revision, however the guide will be referred to as providing good practice and may influence the content of future inspection campaigns.

1.4 OTHER DRIVERS

The earlier section *Why read this guide* introduced a number of drivers for ensuring good practice and the consequences on the organisation, which include:

- penalties, liabilities and reputational issues

- corporate governance
- corporate social responsibility (CSR).

These are each considered briefly in Sections 1.4.1 to 1.4.3.

1.4.1 Penalties, liabilities and reputation issues

Ineffective containment of pollutants can result not only in environmental harm but can also have a severe effect on the company concerned. In the past, fines imposed for pollution offences were trivial compared with the cost of installing protective measures. However fines have been increased significantly and in July 2010 five companies were fined a total of £9.5m for their part in the Buncefield catastrophe, a disaster that it is estimated had a total cost exceeding £1 billion.

Environmental legislation also empowers courts to imprison directors and managers of companies if pollution is proved to have resulted from their negligence. Several cases of imprisonment have been imposed for waste management offences (see Box 1.2) and this trend may spread into other areas of environmental management.

Box 1.2 *Examples of directors imprisoned for waste management offences*

Prison sentences handed out for leakage and dangerous storage of composting leachate, February 2014

Three directors of a South Wales company prosecuted – one received a 12 month prison sentence, 250 hours of unpaid work, five year ban from being a director; another received 32 week imprisonment, 150 hours unpaid work and three year ban director ban. The third received a 16 week prison sentence and a two year director ban. A financial investigation is under way. Clean up costs estimated at £1.6m so the company are likely to get a very large fine. In the past it had received a £35 000 fine for breaching permit conditions.

For more information go to:
<http://resource.co/business/article/wormtech-directors-sentenced-jail>
http://resource.co/article/Waste_Law/WormTech_closes_following_environment_permit_loss-2350

Custodial sentence and £330 000 penalty for illegal wood waste operations, January 2014

The company owner was sentenced at Sheffield Crown Court (7 January) over four charges relating to the operation of illegal wood waste facilities in Mansfield and Sheffield without an environmental permit.

The 49 year old was given a nine month custodial sentence, ordered to pay £250 000 in confiscation under the Proceeds of Crime Act 2002, ordered to pay £80 000 in investigation and costs, along with a £120 victim surcharge.

For more information go to: www.ciwm-journal.co.uk/archives/5596

Websites accessed 29 May 2014

In addition to prosecution for criminal acts, there is an increasing trend for companies, individuals and the statutory authorities to use civil proceedings for the recovery of costs incurred in cleaning up after pollution incidents. These costs can be extremely high, particularly in cases where the clean-up of contaminated land or groundwater is involved.

It is difficult to assess all the liabilities and resulting financial implications arising from the contamination caused by loss of containment. The widely reported case of Cambridge Water Company versus Eastern Counties Leather (BAILII, 1993) in which spillages of a chlorinated solvent migrated into an aquifer, and then to a borehole used for potable water supply, had a profound effect on the insurance industry.

Given the uncertainties, it may be difficult, or perhaps impossible to obtain insurance cover for all the potential liabilities, in particular for fines and authority investigation costs. Provisional statistics compiled by the HSE indicate that the average fine per conviction resulting from enforcement actions over the 2012/2013 fiscal year was circa £29 000 for the manufacturing sector. Insurance premiums are likely to rise for companies that cause major or highly publicised incidents. One way that companies can protect themselves against future liabilities is by providing high integrity containment systems for materials known to endanger the environment. The rate of increase in premiums may be lower for those with good facilities and management systems.

1.4.2 Corporate governance

Corporate governance demands that asset owners are aware of the value of their portfolio, including future maintenance liabilities and risks to operation. This is clearly applicable to the containment systems covered in this guidance.

Hooper *et al* (2009) provide advice on asset management.

1.4.3 Corporate social responsibility

While companies regard legal compliance as a major priority, leading organisations are acutely aware of their reputational image and are becoming more open to the publication of information relating to their environmental performance.

Corporate responsibility or corporate social responsibility (CSR) has become a part of business risk management. Historically, businesses have had to address some of their key risks such as their health, safety and environmental issues through legislative drivers. Failure to comply results in fines and poor press coverage can have a direct impact on the financial performance and future of the business.

Increasingly, poor performance in these areas has been deemed unacceptable and most organisations now recognise the financial, reputational and business continuity risks of not being in control of their health, safety and environmental activities. This has resulted in businesses taking greater responsibility in identifying, managing and mitigating their health, safety and environmental risks. They now are reporting regularly to risk management committees, audit committees and their company Board and presenting key data in annual financial reports and accounts for shareholder evaluation.

As the business environment has evolved, so have the risk profiles, challenges and pressures faced by business. Stakeholders in particular (including investors, staff, non-government organisations (NGOs), local communities, suppliers, the media and customers) are demanding good corporate conduct that includes but also extends beyond health, safety and environmental compliance to address other business impacts such as social and ethical matters. Corporate responsibility has arisen from the pressure for business to be responsible and to be held accountable for its wider impacts such as:

- pollution prevention
- supply chain
- human rights
- bribery and corruption
- biodiversity
- workplace diversity
- ethics.

1.5 UK AND EU LEGISLATION, INTERNATIONAL GUIDANCE AND PUBLICATIONS RELEVANT TO CONTAINMENT

1.5.1 Introduction

Details of the legislative framework and guidance relevant to containment within the UK are presented in Appendix A1 (see Tables A1.1 and Table A1.2).

In the UK various government agencies enforce UK regulations relevant to containment and pollution prevention, these include:

- Environment Agency (EA) for England
- Natural Resources Wales/Cyfoeth Naturiol Cymru (NRW) for Wales
- Environment and Heritage Service (EHS) for Northern Ireland

- Scottish Environment Protection Agency (SEPA) for Scotland
- Competent Authority (CA) for COMAH sites
- Health and Safety Executive (HSE).

Those UK organisations generally responsible for environmental regulation, ie the EA, NRW, EHS and SEPA, are collectively referred to as the ‘regulator’ throughout this guide.

In the UK business owners are responsible for checking the legal requirements that apply to their business activities. Online business advice and support, which help identify regulations that are applicable to various types of business or activities are provided on regulators'/government websites:

- For England and Wales: www.environment-agency.gov.uk/business/default.aspx
- For Northern Ireland and Scotland: www.netregs.gov.uk

In addition, there is much good advice contained in the series of pollution prevention guidelines (PPGs) published jointly by the EA, NIEA and SEPA at (see *Websites* box at the end of the chapter).

Many sites will be covered by regulations whose focus is considerably wider than water and ground pollution. This may include air pollution and risk to humans. A brief summary of the key regulations are set out below, with reference to Appendix A1 for further details.

1.5.2 Control of Major Accident Hazards Regulations (COMAH)

COMAH implement the Seveso II Directive (Council Directive 96/82/EC), except for land use planning requirements, which are implemented by changes to planning legislation. Their main aim is to prevent and mitigate the effects of those major accidents involving dangerous substances that can cause serious damage/harm to people and/or the environment. COMAH regard risks to the environment as serious as those to people.

COMAH apply mainly to the chemical and petrochemical industries. Other businesses to which they apply include those storing fuels or alcoholic spirits, having large warehouses or distribution facilities, or manufacturing and storing explosives. They apply where threshold quantities of dangerous substances identified in the regulations are kept or used. There are two thresholds known as COMAH lower tier and top tier. To determine whether these Regulations apply, it is necessary to determine if there are sufficient dangerous substances to exceed the lower threshold quantities defined in the regulations.

The regulations are enforced by a COMAH Competent Authority (CA) comprising HSE and the EA in England, HSE and NRW in Wales, and HSE and SEPA in Scotland. Operators will generally receive a single response from the CA on all matters to do with COMAH.

COMAH ensure that businesses and duty holders:

- take all measures necessary (AMN) to prevent major accidents involving dangerous substances
- limit the consequences to people and the environment of any major accidents that do occur.

AMN have to be in place so far as is reasonably practicable (SFAIRP) to prevent environmental harm and in particular a major accident to the environment (MATTE). AMN are interpreted to require use of good practice for pollution prevention and the CA considers these to be in place when the risks are demonstrated to be either ‘broadly acceptable’ or ALARP. As this is an important concept, the HSE’s definition of ALARP is repeated here verbatim:

“ALARP, ‘as low as reasonably practicable’, enables the regulator to set goals for duty-holders, rather than being prescriptive. This flexibility is a great advantage but it has its drawbacks too. Deciding whether a risk is ALARP can be challenging because it requires operators and regulators to exercise judgement. In essence, making sure a risk has been reduced ALARP is about weighing the risk against the sacrifice needed to further reduce it. The decision is weighted in favour of safety because the presumption is that the duty-holder should implement the risk reduction measure. To avoid having to make this sacrifice, the duty-holder must be

able to show that it would be grossly disproportionate to the benefits of risk reduction that would be achieved. Thus, the process is not one of balancing the costs and benefits of measures but, rather, of adopting measures except where they are ruled out because they involve grossly disproportionate sacrifices.”

The HSE provides a suite of ALARP related documents on their website (see *Websites* box).

Further guidance on the CA's position on AMN relating to prevention and mitigation of environmental aspects of major accidents can be found in HSE (2012 and on MATTE in CDOIF (2011).

Note

It is anticipated that the Seveso II Directive (Council Directive 96/82/EC) will be replaced in 2015 by the Seveso III Directive (Directive 2012/18/EU). It is understood that the major change will be the use of the globally harmonised system (GHS) for classification of chemicals to determine whether they are within the scope of the Directive. When the new Directive is implemented, there is the potential for sites to change their COMAH status (top tier, lower tier or non-COMAH), depending on the substances and quantities held.

1.5.3 EPR (England and Wales) 2010, PPC (Northern Ireland) 2003 and PPC (Scotland) 2012

The Environment Permitting Regulations (England and Wales) (EPR) 2010, the Pollution Prevention and Control Regulations (Northern Ireland) (PPC) 2003 and the Pollution Prevention and Control (Scotland) Regulations (PPC) 2012 implement Industrial Emissions Directive (IED) (Council Directive 2010/75/EU). These require installations to be operated in a way that provides a high level of protection to the environment as a whole and, in particular, soil and groundwater.

It is the primary operating environmental permit regime in use in the UK for which core guidance is given in Defra (2013).

It is an offence to discharge without authorisation, or exceed the conditions stated on an environmental permit. In particular, Schedule 38 of the EPR 2010 makes it an offence to cause or knowingly permit a 'water discharge activity' or 'groundwater activity' unless authorised by an environmental permit. Similar regulation applies in Scotland and Northern Ireland.

The definitions of a 'water discharge activity' and 'groundwater activity' are set out in Boxes 1.2 and 1.3. In Scotland the regulations are broader and, in respect of discharges, apply to activities likely to cause pollution of the water environment and any other activity that directly or indirectly has or is likely to have a significant adverse effect on the water environment.

Box 1.2 Definition of a water discharge activity (from EPR, 2010)

Schedule 21 (3)

A "water discharge activity" means any of the following—

- (a) the discharge or entry to inland freshwaters, coastal waters or relevant territorial waters of any
 - (i) poisonous, noxious or polluting matter,
 - (ii) waste matter, or
 - (iii) trade effluent or sewage effluent;
- (b) the discharge from land through a pipe into the sea outside the seaward limits of relevant territorial waters of any trade effluent or sewage effluent;
- (c) the removal from any part of the bottom, channel or bed of any inland freshwaters of a deposit accumulated by reason of any dam, weir or sluice holding back the waters, by causing it to be carried away in suspension in the waters, unless the activity is carried on in the exercise of a power conferred by or under any enactment relating to land drainage, flood prevention or navigation;
- (d) the cutting or uprooting of a substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them and failure to take reasonable steps to remove the vegetation from these waters;
- (e) an activity in respect of which a notice under paragraph 4 or 5 has been served and has taken effect.

Schedule 22 (3)

A “groundwater activity” means any of the following—

- (a) the discharge of a pollutant that results in the direct input of that pollutant to groundwater;
- (b) the discharge of a pollutant in circumstances that might lead to an indirect input of that pollutant to groundwater;
- (c) any other discharge that might lead to the direct or indirect input of a pollutant to groundwater;
- (d) an activity in respect of which a notice under paragraph 10 has been served and has taken effect;
- (e) an activity that might lead to a discharge mentioned in paragraph (a), (b) or (c), where that activity is carried on as part of the operation of a regulated facility of another class

A discharge or an activity that might lead to a discharge is not a “groundwater activity” if the discharge is—

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

The regulator may determine that a discharge, or an activity that might lead to a discharge, is not a groundwater activity if the input of the pollutant-

- (a) is the consequence of an accident or exceptional circumstances of natural cause that could not reasonably have been foreseen, avoided or mitigated;
- (b) is or would be of a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater; or
- (c) is or would be incapable, for technical reasons, of being prevented or limited without using—
 - (i) measures that would increase risks to human health or to the quality of the environment as a whole, or
 - (ii) disproportionately costly measures to remove quantities of pollutants from, or otherwise control their percolation in, contaminated ground or subsoil.

Note

The EPR require operators of installations to use best available technique (BAT). Where such installations covered in Schedule 1 have bulk storage of hazardous materials, guidance on what represents BAT is given in the BREF document for emission storage (European Commission, 2006).

BAT takes into account the balance between the costs and environmental benefits and in a similar manner to AMN under COMAH, are interpreted to require use of ‘good practice’ for pollution prevention. Further guidance on BAT in relation to particular industry sectors can be found on the EA’s website (see *Websites* box).

1.5.4 The Control of Pollution (Oil Storage) (England) Regulations (OSR) 2001

The Oil Storage Regulations (OSR) apply where more than 200 litres of oil is to be stored. With the exception of those situations set out in paragraph 2.(2) of the Regulations, secure containment facilities must be provided for tanks, drums, IBCs and mobile bowsers to prevent oil escaping into the environment.

It should be noted that there are differing requirements for each UK country and reference should be made to the primary legislation and to Appendix A1.

1.5.5 The European Water Framework Directive (WFD)

The European Water Framework Directive (WFD) (Directive 2000/60/EC) was transposed into UK law in December 2003 and requires that all inland (including groundwater bodies) and coastal waters achieve at least ‘good’ status. The status of a water body is essentially determined from its biological, hydromorphological and physio-chemical properties. The WFD has established river basin districts for which river basin management plans have been developed by the CA that detail the actions (a programme of measures) required to meet these objectives.

Any activities, such as new development that potentially could lead to deterioration in the status of a waterbody, or would render proposed improvement measures ineffective, would be contrary to the Directive. Details of the WFD classification assessment can be found on the EA’s website (see *Websites* box).

1.5.6 Other legislation and guidance

Flood and Water Management Act 2010

The largest of bunds/lagoons might fall in scope of reservoirs safety legislation as part of the Flood and Water Management Act (FWMA) 2010. Where a structure is currently capable of holding more than 25 000 m³ of water above the natural level of any part of the surrounding land it falls within the scope of the Act and must be registered.

The regulator interprets capacity to hold water to include any capacity intended for rainwater or firewater or other site drainage water. A chemicals bund would not therefore be in scope if the foreseeable volumes of water that could be in the bund do not exceed the threshold.

Note

Primarily reservoir safety in England, Wales and Scotland comes under the Reservoirs Act 1975. There is currently no reservoir safety legislation in Northern Ireland. This applies to any raised reservoir storing 25 000 m³ or more of water above natural ground level. The FWMA 2010 modifies sections of the Reservoirs Act in England and Wales and is likely to include measures to bring any reservoirs stored to 10 000 m³ within the scope of the Act. However at the time of writing there is currently no timetable for when this might be enacted through secondary legislation. The Reservoirs (Scotland) Act 2011 applies in Scotland and will repeal the Reservoirs Act 1975 in Scotland, when implemented (possibly 2015). This will include a volume threshold of 10 000 m³.

BASIS Registration Scheme

The BASIS Registration Scheme (see *Websites* box) has been established to develop standards for the safe storage and transport of agricultural, horticultural and forestry pesticides. Registered stores are audited annually to ensure that the store, the people who operate it and the staff who provide advice on professional pesticides meet their legal obligations and are taking all reasonable precautions to protect people and the environment.

Safety data sheets

Specific advice on the management of inventory is also available from its specific safety data sheet (SDS) (see *Websites* box). SDS should be provided by the inventory suppliers, or can be obtained from a number of readily available sources on the internet.

1.6 ASSESSING THE RISK

Fire is the most common cause of serious pollution incidents. A relatively small proportion of incidents stem directly from the catastrophic failure of tanks or vessels. On-site traffic movements and loading movements are also a regular cause of incidents involving rupture of tanks, drums, vessels, bunds or pipework. For smaller sites vandalism is of increasing concern.

A risk assessment provides a transparent and objective means of assessing the likelihood and consequences of a loss of containment based on the source–pathway–receptor model (see Chapter 2). The outcome of the assessment will aid the development of an holistic containment strategy based on the hazard posed by the inventory to be stored or moved within the site, and the sensitivity of potential receptors should a spillage occur. While this strategy may include a combination of prevention (containment) and mitigation measures, the former are considered preferable.

The starting point of any proposal to modify or extend an existing facility, or construct a new facility should be a risk assessment. The risk assessment will assist in informing the design, development of an appropriate inspection and maintenance regime or, where resources are limited, to prioritise risk reduction measures.

Risk assessments are covered in detail in Chapter 2, however, the principal role of the containment systems associated with this guidance is to break the pathway between the source, (the inventory in the primary container), and any potential receptors, eg watercourses, groundwaters, habitats.

Websites

Pollution prevention advice and guidance (PPG):

<https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>

ALARP: www.hse.gov.uk/risk/theory/alarp.htm

BAT: <http://tinyurl.com/p5ejk5q>

BASIS Registration Scheme: www.basis-reg.com/default.aspx

Safety Data Sheets (SDS):

<http://echa.europa.eu/en/regulations/reach/safety-data-sheets;jsessionid=DBF175C3E30F71B7939CE3F89E727CA5.live1>

Water Framework Directive classification (2013 update):

<https://www.gov.uk/government/publications/water-framework-directive-classification-2013-progress-update>

Accessed 29 May 2014

2 Risk assessment and classification of secondary and tertiary containment systems

This chapter provides:

- A brief introduction to environmental risk assessments (Section 2.1)
- A framework around which hazards and risks may be assessed in the context of containment design (Sections 2.2 to 2.5)
- An approach to containment design based on these ratings (Sections 2.6)

2.1 INTRODUCTION

This chapter provides a risk assessment methodology to support a three-tier risk-based classification system for secondary and tertiary containment. This classification system recommends different standards of construction, or levels of performance in accordance with each of the three levels of risk. It provides guidance on completing an assessment of the risks posed (principally to the water environment and soils) should there be a release of the inventory stored in the primary containment. The results of the assessment are then used to set standards for specifying mitigation measures appropriate to the risk.

As stated in Chapter 1, the duty holder may take a different approach to determining an appropriate level of performance and standard of construction for their facility than the one described in this chapter. However, regulators may expect the duty holder to reconcile their proposed approach with that set out in this guide.

This guidance will use the following definitions, which are consistent with European law:

- **hazard** is the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health and/or the environment
- **risk** is the likelihood of a specific effect occurring within a specified period or in specified circumstances.

Risk is therefore a combination of **consequence** and the **likelihood** (or probability of occurrence) of that consequence. Consequence can be further defined in terms of the **extent** of harm and the **severity** of harm. In addition to extent and severity, consequence is also a function of duration of harm (both environmental harm index (EHI) and CDOIF (2013a) benchmark this against timescale for natural recovery).

It is a requirement under health and safety and environmental legislation that a duty holder manages potential hazards to comply with the law. Discharging this responsibility generally includes a requirement to apply good practice in the management of risk.

It is unlikely to be economic to provide the primary storage such that it is 100 per cent safe, ie it can be guaranteed not to permit the escape of inventory in every conceivable circumstance. No matter how much care is taken there is always a finite risk that, for example, a particular hazard has not been recognised, structural elements or materials do not behave as predicted or an error in the design or construction was made. Additional risks and uncertainties can be introduced throughout the service life of a primary containment system if it is poorly maintained, it is put to a different use not considered by the original design, or is modified or extended in an inappropriate manner.

Generally following this guidance will assist duty holders to demonstrate that they have managed these risks to comply with the law, specifically through the provision of secondary and potentially tertiary containment.

Defra (2011) provides generic guidelines for the assessment and management of environmental risks. While the guidelines focus on generic principles, the framework presented underpins the specific risk assessment methodology set out in this guide and identifies four main components of risk assessment (see Table 2.1).

Table 2.1 The four components of a risk assessment

Task	Chapter
Formulating the problem	Chapter 2
Carrying out an assessment of the risk	
Identifying and appraising the management options available	Chapters 3 and 4
Addressing the risk with the chosen risk management strategy	Chapters 6 to 11

The guidelines emphasise that environmental risk management is not a single, one-off exercise, but a dynamic process as illustrated by Figure 2.1.

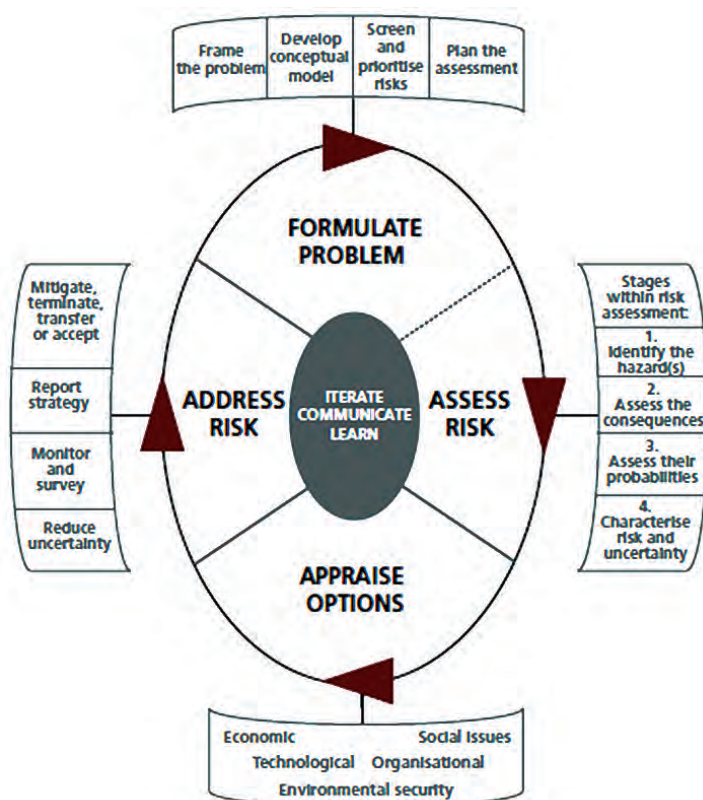


Figure 2.1 A framework for environmental management (from Defra, 2011)

This cyclical approach is particularly relevant to containment systems, and it is good practice to regularly review risk assessments for existing sites (recommendations for existing sites are provided in Section 5.3).

More sector-specific guidance is given in PPG28. The principal focus of PPG28 is on when and how to use a controlled burn as part of a firefighting strategy to prevent or reduce damage to the environment. However, the guidance is underpinned by a risk assessment methodology the principles of which are broadly followed here.

In common with many other environmental risk assessment methodologies, PPG28 uses the source–pathway–receptor model. So, for a risk to exist, all three elements have to be in place. This is illustrated

by Figure 2.2. The aim of a containment system in the context of this guide is to break the pathway between a source such as an oil tank and a receptor such as an adjacent river. The likelihood that a containment system will fail to break the pathway will depend on several factors associated with the way it has been designed, built, operated and maintained.



Figure 2.2 Source–pathway–receptor model

The concept of the source–pathway–receptor model is illustrated in Figure 2.3.

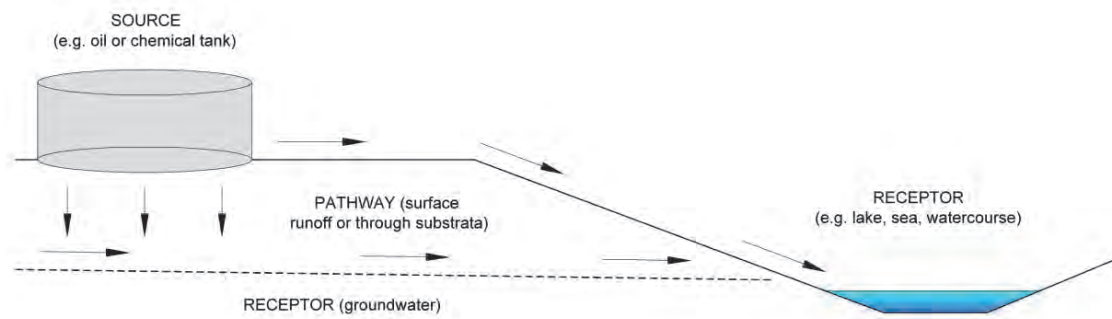


Figure 2.3 Concept of the source–pathway–receptor model

Note that where a site falls within a particular regulatory regime, ie COMAH or EPR/PPC, there are specific risk assessment methodologies that should be followed. However, there is much cross-cutting guidance prepared by the CA for COMAH and the regulator for EPR/PPC that is relevant to the methodology set out in this chapter. This, together with work by industry bodies such as the Energy Institute (EI) and the CDOIF on risk assessment, will be referenced as appropriate.

It is beyond the scope of this guide to provide advice on completing detailed risk assessments, however, the EA provide information on preparing a risk assessment to support an environmental permit (see *Websites* box at the end of this chapter). Guidance is also available in CDOIF (2013a).

CA (2012) provides advice on the selection of an appropriate risk assessment methodology such that it is proportionate to the risks involved.

In addition to extent and severity, consequence is also a function of duration of harm (both EHI and CDOIF (2013a) benchmark this against timescale for natural recovery).

2.2 FRAMEWORK FOR CLASSIFICATION OF SECONDARY AND TERTIARY CONTAINMENT

This section introduces the risk assessment framework that underpins the three-tiered classification system for secondary and tertiary containment facilities set out in this guide. The purpose of a risk assessment is to ensure that the measures put in place to manage or mitigate risk are proportionate.

It has been developed specifically to inform the design and performance of containment systems that are appropriate to the risk associated with inventory and the environmental setting. To this extent, it is

deliberately restricted in context and scope. Class 1 containment systems are provided where the risk of pollution arising from the storage of the inventory is relatively low, whereas class 3 containment systems are provided where this risk is relatively high. Part 3 gives advice on standards of design and detailing appropriate to each class for a number of forms of containment construction.



As noted in Sections 1.3 and 1.4, using a class appropriate to the risk as determined by this guide will not guarantee legal compliance and the final containment solution will ultimately depend on regime specific requirements and risk assessment methodologies. For example, if the output of the risk assessment determines that class 1 (the lowest risk) is appropriate there might still be requirements in law that requires a higher standard of containment.

An operator seeking to develop or extend a site storing inventory where no secondary or tertiary containment is proposed would have to supply clear justification to the regulators as to why it would not be necessary. The information in this chapter is not appropriate to develop any such case.

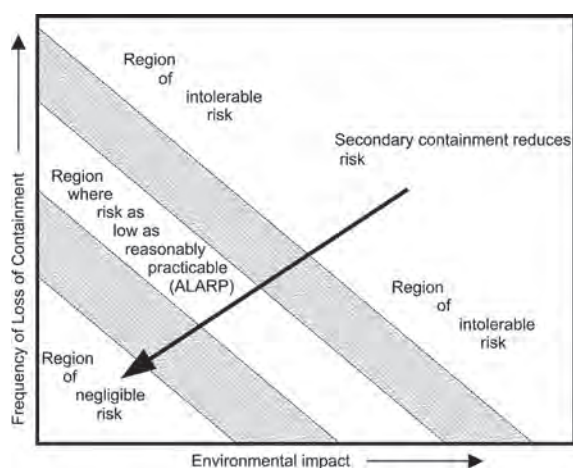


Figure 2.4 Relationship between risk, environmental impact and frequency

The relationship between risk, environmental impact and likelihood of loss of containment is shown in Figure 2.4 where different levels of risk are indicated by different regions of the chart. The overall purpose of containment is to reduce the likelihood of the escape of inventory and/or the resulting environmental impact.

It should be stressed that this diagram necessarily simplifies what is a complex set of relationships. In particular, the boundaries (represented by the shaded areas) between the regions separating the three risk levels are not in practice clearly defined.

Managing risk to be ‘tolerable if ALARP’ (TifALARP) implies that the measures to be put in place should be proportionate. This guide

therefore provides a risk assessment framework to advise on standards of design and construction for containment systems that are proportionate to the risk.

The general framework for the risk assessment is illustrated by Figure 2.5 and provides a three-step approach:

- **Step 1** applies the source–pathway–receptor model to the site to assess the hazard presented by the inventory to the surrounding environment. Chapter 2 provides guidance on how to undertake this assessment from first principles. The assessment of the source–pathway–receptor is combined in Section 2.4 to provide a **site hazard rating**. However, in many cases the nature and quantity of the inventory and knowledge of nearby sensitive receptors such as water bodies or designated habitats may be sufficient to determine that there is negligible (low site hazard rating) or, conversely, a high (high site hazard rating) risk.
- **Step 2** considers the likelihood of a loss of containment. This will depend on several factors such as the reliability of the operations and inspections undertaken on site, the conditions of the primary storage vessels and the degree they are protected from impact damage etc. Security will also be a consideration (see Section 3.7). The likelihood of a loss of containment is combined with the site hazard rating in Section 2.5 to provide a **site risk rating**.
- **Step 3** the site risk rating leads to a recommendation for an appropriate class of containment as defined in this guide.

The three classes are defined by increasing requirements in terms of design and construction integrity, the recommendations for which are set out in Part 3.

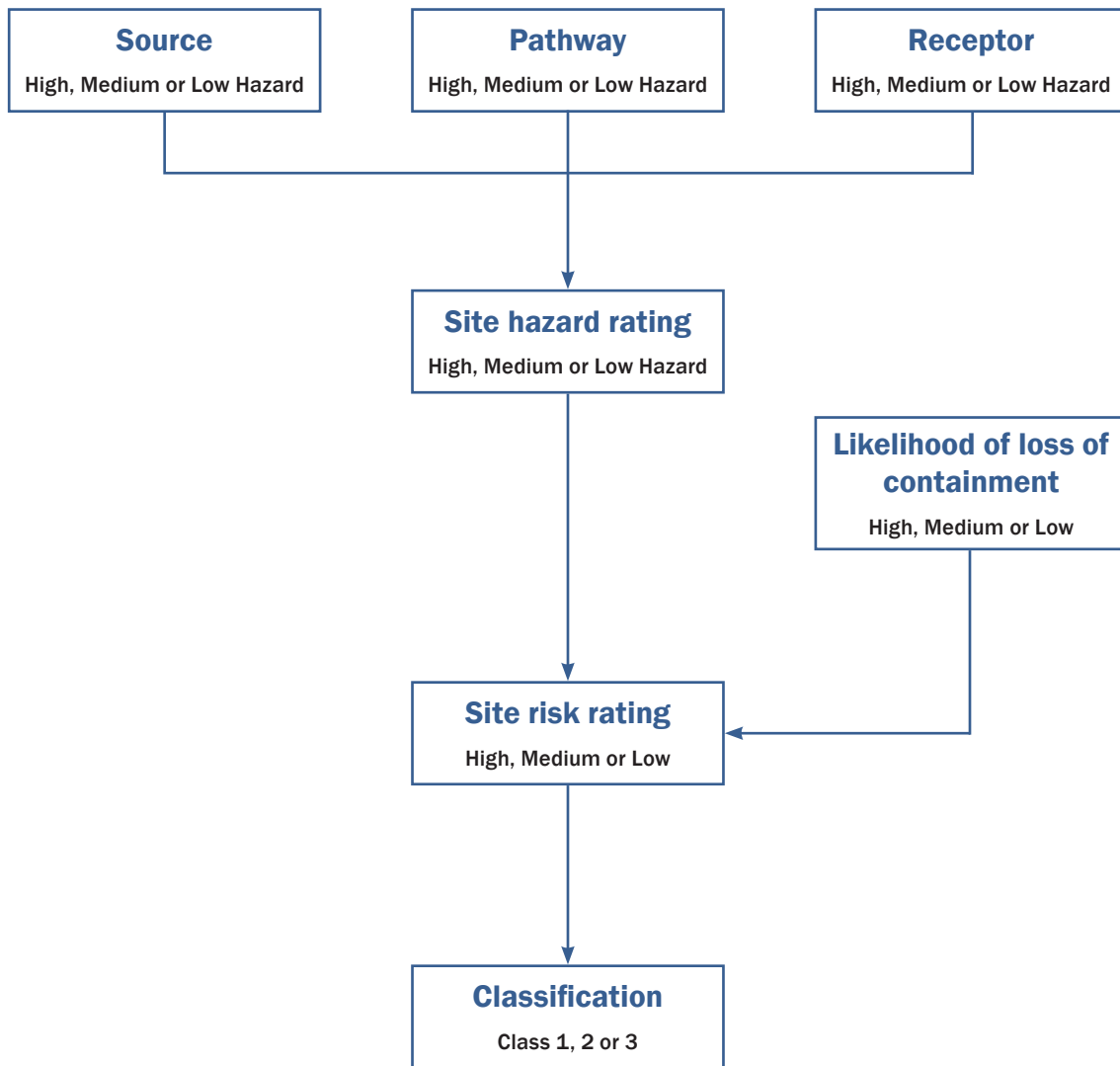


Figure 2.5 Risk assessment framework

2.3 KEY ELEMENTS FOR DETERMINING THE SITE HAZARD RATING

2.3.1 Source

Source	Pathway	Receptor
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Introduction

In the context of assessing hazard, the **source** refers to:

- the inventory
- rainwater or surface water runoff contaminated by the inventory
- firefighting agents that are harmful to the environment in their own right and/or are contaminated by the inventory
- firefighting and cooling water contaminated by the inventory.

Nature and quantity of potential pollutants

The potential pollutants present on industrial sites will comprise a range of raw materials, products, fuels and wastes. The quantity and nature of these materials should be assessed in relation to their polluting potential, the extent to which their presence may trigger or exacerbate an incident (eg highly flammable substances) and any physical or chemical properties that may call for special containment measures (eg corrosive materials that may damage concrete). In addition the potential duration of the release should be considered.

In relation to pollution potential, a wide range of characteristics of the inventory and any material used to suppress the fire should be taken into account including:

- physical properties (eg density and viscosity)
- chemical and biochemical properties (eg BOD and pH)
- ecotoxicological properties
- bioaccumulation, biomagnification or persistence potential
- by-products of fire/unwanted reactions
- contaminated firewater.

The first stage is to assess whether the individual chemicals present on site, or any combination of them, will pose a hazard to potential environmental receptors if released. The SDS will provide all relevant environmental data.

Environmental harm index (EHI)

The potential harm caused by a particular substance is a function of the sensitivity of the receptor to that substance. The **severity** of the impact is in turn a function of the potential **extent** over which spillage might occur and **duration** of the harm, ie how persistent the substance is in the particular environment. One method of quantifying the potential harm is the development of an environmental harm index (EHI) as proposed by DETR (1998) There are also a number of other work streams in this area under development that include CDOIF (2013a).

The degree of susceptibility to different substances is likely to vary from receptor to receptor. So, if more than one substance is stored on site and these are not similar, where there is a pathway it will be necessary to repeat the assessment for each substance and against each receptor as necessary.

The quantity of hazardous material present on a site is an important factor to be taken into account when considering containment capacity. There are 'threshold' quantities below which the escape to soils or controlled waters may not have a significant environmental impact. These are provided by 'chemical standards', chemical concentrations in an environmental medium such as water, air or soil that are not expected to cause harm to environmental organisms or human health, provided they are not exceeded. It should be noted that the same chemical may have several standards for different environmental receptors, and for different protection goals. Details of these standards are listed in Appendix A1.

There are a number of statutory and non-statutory standards that are set in legislation and by various organisations respectively. It should be noted that these standards may prohibit any concentrations of a substance in the environment. Information on chemical standards and statutory and non-statutory standards may be found on the EA's website (see *Websites* box).

Toxicity and hazard

An alternative method to the EHI and the work of the CA and CDOIF in classifying the source hazard is based on the toxicity and quantity of the stored substance. The toxicity is based on Regulation (EC) No 1272/2008. This Regulation makes reference to the H-Phrase of a substance defined in the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) (United Nations, 2005). H-Phrases are intended to form a set of standardised phrases about the hazards of chemical substances and mixtures that can be translated into different languages (OChemOnline, 2011).

Some substances classified under the CLP, which are very toxic for the aquatic environment, have a 'multiplying factor' (M-factor) applied to give an increased weight. More information can be obtained from the HSE (see *Websites* box).

Many materials may also have LD50 and LC50 toxicity ratings. These refer to the concentration of the material that kills 50 per cent of an exposed population of test animals and the concentration in water that kills 50 per cent of the aquatic organisms within a given time period respectively. These ratings have been used to relate toxicity, quantity and hazard (see Figure 2.6).

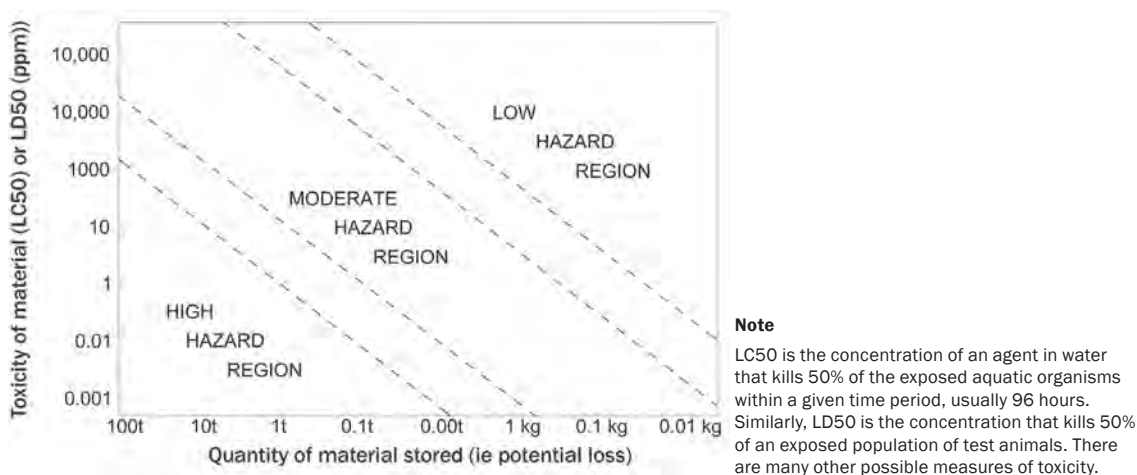


Figure 2.6 Relationship between material quantities, toxicity and hazard

Examples of inventory that, if present on site, would suggest a high source hazard irrespective of the quantity stored are listed in Appendix A2.

It is important that the polluting effects of all the possible cocktails of materials that may arise during an incident are taken into account. This is a particularly important consideration in warehouse situations and across large sites where many different materials may be stored together and there is a risk that they could be released simultaneously into the environment.

Effects of fires and firefighting water

On many industrial sites, one of the most significant hazards is fire. The potential effects of a fire can alter the assessment of source hazard in a number of ways, including physical or chemical modification of the materials on site and damage to other primary containers, which could result in further materials being released.

By far the most important effect of fire, in the context of considering **sources**, is the introduction of potentially very large volumes of water used to extinguish fires and to cool adjacent containment (collectively termed firefighting water in this guide) and, to a lesser extent, foams. Firefighting water will become contaminated on contact with the inventory and so it is just as important to control its release to the environment as it is with the inventory itself. Sites where flammable inventory is present should be considered as a high source hazard rating. Methods for estimating volumes of cooling and firefighting water and foam are presented in Section 4.3.3.

2.3.2 Pathway

Source	Pathway	Receptor
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This section provides:

Guidance on how to identify and assess the potential pathways between the source and the receptor and how to assess the hazard rating of the different pathways. It considers:

- proximity of receptors
- firefighting water
- site layout and drainage
- treatment plants
- topography, geology and hydrogeology
- mitigating effects
- climatic conditions
- factors affecting transport potential.

Introduction

Pathways are the means by which a hazardous substance would reach a **receptor**. The area of search for potential receptors is governed by the potential pathways and these might include:

- simple overland flow following the local topography
- existing pipes, sewers, drains or other underground features that could lead to a receptor such as a watercourse
- permeable sub-soils and strata underling a site that could provide a pathway to groundwater or a watercourse.

Multiple combinations of pathways may exist and should be considered.

In considering the hazard rating of potential pathways the following should be considered:

- 1 The distance between the source and the various potential receptors.
- 2 Site layout (including topography), and the position and effectiveness of drains and other internal and external pathways.
- 3 Geographical, geological and hydrogeological features that could either impede or facilitate escape of inventory from the site. In addition building foundations may impede or alter sub-surface drainage paths.
- 4 Climatic conditions and expected variability.
- 5 The direct effects of fire and the introduction of firefighting water, or foam.
- 6 The presence of treatment plants (on or off site).
- 7 Modification of the inventory during passage through the pathway such as the cooling of a liquid.
- 8 Inventory that is not particularly mobile in ambient conditions may be soluble in water.
- 9 The scale of potential incidents (larger incidents and firewater generally have greater potential for mobilisation in the environment than smaller spills).

The time it would take for an inventory to reach a receptor is an important factor. The potential for the substance to harm the environment is higher if it reaches the receptor quickly since:

- there will be less opportunity to contain the inventory (either on site or off site) and prevent escape to the wider environment
- mitigation of the effects of the substance by such factors as evaporation or dilution will be reduced
- there will be less time to warn other organisations and individuals likely to be affected, eg the regulator, downstream landowners and water users, and sewage treatment plant operators.

In cases where the escape of inventory goes undetected, particularly over a long period of time, there will be no opportunity to put mitigation measures in place in a timely manner. The presence of leak detection systems should therefore be taken into account when assessing the hazard rating for pathways.

However, if the time it takes for the inventory to reach a sensitive receptor and cause harm is long, then a planned and tested mitigation strategy may well reduce the impact or prevent damage to the receptor.

By taking into account the factors outlined above it is possible to derive a hazard rating for the pathway. In the same manner as the source hazard, ie this is designated a high, moderate or low according to the particular characteristics of the pathways.

Proximity of receptors

It is important first to identify all of the possible receptors and their locations in relation to the source to be able to assess the relevant pathways. However, judgement will be required in the first instance to make an assessment of credible pathways to set reasonable limits on the area of search for potential receptors.

Potential pathways for overland flow will be determined by the local topography and to an extent the permeability of the near surface soils. Where permeable soils are present, the interaction with groundwater should be considered, which in itself is both a potential pathway and receptor.

Sewers, culverts and drains all have the potential to convey inventory rapidly away from a site and to release them into the environment many kilometres from the site boundary. Even where the sewers, culverts and drains are sealed, the bedding and surround may act as pathway for rapid off site migration.

Permeable substrata can also convey inventory over large distances where they can affect ground and surface water resources. Potential sources of information on groundwater are given in Box 2.2 and the regulator should also be consulted.

Site layout and drainage

The layout of the plant, buildings, roadways, hardstandings and other features, and the surface finish and permeability of the surfaces over which the hazardous substance may flow in the event of an escape, are all relevant factors in deriving hazard rating.

The following issues will tend to increase the hazard rating for pathways:

- 1 Hardstandings around the primary containment sloping towards a surface receptor.
- 2 Primary containment installations surrounded by flat or slightly sloping permeable ground permitting infiltration to groundwaters.
- 3 On-site effluent drainage systems that provide pathways to trade effluent outfalls, to public sewers, or to on- or off-site public treatment works.
- 4 The presence of below-ground features such as services, ducts, pipelines, filled ground, tunnels, tanks or sumps.
- 5 Other man-made pathways such as old mine workings, storm drains and gullies, culverted watercourses and land drains located close to the source or potential pathway.

Rainwater soakaways are a common feature on many sites. The proximity of soakaways to sources of inventory, their location with respect to physical pathways, the possibility of their contamination in the event of an incident, and even their use in principle, need to be carefully reviewed.

Where soakaways are provided as means of rainwater disposal, the potential pathways via infiltration and groundwater as a potential receptor should be fully assessed.

Topography, geology and hydrogeology

The topography of the site and the permeability of the ground will have an effect on the transport of inventory to surface waters and infiltration to groundwaters. On large sites there may be a considerable variation in landform, soil type and geology across the site, which will influence runoff and infiltration.

With the exception of some small sites where the ground conditions are well known, geotechnical and hydrogeological surveys should be carried out on sites where inventory is to be stored.

This will be particularly important where the ground is to be used as part of the containment system, ie earth embankment bunds and lagoons.

Topographic survey data may also be required to confirm potential overland flow paths.

Climatic conditions

Climatic conditions, including precipitation and temperature, can affect ground conditions and permeability, vegetation and evapotranspiration, each of which can affect the pathway. Frozen or saturated ground will increase the tendency for rapid runoff from areas where, at other times, runoff may be very much slower or absent altogether. Surface cracks and fissures in dry conditions will increase infiltration and may provide direct pathways to permeable substrata and groundwater.

The consequences of the failure of a containment system during a period of heavy rain need to be taken into consideration. One possible beneficial effect may be that the rain will dilute the inventory before it reaches the receiving water. However, the higher runoff volume may increase the possibility of it reaching the receptor.

Areas that are susceptible to persistent and/or widespread flooding can also provide a pathway for hazardous substances released from the primary containment. Information on areas potentially at risk of flooding from surface water runoff, rivers and the sea is available from the EA, SEPA and DARDNI (see *Websites* box).

A particular issue is operation of combined sewer overflows (CSO) during periods of heavy rainfall. A combined sewer caters for both foul (including, where consented, trade effluent) and surface flows. CSOs were constructed to reduce the risk of sewer surcharge, flooding or overwhelming the wastewater treatment works (WwTW) during periods of heavy rainfall that discharge to a local watercourse. These CSOs therefore have the potential to provide a direct pathway to a receptor by bypassing the WwTW.

Firefighting water

Firefighting water has the potential to dilute very significantly any hazardous substance released from the primary containment. However, in the same way as heavy rain, it may also affect the pathway. If the flow of firefighting water is greater than the capacity of the site drains, the contaminated firefighting water will find other pathways from the site. Forecasting the pathway of the inventory, taking into account the effects of heavy rain or firefighting water, or even both together, is a key factor in assessing pathways.

Another important consideration is the effect that fire may have on the flow properties of the hazardous substance, particularly in the site drainage system. Fire and heat may cause increases in viscosity or surface crusting so that flow through the system is slowed down or even stopped completely. Conversely, fire may melt or destroy site features that under normal circumstances would divert flows elsewhere. Drains may also become blocked through debris flushed into them by the firefighting water.

Treatment plants

Pathways may lead to, and include, effluent treatment works on the site, or WwTW off site. The unplanned entry of highly polluting effluent into a treatment plant at a level that exceeds the treatment or containment capacity of the works may cause major damage, which effectively puts the plant out of action. The damage may be long-term. The resulting discharge from the damaged works may result in more serious pollution than would have resulted from a direct discharge of the primary pollutant.

WwTW, and particularly those catering for combined sewers, are often provided with storm tanks to balance the load through the works. If the duty holder notifies the works as soon as the incident occurs,

these storm tanks, if provided, may contain any spillage from the primary containment that enters the upstream drainage network potentially interrupting a significant pathway.

Mitigating and exacerbating effects

When inventory escapes from the primary containment, it may be subject to a number of factors that alter its environmental impact potential, either by modifying its properties or its volume.

In assessing possible mitigating effects, the factors that should be taken into account include:

- likelihood of dilution in the drains
- possible dilution and treatment at on-site or off-site treatment plant (note that such plant could be severely affected by the pollutant and to that extent can equally be regarded as a receptor)
- chemical reactions (eg materials may be highly reactive with water)
- application of neutralising agents that might dilute the escaped inventory
- evaporation (eg volatile solvents)
- absorption (some materials may be absorbed by soil or other solids)
- settling (some materials may settle in drains, interceptors or lagoons)
- existing retention capacity on the site.

Note that simply diluting escaped inventory as part of spill management is not considered good practice.

Exacerbating factors might include:

- larger volumes tend to spread further
- greater slopes result in faster runoff and less time to act to intercept
- inventory spread over large areas at shallow depth may be more difficult to recover
- adverse chemical reactions between differing inventories released during an incident.

Factors affecting transport potential

Examples of pathways where the hazard rating is considered to be high might include:

- short runoff time between source and receptor
- direct drainage links between source and receptor (or treatment plant where this could be considered a receptor)
- absence of holding capacity in drains and sewers
- highly permeable strata between source and groundwater receptor
- absence of treatment facilities
- little to mitigate the effects of the released hazardous substance
- flooding.

2.3.3 Receptors

Source	Pathway	Receptor
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This section provides:

Guidance on how to identify the various receptors and their susceptibility to harm from the sources and via the pathways identified. It considers:

- environmental sensitivity
- other factors
- uncertainties
- nature and classification of receiving waters
- wastewater treatment works
- dilution and mixing.

Introduction

A receptor includes humans, animals, fish, plants and biota, watercourse or body, groundwater or soils that would be affected (directly or indirectly) by the escape of the inventory. A receptor could also be a downstream process such as a WwTW.

To assess the impact of a hazardous substance release on receptors, it is first necessary to identify any that could be affected. The hazard rating completed for pathways should be used to inform the area of search. Useful information on the presence and nature of environmental receptors in the vicinity of the site may be obtained via site inspection and the study of local maps. Additional information may be held by local authorities, countryside and heritage commissions, and the various regulators. Other potential web-based sources are listed in Table 2.2.

Table 2.2 Sources of information for environmental receptors (accessed 29 May 2014)

Source	Website link	Information
Environment Agency <i>What's in your backyard?</i>	http://tinyurl.com/ntx7agd	This site provides information on flood risk, groundwater vulnerability, aquifers, nitrate vulnerable zones and river water quality for sites in England and Wales. No similar information is currently available for Scotland
British Geological Survey Geology of Britain maps	http://tinyurl.com/6ssf79p	Maps provide descriptions of the solid and superficial geological deposits. While the potential permeability of the soils, and the likelihood that pollutants could affect groundwaters, is not always clear from the descriptions, of particularly high potential risk would be sands and gravels and chalk
Natural England <i>Sites of Special Scientific Interest</i>	http://tinyurl.com/c637z6	Provides information on Sites of Scientific Interest (SSSI) and Special Protection Areas (SPAs) in England
Countryside Council for Wales <i>Special landscapes and sites</i>	http://tinyurl.com/oqjvq4x	Provides information on designated sites in Wales (note that this information may be ported to the Natural Resources Wales (NRW) website in due course)
Scottish Government <i>Where are SSSIs found?</i>	http://tinyurl.com/ntsvk2t	Provides information SSSI and SPAs in Scotland
Defra <i>Special Areas of Conservation</i>	http://tinyurl.com/opthzqn	A listing of SACs in the UK
Joint Nature Conservancy Council Ramsar sites in the UK, its overseas territories and Crown dependences	http://tinyurl.com/ph6r3pr	Information on Ramsar (bird protection) sites
Ancient Monuments	www.ancientmonuments.info	Information on the designation of Scheduled Monuments in the whole of the UK
MAGIC <i>Interactive mapping</i>	http://tinyurl.com/nso8tb7	Is a web-based interactive map provided by Defra that brings together information on key environmental schemes and designations in one place, including some of the sources listed above

The presence and nature of the receptor can generally be thought of as a fixed point in any hazard or risk assessment. However, in areas at risk of flooding, there may be circumstances where the location of the receptor may change, ie where the flood waters themselves would be considered a receptor. Although the site operator is able to modify sources and, to some extent perhaps, on-site pathways, altering the location of the receptor is more difficult.

WFD objectives should be noted when assessing the sensitivity of the receptor as it should be taken as its future potential rather than current condition.

As with source and pathway, a receptor is assigned a hazard rating according to its sensitivity to the hazardous substance, ie high, moderate or low.

Environmental sensitivity

Potential receptors should be discussed with the regulator and agreement reached on which of them are sensitive to harm from the hazardous substance(s) stored on the site. As noted in Section 2.4, if there are several different inventories stored at a site then each of these could affect each receptor in a different way.

Other factors

There are other factors that may reduce or increase the severity of the environmental impact. Mitigating factors include:

- biodegradation (eg compounds broken down by microbes)
- evaporation
- photolysis (eg compounds broken down by sunlight)
- hydrolysis (eg compounds broken in water)
- absorption (compounds absorbed by another substance, for example the deployment of chemical spill kit).

Aggravating factors include:

- bioaccumulation (eg in fish)
- biomagnification (eg along a food chain)
- biodegradation (eg discharge of inventory with a high biological oxygen demand).

The rate at which these effects mitigate or aggravate environmental impacts depends on a variety of interacting circumstances, but in some cases it is quantifiable.

Analysis of these mitigating and aggravating factors is a complex task. If these are likely to be significant factors in determining a hazard rating for a receptor, ie high, moderate or low, the advice of a competent person should be sought.

Uncertainties

There are considerable gaps in the knowledge when it comes to quantifying the effects of inventory on receptors. In particular, toxicity effects on man and ecotoxicity effects on ecosystems are only readily available for those substances commonly used in industrial and manufacturing processes.

The hazardous substance may not be a single chemical, but may be, for example, a complex mixture of hydrocarbons as in fuels or oils. In such cases it will be necessary to consider whether to assess all individual chemicals separately, or to treat the mixture as a single substance using available whole product data.

Nature and classification of receiving waters

The EA (2013a) uses aquifer designations that are consistent with the WFD. These designations reflect the importance of aquifers not only in terms of groundwater bodies as a resource (drinking water supply) but also their role in supporting surface water flows and wetland ecosystems. Geological units are broadly divided into principal aquifers, secondary aquifers and non-productive strata. Further information on aquifer designations may be found on the EA's website for England and Wales, and on SEPA's website for sites in Scotland (see *Websites* box).

Wastewater treatment works

On-site effluent treatment plant and off-site WwTW may be considered as receptors. The normal functions of the plant could be impaired for a long period by the entry of materials incompatible with normal treatment processes. For example, all biological treatment plants depend on the activity of bacteria to break down complex organic compounds. The uncontrolled discharge of substances such as pesticides, hypochlorite, metals, organochlorine solvents and acids and alkalis is likely to kill the bacteria

and halt biodegradation processes. Equally, overloading the plant with non-hazardous but high BOD substances can disrupt performance. It could take a treatment plant many weeks to return to its previous level of biological activity. In this period, the plant could not carry out its normal function and sewage and trade effluents would have to be removed off-site for treatment elsewhere.

The effects of pollutants on WwTW need to be considered in the hazard assessment. Tolerable levels and loads of inventory should be established in collaboration with the treatment plant operators particularly in respect of their trade effluent consents. In some situations it is possible that a treatment plant will be the critical receptor.

Dilution and mixing

Receptors may be located many kilometres away from the point at which the inventory is released into the environment. Where the pathway includes surface or groundwaters (receptors in their own right) dilution and dispersion takes place that can mitigate the potential impact. However, in general, regulators would not condone dilution and dispersion in the water environment as a means of mitigation, except as an authorised discharge.

If there is a risk of inventory entering the water environment, regulators would expect to see AMN/BAT applied to reduce that risk. Modelling may, however, be used to demonstrate the effect of residual risk following installation of AMN/BAT, or for assessing impact of a major accident of low frequency. There are a number of dispersion models available ranging from the simple to the extremely complex and the appropriate choice of which will be governed by the potential risk to the receptor. Depending on the complexity of the model to be used, the following information is likely to be required:

- duration and mode of release
- flow of the receiving water and dilution potential. This should also consider periods of low flow where the dilution potential may be limited
- background levels of the inventory
- tidal influences (if any)
- mixing characteristics, stratification, turbulence etc
- density and solubility of the inventory (is it miscible with water, will it float or sink?)
- climatic conditions and the impact of climate change.

Dispersion modelling is a complex process and should be completed by a competent person. The scope of any such model should be agreed in advance with the regulator.

2.4 OVERALL SITE HAZARD RATING

The preceding sections provide an approach to determining a hazard rating for the source, pathway and receptor. The three factors are now combined to obtain an overall site hazard rating designated as **high**, **moderate** or **low**.

There are a number of ways in which the individual factors can be combined, particularly if a different weighting is given to each factor, as may be appropriate in some circumstances. However, assessing the combined effects has to be a judgement based on knowledge, experience and the degree of confidence in the information available. Where there is uncertainty about the correct categorisation of any of the individual source, pathway or receptor hazard ratings, it may be appropriate to move the overall site hazard rating to the next higher rating, ie from medium to high.

It should be stressed that it is likely to be necessary to consider multiple source, pathway and receptor scenarios. For example, there may be one pathway to groundwater and another to surface water, each of which needs to be considered separately. Similarly it may be necessary to consider a number of receptors, since it may not be clear initially which of these is the most environmentally sensitive. The site hazard rating adopted should represent the highest of the individual scenarios considered.

A further issue is a large site where multiple sources of inventory are stored but share secondary containment facilities. As the site hazard rating is used to inform the class of the secondary containment, it is the highest site hazard rating for the combination of source, pathway and receptor estimated for the sources within the particular facility that should be used.

The only exception to this may be where multiple sources are stored in separate secondary containment facilities, ie the site is 'zoned' (see Section 3.7) in which case the site hazard rating should be applied on a zone by zone basis.

If the analysis indicates that the hazard rating of any one element in a combination of source, pathway and receptor is negligible, then the site hazard rating for this particular combination is also considered to be negligible.

Typically, if the three factors are given equal weighting, they may be combined in the way illustrated in Box 2.1 to give an overall site hazard rating.

Box 2.1 Suggested combinations of hazard ratings to give overall site hazard rating

Environmental hazard ratings		
H = High rating		
M = Moderate rating		
L = Low rating		
Source	Pathway	Receptor
(hazard rating)	(transport potential)	(damage potential)
May be H, M or L	May be H, M or L	May be H, M or L
Possible combination of ratings:		Suggested consequent overall site hazard rating:
HHH or HHM or HMM		HIGH
HHL or MMM or HML		MODERATE
MML or HLL or MILL or LLL		LOW

As a general guide it can be anticipated that regulators' initial expectations in terms of the components of the site hazard rating will be as follows:

Source hazard

- Main inventory at COMAH establishments likely to be high.
- EPR establishments likely to be **high/medium**.
- EPR exempt establishments likely to be **medium/low** (though some could be **high**, eg certain large storage facilities otherwise exempt from COMAH/EPR).

Receptor hazard

- Nationally designated sites (SSSIs/SPAs/SACs) and drinking water sources (source protection zones) are likely to be **high**.
- Locally designated sites, surface or groundwater bodies defined as such by the WFD are likely to be **medium**.
- Non-designated sites and other water and groundwaters are likely to be **low**.

When considering the overall site hazard rating regulators would normally refer to the Compliance Classification Scheme (CCS) and the Common Incident Classification Scheme (CICS) (see *Websites* box), which defines a scale of incident impacts and informs their enforcement stance. Therefore, it would be anticipated that overall site hazard rating would be:

- **High** for potential for CICS category 1 (or MATTE) incidents.

- **Medium** for potential for CICS category 2 incidents.
- **Low** for potential for CICS category 3 incidents.

In consultation with the regulators, the assessment may be ended at this stage if it is concluded that decisions regarding containment can be made based on the site hazard rating. It should be noted that the regulators are likely to require containment provisions for sites with a high hazard rating.

Alternatively, the assessment may be developed further to combine the site hazard rating with the likelihood of all events, which could lead to loss of containment and quantifying their impact on the environment.

2.5 SITE RISK RATING

The preceding sections are concerned specifically with hazard assessment. To assess the risk it is necessary to consider the events that may lead to the release of inventory from the primary containment and the likelihood that this would occur, ie:

- 1 Identification of all the events that are capable of causing loss of containment.
- 2 Assessment of the likelihood of occurrence of each event.

The potential failures and the reasons for failure include:

- operational failures, such as failure of plant, or human failure by operators
- shortfalls in design – lack of alarms and fail-safe devices
- structural failure – materials, components, detailing, corrosion or when exposed to heat and flame
- abuse – inappropriate change of use or other misuse
- impact, eg from a vehicle
- vandalism, terrorism, force majeure etc
- flood, fire or explosion
- geological factors -subsidence etc
- ageing or deteriorating assets/sub-components.

Where the need has been identified, a detailed investigation of the reasons for the potential failure of plant and equipment may be carried out with the help of a variety of techniques including hazard and operability (HAZOP) studies, fault tree analysis (FTA) or failure, mode and effect analysis (FMEA). These studies are normally carried out by teams led by engineers specialising in the safety and reliability of processes working with maintenance and operating practitioners.

The effects of changes in the nature, size or frequency of potential releases as a result of actions taken may be modelled using risk assessment techniques. It is also the case that general risk management procedures can assist with avoiding potential releases of inventory and that incident management can include measures other than the provision of containment.

Where company or plant specific failure rate data are not available, reference to the data provided in Appendix 1 of CA (2012) should be made. This provides data on the risk of tank and associated infrastructure failure, tank and bund fires and warehouse fires drawn from a literature review of historic information.

By analysing the events and circumstances that may affect a site it is possible to arrive at an assessment of the probability of a loss of containment and release of inventory expressed a low, medium or high. It is unlikely to be possible to precisely estimate the probability of a failure of the primary containment and/or secondary containment due to the inherent uncertainties involved. It is therefore advised that any such estimates that are made to inform the classification and of the design processes are discussed with the regulator.

However, as a general guide, the following typical probabilities might be considered appropriate for use in establishing the site risk rating.

Table 2.3 Frequency of loss of containment

Risk of loss of containment	Annual probability of loss of containment per site
High	Greater than 1% (1 in 100)
Medium	Between 1% (1 in 100) and 0.001% (1 in 1 million)
Low	Less than 0.001% (1 in 1 million)

Typical examples of incidents that could lead to a loss of containment (listed in order of reducing probability) might include:

- small spills
- pipe failures
- single IBC incident
- localised flooding
- site-wide fires
- whole vessel failures
- major flooding
- vandalism
- subsidence
- terrorism
- plane crash
- earthquake.

It will also be necessary to consider multiple credible potential failure scenarios.

The combination of site hazard rating, with the frequency of loss of containment, provides an assessment of the overall site risk. The ways in which the ratings for hazard and risk can be combined to provide an overall site risk are shown in Box 2.2 where the hazard and the probability are given equal weighting.

Box 2.2 Overall site risk rating as defined by combining ratings of site hazard and probability of containment failure

Site hazard ratings	
May be high (H), moderate (M) or low (L) (see Box 2.1)	
Frequency of loss of containment	
May be high (H), moderate (M) or low (L)	
Possible combination of ratings:	Suggested consequent overall site hazard rating:
HH or HM or MH	HIGH
MM or HL or LH	MODERATE
LL or ML or LM	LOW

Where the risk assessment indicates that an event could result in significant environmental damage at an intolerable frequency, the operator or designer would need to consider one or more of the following risk reduction measures:

- change to less hazardous or reduce inventory
- change or relocate the process or activity to a less environmentally sensitive location
- install new, or improve existing, containment systems (the subject of this guide)
- provide smaller storage units
- modify the on-site pathways to minimise the likelihood of escape of pollutant
- change or relocate the process or activity
- change operational and/or management practices.

As with the classification of hazards, there are many uncertainties and gaps in current information. Combining ratings for hazard and frequency of loss of containment as described previously calls for skill, experience and judgement if sensible and useful conclusions are to be drawn. There are likely to be some distinctly high risk or low risk situations that are relatively easy to define and classify but the majority of

situations will necessarily require some subjective judgements to be made. Key stakeholders including plant operators, regulatory bodies and designers should be consulted throughout the risk assessment and design process.

The hazard and likelihood rating combinations HL and LH in Box 2.5 are perhaps the most difficult to classify in terms of overall site risk, although the recommendation is that they are given a moderate rating. There are likely to be many situations where the hazard rating is high but where the probability of an event causing loss of containment is low. Views on how this situation should be treated may differ and there should be full consultation with the regulator at the start of the process.

Sites scoring a low risk rating are not likely to require further assessment, subject to all site conditions remaining the same. However, when any of the source, pathways or receptors are assessed as a high hazard then a detailed risk assessment should be undertaken by a competent person.

An alternative framework for determining the overall site risk is presented in the CA (2012) based on the EHI. This is combined with likelihood of occurrence (frequency) graphically (see Figure 2.7) and provides three zones, an 'area of concern', 'need to demonstrate risks are ALARP' and 'broadly acceptable'.

Figure 2.7 indicates how the low, medium and high overall site risk relates to the three zones.

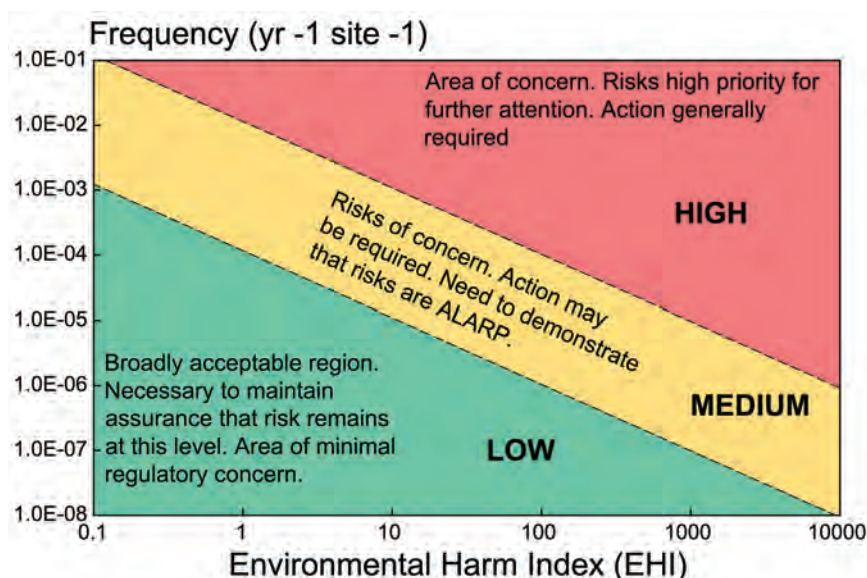


Figure 2.7 Establishment risk threshold frequencies (per receptor) (from DETR, 1998)

2.6 CONTAINMENT CLASSIFICATION SYSTEM

2.6.1 Hazard and risk assessment and design classification

This guidance sets out a classification of containment systems based on three categories (classes 1, 2 and 3) each representing a different level of integrity to match the different requirements of high, moderate and low overall site risks. However, it should be noted that legal requirements for containment systems such as the OSR would have priority above any advice contained in this guidance.

Although there is no direct quantifiable link between the site hazard or site risk and the design of the containment system the following simple relationship is considered appropriate in most circumstances:

- low overall site risk containment type **class 1**, ie base level of integrity
- moderate overall site risk containment type **class 2**, ie intermediate degree of integrity
- high overall site risk containment type **class 3**, ie highest degree of integrity.

The difference in performance between the three classes of containment can be expressed in terms of:

- system safeguards (eg whether or not fail-safe alarms form part of the system)
- system and component redundancies (eg whether there are back-up collection and storage facilities in the event of the failure of containment)
- structural integrity and quality of construction (eg increasing design requirements)
- operation and maintenance (eg enhanced inspection and maintenance regimes).

A suggested approach to the system design for a secondary containment system is outlined by the flowchart in Figure 2.8.

The detailed design guidance presented in Part 3 of this guide is based on these three classifications.

Websites

Horizontal guidance for preparing risk assessments:

<https://www.gov.uk/government/collections/horizontal-guidance-environmental-permitting>

Chemical standards: <http://evidence.environment-agency.gov.uk/ChemicalStandards/home.aspx>

Seveso Directive: www.hse.gov.uk/seveso/index.htm

Compliance Classification Scheme (CCS) and the Common Incident Classification Scheme (CICS): <http://tinyurl.com/nbc2mby>

Flood risk:

Department of Agriculture and Development (Northern Ireland) Flood risk:

www.dardni.gov.uk/index/rivers/strategic-flood-map-ni.htm

Flood risk: <https://www.gov.uk/browse/environment-countryside/flooding-extreme-weather>

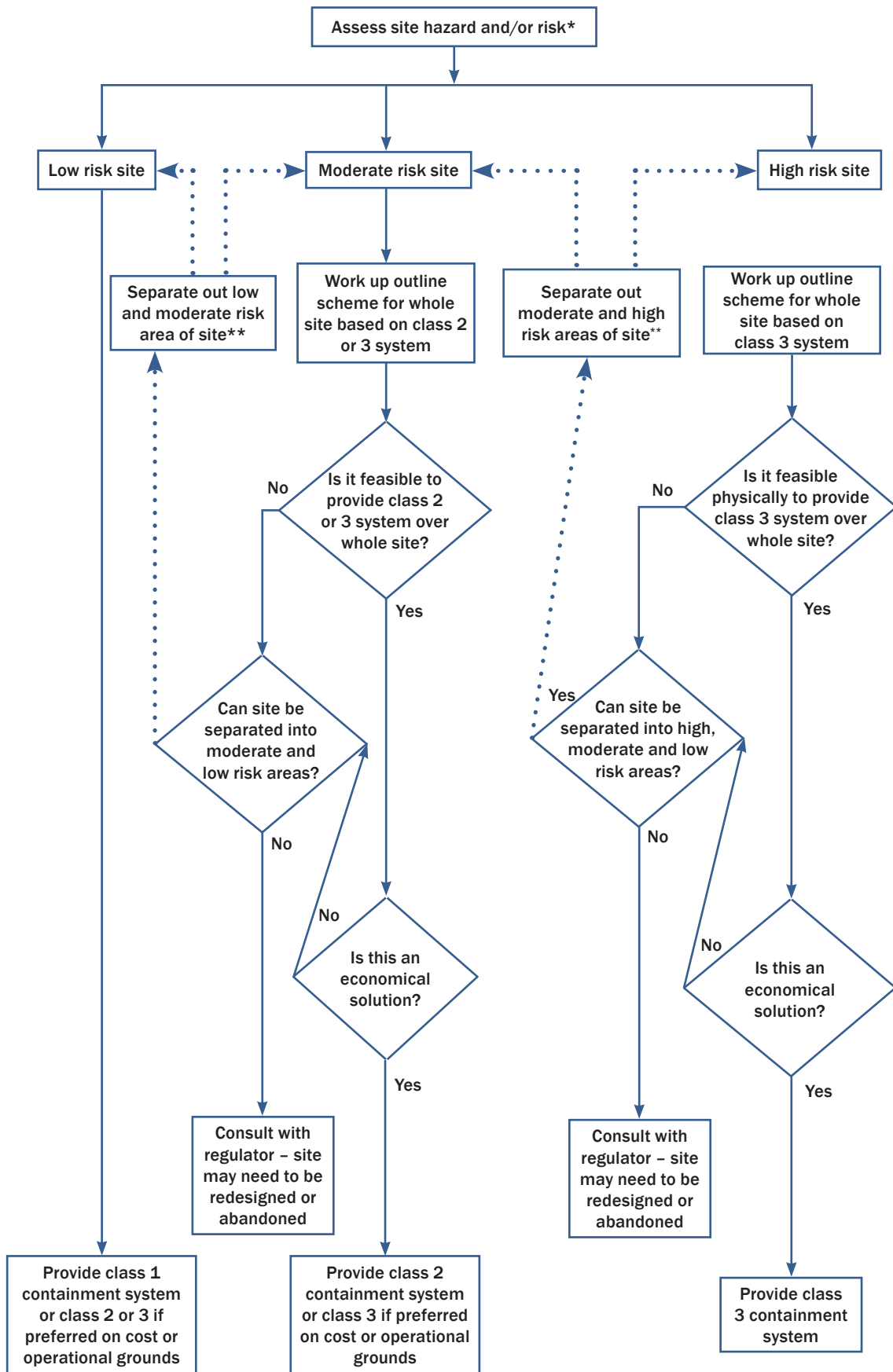
SEPA: <http://map.sepa.org.uk/floodmap/map.htm>

Aquifers

Environment Agency: <http://apps.environment-agency.gov.uk/wiyby/117020.aspx>

SEPA: Water body classifications: www.sepa.org.uk/water/monitoring_and_classification/classification.aspx

Accessed 29 May 2014



Notes

* The expression 'hazard and/or risk' is abbreviated to 'risk' in the flowchart.

** Beyond these points in the iteration, for 'site' and 'whole site' read 'area' and 'whole area' respectively.

Figure 2.8 Containment system classification

3 Secondary and tertiary containment options

This chapter provides:

- An introduction to containment system selection (Section 3.1)
- Details of containment options (Sections 3.2 to 3.5)
- Recommendations for system selection and site zoning (Section 3.6)
- Advice on considering overall system reliability (Section 3.7)

3.1 INTRODUCTION

System selection is an important first step in the design process and should be informed by the site risk rating, which is the outcome of the risk assessment process described in Chapter 2.

System selection may also be influenced by the required containment volume, which is estimated by following the guidance provided in Chapter 4.

Additional considerations to selecting an appropriate containment occur where the site falls within the scope of the COMAH Regulations, the OSR, the EPR and equivalent regulations, or the reservoir safety legislation included as part of the FWMA. However, in the absence of regime specific requirements, this guidance reflects current good practice for the design and maintenance of containment systems for the prevention of pollution. Following these guidelines will help businesses manage their environmental responsibilities to prevent pollution and comply with the law.

If the system is inappropriate for the site, then no matter how much care is taken over the detailed design and construction of the components, the result is likely to be unsatisfactory either in terms of performance, or cost, or both.

3.2 CONTAINMENT SYSTEM TYPES

Containment systems may be categorised broadly as either local (eg bunds), remote or combined (combined local and remote).

The differences between the three methods of providing containment, the situations in which they may be suitable and the protection that they can afford are described in the following sections. The examples given in this chapter refer to bunds although there are other options for providing containment such as earth embankments and for remote containment, tanks and lagoons.

There is no universally recognised definition of the term ‘bund’, however, in the context of this guidance, a bund is defined as (Mason *et al*, 1997):

“a facility (including walls and a base) built around an area where potentially polluting materials are handled, processed or stored, for the purposes of containing any unintended escape of material from that area until such time as remedial action can be taken. Bunds are usually structurally independent from the primary containment tank”

3.3 LOCAL CONTAINMENT SYSTEMS

Bunds provide a container designed to prevent the spread of any inventory that escapes from the primary containment. They contain the material at source, hence the term local containment.

Storage tanks, IBC/drum stores or other areas used for storing or handling inventory may be banded individually or in groups. However, bands may also be built inside buildings, eg warehouses used for storing chemicals, that may be specially built or modified so that the structure itself provides an effective bund.



Figure 3.1 Typical storage of IBCs in a warehouse (courtesy Feedwater Ltd)

Bunds can also be used in linear form to protect against leaks from pipework. For pipework laid below ground the bund normally takes the form of a covered channel or culvert, although below-ground pipework should be avoided where possible. However, as these linear bunds will usually have only a small capacity and the volume of potential leakage from pipework can be large, it is good practice to arrange them to drain or overflow into larger local or remote secondary and/or tertiary containment areas.

3.4 REMOTE CONTAINMENT SYSTEMS

Remote containment systems retain escaped inventory at a location that is not local to the primary container. These systems would rarely provide any significant containment at the source of failure and so they rely principally on the capacity of the transfer system to convey spillages at a rate no less than the potential flow that would be generated by a sudden (catastrophic) loss of primary containment. Guidance on transfer systems is provided in Chapter 10.

A clear advantage of a remote containment is that a single facility can be designed to serve a number of primary containment areas. However, the design of such a 'shared' facility has to cater for the most hazardous of the substances stored on site as well as considering the potential cocktail of substances that might be retained during a site-wide incident as well as simultaneous or 'domino' events.

It is not always possible to make a clear distinction between a remote secondary containment facility and tertiary containment where the tertiary containment is provided in the form of a permanent facility such as a lagoon. However, following guidance on system capacity provided in Chapter 4:

- **Secondary containment** includes the volume of the inventory stored in the primary containment, plus the allowance made for rainwater, cooling water and firefighting agents (foam) but not necessarily firefighting water.
- **Tertiary containment** would include anything beyond this including an allowance for firefighting water. However, tertiary containment is also a line of defence for failure of secondary containment.

Additional guidance on tertiary containment can be found in EI (2013).

Transfer to tertiary containment may be through a drainage system (above or below ground), or over the surface of appropriately graded areas of hardstanding or formations and, as such, remote systems are best suited to sloping sites where the transfer system can work under gravity.

However, if the transfer system has to rely on pumping, additional measures should be provided for class 2 and 3 sites and these might have a bearing on the design of the secondary containment (see Section 10.3).



The integrity and capacity of the transfer systems clearly influences the level of protection that remote containment systems provide. While a gravity transfer system is preferable as it is 'passive', where this would require below-ground pipework, the integrity of the pipework can be difficult to monitor compared to an above ground pumped system. These are factors that should be considered in the risk assessment when determining an appropriate containment strategy for a site.

Another, less common, method of providing containment is to surround part, or all, of a site with diaphragm or sheet piling cut-off walls, which extend down to an impermeable stratum. The impermeable stratum acts as an impermeable floor and in the event of an incident pollution is restricted to the ground contained by the cut-off walls. A major disadvantage to this approach is that it may result in a large quantity of contaminated soil for which, ultimately, treatment or disposal arrangements would need to be made and paid for. Also, it is not possible to monitor the integrity of the containment. So, cut-off walls should only be used to provide tertiary protection where other types of secondary containment described in this section are already in place. Further guidance on sacrificial areas and temporary containment is given in Chapter 11.

3.5 COMBINED CONTAINMENT SYSTEMS

A combination of both local and remote systems can be provided on a site incorporating a variety of transfer systems as illustrated by the key plan in the overview of this publication.

Combined containment systems have both local and remote elements and are designed to contain some of the escaped inventory close to the source, as in local containment, and to transfer by gravity, or by pumping, to a further secondary containment facility at a remote location.

For combined systems, the distinctions between secondary and tertiary storage can sometimes blur as shown in Box 3.1.

Box 3.1 Combined containment systems

A combined containment system may provide only limited local containment, in which case it becomes, in effect, a remote system as described above. At the other end of the scale, a combined system may include full secondary containment at source, in which case the additional facility to transfer to remote secondary containment can provide an extra degree of environmental protection. Secondary containment in this situation is therefore tertiary containment.

Transfer arrangements

The release of material from the local bund to the remote containment should be controlled manually (for example, by operatives opening a valve when the bund appears to be in danger of overflowing), however, this introduces vulnerability to human failure as it requires competent staff to be available 24/7 to correctly detect, diagnose and act. Alternatively, an overflow weir may be incorporated into the bund design so that no intervention is required to relieve overfilling. Where the capacity of the bund is less than the recommended capacity for a local system, it is essential that the transfer control mechanism operates reliably and preferably incorporates back-up or fail-safe devices. Failure of the control mechanism, or inadequate capacity of the transfer system, could cause a bund with a limited capacity to overflow.

3.6 SYSTEM SELECTION

The assessment of which type of system (or combination of systems) would be most effective and provide best value for money in a particular situation involves consideration of a wide range of factors. These are summarised in Table 3.1.

Table 3.1 System selection

Issue	Factors to consider
Storage of inventory	<ul style="list-style-type: none"> ■ inventory quantity, rainwater, firefighting agents (foam) plus an allowance for firefighting water if required (see Chapter 4) ■ nature of inventory and any 'cocktails' that may result from an incident where remote secondary containment is shared by a number of different inventories (incompatible substances, water-miscible and water-immiscible substances etc) ■ the nature of the primary system, for example whether single tank, tank farm, process plant, warehouse, pipeline, loading point or drum store.
Receptors	<ul style="list-style-type: none"> ■ the proximity and sensitivity of receptors ■ the level of unmitigated risk to the receptors.
Site constraints	<ul style="list-style-type: none"> ■ space available for containment works ■ the potential for using or adapting existing containment facilities, for example interceptors, lagoons and bunds, and on-site or external treatment plant facilities which may have spare storage or treatment capacity ■ the potential for sharing containment facilities across different process areas of a site where a range of different inventories may be present ■ site topography ■ the type of drainage system, including the method of disposal of trade effluents, sewage and stormwater, and how the drains interconnect ■ future development plans for the site, either physical changes in layout, plant or buildings, or in the processes to be carried out.
Financial	<ul style="list-style-type: none"> ■ cost constraints.

Case study 3.1
Example of process resulting in selection of remote secondary containment, West Yorkshire, UK

PPG Architectural Coatings UK Ltd are a manufacturer of paints with a high inventory of chemicals and finished goods stored on their site at Batley, West Yorkshire. With a change to the CHIP regulations, the site became a top tier CoMAH site after many years of being considered a 'normal' manufacturing establishment and therefore required preparation of a CoMAH safety report to evaluate the offsite potential for pollution in the event of a fire and/or spill.

The potential environmental impact from the fire water runoff to an adjacent stream was assessed as a significant MATTE, so the site had to consider how to mitigate impact.

An initial scheme considered effectively containing the entire sloping site within a bund wall. However, this was discounted on cost grounds and a more economically viable option was developed focusing on the control of runoff via the drainage system to the stream.

Surface water (and potentially firewater) runoff from the former Victorian mill complex drains directly to the stream. However, details of the drainage and potential overland flow paths were unknown and had to be established by a detailed site topographic survey. The initial phase of works installed automatic drain closing penstocks on all the outfalls to the stream. These are triggered by the sound of the site fire alarm and by push-button to allow manual closure. They are powered by the mains with a solar battery back-up.

The topographic survey and assessment of firefighting water volumes confirmed that additional containment volume would be required within the site during an incident. This was achieved by lowering an existing car park adjacent to the stream by some two metres to create a lagoon that was designed to fill via backing up of the site drainage once the outfall had closed.

The walls and base of the lagoon, still retained as a car park, were designed following the original CIRIA R164 guidance to be liquid retaining and hold contaminated firefighting water and surface water runoff until it could be remove for offsite disposal. Part of the site's emergency response plan includes a 24/7/365 contract to provide tankers to remove firefighting water from the lagoon should its capacity be fully used during an incident.



3.7 SITE ZONING

As stated in Chapter 2, where a range of inventories are to be stored on a site, the site hazard rating for each inventory should be considered individually. Where such analysis results in differing ratings for each, or groups of, inventory, it may be appropriate to consider 'zoning' the site as differing classes of containment may be required.

Such an approach is likely to be governed by site (space) and economic constraints.

3.8 SYSTEM RELIABILITY

It is not intended that the reliability of the overall containment strategy discussed in this section should influence the class of the containment system. However, overall system reliability is a matter that should be considered as part of the design of the containment facilities.

If properly designed and constructed, a local, remote or combined system is capable of providing effective secondary and/or tertiary containment. However, the degree of environmental protection provided by each system depends upon its reliability to respond to an incident in the way intended. This level of reliability of a system depends, on a number of factors including:

- complexity – the more there is to go wrong, the greater the risk
- whether intervention (manual or automatic) is necessary for the system to work
- ease of maintenance
- ease with which containment condition or integrity may be monitored and any defects or failures dealt with
- site management (arrangements for ongoing assurance, staffing competence, safety culture etc).

It is important to stress that this reliability rating is a relative measure of the likelihood that the containment system will perform as it was designed to, throughout the whole of its life, when called into action.

It is evident that system reliability is dependent not only on the intrinsic characteristics of the system but also on the circumstances in which it is used. It should be stressed that Table 3.2 necessarily simplifies what is a complex design process and there may be site factors or particular characteristics of the operation that would lead to different conclusions regarding relative reliability.

The design of secondary containment systems should therefore balance the advantages and disadvantages of particular features and characteristics of a system. This will require a full and thorough understanding of the site and operations likely to be carried out on it

Table 3.2 Reliability of containment systems

Type of system	Summary of system characteristics				Suggested relative reliability
	Complexity	Intervention	Maintenance	Monitoring	
<i>Local</i>	<ul style="list-style-type: none"> simplest system fully passive does not rely on operation of valves, transfer systems etc. 	<ul style="list-style-type: none"> no intervention required in response to an incident intervention necessary only to ensure bund kept free from accumulated rainwater and to empty following incident. 	<ul style="list-style-type: none"> relatively easy all parts accessible no valves, pumps, transfer systems etc to maintain. 	<ul style="list-style-type: none"> relatively easy major defects obvious leakage from primary containment into bund easy to detect. 	High
<i>Remote</i>	<ul style="list-style-type: none"> system has more components, ie local catchment area, transfer system and remote containment additional components with pumped transfer system. 	<ul style="list-style-type: none"> none required with gravity transfer system non-automatic pumped transfer systems require intervention at start of incident intervention necessary only to ensure bund kept free from accumulated rainwater and to empty following incident, or during incident to reduce level if capacity to be exceeded (eg by transferring our firewater). 	<ul style="list-style-type: none"> relatively difficult systems more 'extensive', likely to include inaccessible transfer system on pumped system, valves, pumps etc require maintenance. 	<ul style="list-style-type: none"> less easy since three potential leakage areas to monitor: catchment area, transfer system and remote containment transfer system particularly difficult. 	Low: except where transfer system gravity operated, or pumped above ground system, in which case medium
<i>Combined</i>	<ul style="list-style-type: none"> same as remote system. 	<ul style="list-style-type: none"> same as remote system but need also to ensure any banded area free from accumulated rainwater. 	<ul style="list-style-type: none"> same as remote. 	<ul style="list-style-type: none"> same as remote. 	Low or medium, with same caveats as remote systems

4 Containment system capacity

This chapter provides:

- An introduction to determining containment capacity (Section 4.1)
- A review of current industry practice (Section 4.2)
- A method for assessing containment capacity (Section 4.3)
- A review of research into the freeboard in bunds to allow for dynamic effects (Section 4.4)
- A summary of retention capacity recommendations (Section 4.5)

4.1 INTRODUCTION

Determining the correct capacity for a containment system is one of the most important parts of the design process. If the capacity of a system is too large, resources that might have been invested in other ways may have been wasted, whereas if a system is too small and is incapable of providing effective protection in the event of an incident, the cost of installation may equally have been wasted.

The assessment of capacity raises a number of issues, such as:

- how much firefighting water would be likely to be used in the event of a major fire
- the impact of any 'burn strategies' that may be in place
- whether firefighting water can be recirculated.

It is important to consult widely with the regulatory authorities and in particular the Fire and Rescue Service, to ensure that the containment system is designed based on credible scenarios.

The method in this guidance is applicable to all types and sizes of containment system from the storage of IBCs in a warehouse to large tank farm sites. However, it is important to note that for the storage of certain materials, there are specific regulations that apply and these must be adhered to. These are referred to in Section 1.7.

As a general point, where containment capacity could potentially be exceeded, operators should have a clear understanding of what would happen to the inventory, ie where it will go, and have contingencies in place to minimise the risks. This will have been established by the assessment of the pathways completed as part of the site risk rating described in Chapter 2.

4.2 CURRENT INDUSTRY PRACTICE

Table 4.1 lists the current approaches, regulations and guidelines for estimating secondary containment volumes and are reviewed in the sections that follow. They are also summarised in Table 4.2.

Table 4.1 List of approaches, regulations and guidelines

Guidance	Section
The '110%' and '25%' rules	4.2.1
The Control of Pollution (Oil Storage) (England) Regulations (OSR) 2001	4.2.2
Health and Safety Executive guidance: <ul style="list-style-type: none"> ■ HSG51 (1998a) <i>The storage of flammable liquids in containers</i> ■ HSG176 (1998b) <i>The storage of flammable liquids in tanks</i> ■ HSG71 (2009b) <i>Chemical warehousing, the storage of packaged dangerous substances</i> ■ HSE (2009a) <i>Safety and environmental standards for fuel storage sites, Process Safety Leadership Group (PSLG), Final report</i> ■ The Control of Major Accident Hazard (COMAH) Regulations 1999 ■ COMAH (2008) <i>Competent Authority policy on containment of bulk hazardous liquids at COMAH establishments</i> 	4.2.3
Pollution prevention guidelines (PPG) <ul style="list-style-type: none"> ■ PPG18 (2000) <i>Managing fire water and major spillages</i> ■ PPG26 (2004) <i>Storage and handling of drums and intermediate bulk containers</i> 	4.2.4
Environmental Permitting Regulations (England and Wales) 2010 (ERP)	4.2.5
Energy Institute (EI) <ul style="list-style-type: none"> ■ EI (2012) <i>Model code of safe practice. Part 19: Fire precautions at petroleum refineries and bulk storage installations</i> ■ EI (2013) <i>Model code of safe practice. Part 2: Design, construction and operation of petroleum distribution installations</i> 	4.2.6
BASIS Registration Scheme	4.2.7
Summary of the requirements of each of the regulations or guides listed here	4.2.8

4.2.1 The '110 per cent' and '25 per cent' rules

The basis for much industry practice in the past has been the 110 per cent and 25 per cent rule. Although not following the risk-based approach recommended in this guide, this practice has been in use for many years.

Where a single bulk liquid tank is banded, the recommended minimum bund capacity is 110 per cent of the capacity of the tank.

Where two or more tanks are installed within the same bund, the recommended capacity of the bund is the greater of:

- 1 110 per cent of the capacity of the largest tank within the bund.
- 2 25 per cent of the total capacity of all of the tanks within the bund, except where tanks are hydraulically linked in which case they should be treated as if they were a single tank

The existing 110 per cent recommendation for single tanks and hydraulically linked multi-tank installations implies a margin of 10 per cent, which is discussed as follows. The recommendation for other multi-tank installations, the 25 per cent rule, is based on the assumption that it is unlikely that more than one tank will fail at any one time. This may be reasonable in circumstances where the contents escape from a primary tank as a result of, for example, tank corrosion or operator error, which is likely to affect only one tank at any one time. However, there may be credible scenarios such as fire or explosion or acts of vandalism that could affect all of the tanks within a banded area.

The 10 per cent margin has been interpreted by industry and regulators to cover a range of factors including:

- prevention of overtopping of the bund in the event of a surge of liquid caused by the catastrophic failure of the primary tank
- prevention of overtopping, which may be caused by wind-induced wave action during the time that the bund is full following failure of a primary tank

- an allowance for firefighting agents, including a foam blanket on the surface or firefighting water
- protection against overfilling
- an allowance for rain that might collect in the bund and reduce its net capacity, or for rain that might fall in coincident with, or immediately following, the failure of the primary containment.

The method set out in this guidance (Section 4.3) provides a quantitative assessment of these assumptions, rather than relying on an arbitrary allowance of 10 per cent of the primary capacity or 25 per cent of the primary capacity for multiple tanks within a common secondary containment. See Sections 4.3 and 4.4 which cover credible scenarios.

It should be noted that the 110 per cent and 25 per cent rules apply as the recommended minimum volume for IBC/drum stores as set out in PPG26, although recent guidance is moving towards the requirement to size IBC/drum stores (and associated combined containment system) based on containment of complete inventory plus rainfall and firefighting water, eg in accordance with HSE (2009b) and EI (2013). The guidance contained in HSE (2009b) and PPG26 is discussed in Sections 4.2.3 and 4.2.4 respectively.

4.2.2 The Control of Pollution (Oil Storage) (England) Regulations (OSR) 2001

The OSR apply to the storage of oil in containers in quantities of greater than 200 litres except where it is stored within a building, is at a private dwelling (where the limit is increased to 3500 litres) or is on a premise use for refining oil or for the onward distribution of oil to other places.

Section 3(2) of the OSR requires that secondary containment is provided with a minimum of 110 per cent of the container's capacity for a single container or where there is more than one container, not less than 110 per cent of the largest container or 25 per cent of their aggregate capacity, whichever is the greater.

Further advice on the interpretation of the OSR is provided by EA *et al* (2011a).

4.2.3 Health and Safety Executive (HSE)

HSG51 The storage of flammable liquids in containers

HSG51 applies to containers with a volume of less than 1000 litres and recommends that secondary containment equivalent to 110 per cent of the largest containers is provided for both indoor and outdoor storage of flammable materials.

HSG71 Chemical warehousing, the storage of packaged dangerous substances

HSG71 recommends that spillage control in outdoor areas should comprise a containment area with a volume that is at least 110 per cent of the capacity of the largest single container except in the case of oil storage where 25 per cent of the total volume should be provided. The guidance also makes reference to CIRIA R164 and PPG18 for further advice on containment capacities.

HSG176 The storage of flammable liquids in tanks

HSG176 applies to above and below-ground bulk fixed bulk storage tanks and to portable, or skid mounted, vessels with a capacity greater than 1000 litres. Smaller containers are covered by HSG51.

The guidance recommends that the secondary containment should have sufficient capacity to contain the largest predictable spillage and that a bund capacity of 110 per cent of the capacity of the largest storage vessel located within the bund will normally be sufficient. It also advises that smaller capacity bunds may be acceptable where liquid can be directed to a remote or tertiary containment area.

It is stated that individual bunding is to be preferred to common bunding, particularly for large tanks,

but where several tanks are contained in one bunded area, intermediate lower bund walls should be provided to divide tanks into groups to contain small spillages and to minimise the surface area of any spillage. The total capacity of tanks in a bund should not exceed 60 000 m³ (120 000 m³ for floating-roof tanks).

Where there is no risk of pollution or of hazard to the public the guidance advised that the containment volume can be reduced to no less than 75 per cent of the largest vessel located within the bund.

COMAH Competent Authority policy on containment of bulk hazardous liquids at COMAH establishments. Control of Major Accident Hazard (COMAH) Regulations 1999

If the quantity of dangerous substances on site exceeds the qualifying inventory for COMAH, operators of such sites are required to take all measures necessary to prevent major accidents based on the principle of reducing risk to ALARP.

CA (2008a) requires that secondary containment shall:

“...have sufficient capacity to allow for tank failure and firewater management. This will normally be a minimum capacity of either 110 per cent of the capacity of the largest tank, or 25 per cent of the total capacity of all the tanks within the bund, whichever is the greater”

and at Part C 11 states that:

“The installation shall have sufficient capacity to hold safely the anticipated or foreseeable volume of hazardous liquids, including firewater, compatible with the intended operational characteristics.”

Safety and environmental standards for fuel storage sites, Process Safety Leadership Group (PSLG), final report

The final report was published to translate the lessons learnt following the catastrophic Buncefield incident into effective and practical guidance for the industry. Part 4 of the report provides guidance on engineering against the loss of containment principally from large gasoline tanks and states that:

“The bund should be sized for 110% of the ‘tank rated capacity’ (TRC) as a minimum. This assumes that the minimum standards for overfill protection systems of control are in place relating to:

- *tank levels and capacities are determined in accordance with Appendix 3 Guidance on defining tank capacity (to the PSLG Final report);*
- *position and type of level gauges and high level detectors;*
- *how are these monitored and the required response;*
- *response times to shutdown inflow*

Unless multiple tanks sharing the same bund are hydraulically linked, simultaneous overfill of independent tanks can be discounted as a realistic hazard. Therefore, the 25% criteria would not apply to the Overfill level. For the bund capacity calculation based on 25% of the total capacity of all the tanks, the normal fill levels of all the tanks within the bund should be used.

The 25% criterion applies to the risk of loss of containment of more than one tank and provision for firewater management. This provides a buffer to deal with the incident and informs risk assessment as to the degree of tertiary containment that may be required to deal with subsequent failure of secondary containment in a severe and prolonged event. The actual sizing for multi-tank bunds will be determined by the hazard and the risk – including the modifying factors stated above.”

4.2.4 Pollution prevention guidelines (PPG)

PPG18 Managing fire water and major spillages

PPG18 (EA, NIEA, SEPA, 2000) provides advice on managing firewater and major spillages. For advice on local secondary containment capacity, PPG2 (EA, NIEA, SEPA, 2011a) is referred to, ie the '110 per cent' and '25 per cent' rules. However, for remote containment the advice mirrors that in this guidance with no distinction made between secondary and tertiary containment.

PPG26 Storage and handling of drums and intermediate bulk containers

PPG26 (EA, NIEA, SEPA, 2004) applies to IBCs of not more than 1000 litres capacity that are not directly connected to a part of a process or other point of use, irrespective of the number of containers stored.

The guidance states that the capacity of secondary containment facilities should take account of the maximum volume of product that could be stored at any one time. If a fixed firefighting system is in place, additional provision will be required for the quantity of firefighting media (eg foam) likely to be used.

For multiple container storage, containment facilities should have sufficient capacity to contain at least 25 per cent of the total volume of the containers being stored, or 110 per cent of the largest container, whichever is the greater.

With large external stores, 25 per cent containment capacity may result in low containment walls, which are quickly overwhelmed by rainfall or firefighting agents. An additional 100 mm height on the walls, known as freeboard, should be provided.

Where containers are stored inside a building, containment facilities should be proportionate to the risk, however, the risk may be substantial. For example, in the case of agricultural stores (see Section 4.2.7) the capacity should be between 110 per cent and 185 per cent of the maximum storage capacity.

4.2.5 Environmental Permitting Regulations (England and Wales) (EPR) 2010

The EPR recognises the potential harm that can be caused by accidental releases from tanks, sumps and containers and a condition of the permit will be the provision of secondary containment or other appropriate measures to prevent or minimise leakage from the primary container.

No specific recommendation are made on containment capacities, however, where there is potential for significant pollution to occur an emissions management plan is required informed by an environmental risk assessment. The outcome of the risk assessment determines the containment or other measures that may be required.

4.2.6 Energy Institute (EI)

EI (2013) and EI (2012b) refer to the CA containment policy for COMAH sites for advice on the provision of secondary containment (CA, 2008b).

4.2.7 BASIS recommendations

Defra (1998) recommends that stores should be capable of containing 110 per cent of the total amount of pesticides to be stored at any one time. However, this should be increased to 185 per cent in "pollution risk or environmentally sensitive areas".

4.2.8 Summary

Table 4.2 Summary of secondary containment requirements in regulations, policies, schemes and publications

Regulations/guidance	Containment requirements	Scope	Typical inventory
OSR 2001 PPG2	110% of the capacity for a single container or, where there is more than one container, not less than 110% of the largest container or 25% of their aggregate capacity, whichever is the greater.	Greater than 200 litres or 3500 litres when stored on residential premises or within a building.	Oil
COMAH	Take all measures necessary to prevent major accidents based on the principle of reducing risk to ALARP.	Qualifying inventory for COMAH.	Dangerous substances
CA containment policy for fuels	Sufficient capacity to allow for tank failure and firewater management. This will normally be a minimum capacity of either 110% of the capacity of the largest tank, or 25% of the total capacity of all the tanks within the bund, whichever is the greater.		
HSE (2009a)	110% of the 'tank rated capacity' (TRC) as a minimum provide that minimum standards for overfill protection systems of control are in place. For the bund capacity calculation based on 25% of the total capacity of all the tanks, the normal fill levels of all the tanks within the bund should be used.		
HSE (1998a)	110% of the largest containers are provided for both indoor and outdoor storage.	Less than 1000 litres.	Flammable liquids in containers
HSE (1998b)	Should contain the largest predictable spillage and that 110% of the capacity of the largest storage vessel located within the bund will normally be sufficient. Advises that smaller capacity bunds may be acceptable where liquid can be directed to a remote or tertiary containment area.	Greater than 1000 litres.	Flammable liquids in tanks
HSE (2009b) PPG26	In outdoor areas at least 110% of the capacity of the largest single. For multiple container storage at least 25% of the total volume of the containers being stored, or 110% of the largest container, whichever is the greater. Allowance for firefighting waters should be made. Containment should be based on risk assessment.		Packaged dangerous substances
EI (2012b)	Refers to CA containment policy for advice on appropriate secondary containment volumes.		Petroleum
BASIS Registration Scheme	110% of the total amount of pesticides to be stored at any one time. However, increased to 185% in "pollution risk or environmentally sensitive areas".		Pesticides for use in agriculture, horticulture and forestry

4.3 METHOD FOR ASSESSING CONTAINMENT CAPACITY

4.3.1 Introduction

This section sets out a method for assessing the required site-wide capacity for containment. This refers to and draws on experience in using a range of the current approaches discussed in Section 4.2.

The method is based on the principle that the containment should be capable of retaining:

- the total volume of inventory that could be released during a credible incident (see Section 4.3.2)
- the maximum rainfall that would be likely to accumulate within the containment before, during and/or after an incident (see Section 4.3.3)
- firefighting agents (water and/or foam), including cooling water (see Sections 4.3.4).

A summary of recommendations from these approaches is provided in Section 4.5 and Table 4.6.

4.3.2 Volume of inventory

The volume of inventory should be taken as the capacity of the primary containment.

For above ground storage tanks, the brimful capacity of the primary containment should normally be adopted as advised in the environmental permit. However, where the tank is fitted with a physical overflow, the capacity at which the tanks would overflow may be taken.

In some cases, and subject to a risk assessment, it may be appropriate to use the nominal capacity, or TRC. This should be discussed and agreed with regulators at an early stage in the design process and would normally only be allowable if a high integrity overfill protection system is in place.

The relationship between capacities is shown in Figure 4.1.

In determining containment requirements, the volume of substance should be based on the loss from a credible scenario and this need not necessarily involve the entire site inventory. This should also be discussed and agreed with regulators at an early stage in the design process.

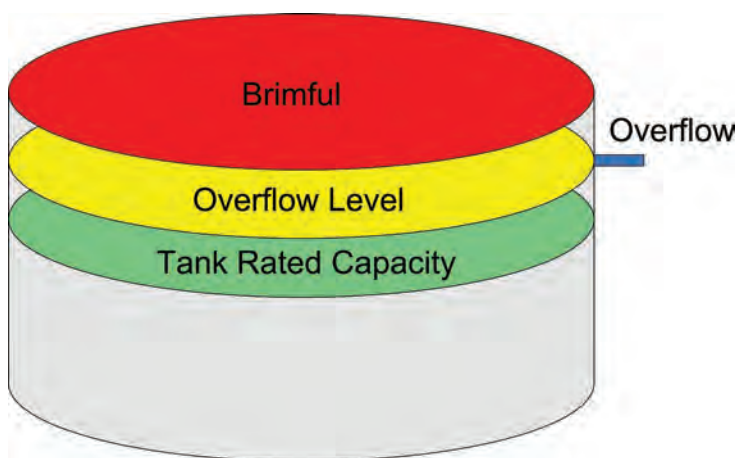


Figure 4.1 Definition of tank capacities

4.3.3 Rainfall

The following recommendation is based on the assumption that secondary containment is regularly inspected and that any rainwater that has collected is removed regularly. If this is not the case, capacity should be increased to allow for the accumulation of rainwater between inspections and/or the time between its periodic removal.

If the containment is covered, or located within a building, then it is less important to account for accumulated rainfall when determining the containment capacity although collapse of the roof during the incident is a possibility.

The allowance for accumulated rainfall should be based on an event (storm) with an annual exceedance probability (AEP) of 10 per cent (1 in 10). This is commonly referred to as the 1 in 10 year return period event.

The containment capacity should allow for rain falling over the containment area immediately preceding an incident (ie before it could be removed as part of routine operations) and immediately after an incident (ie before a substance, which had escaped from the primary, could be removed from the bund).

The containment volume should include an allowance for the total volume of accumulated rainfall in response to a 10 per cent AEP event for:

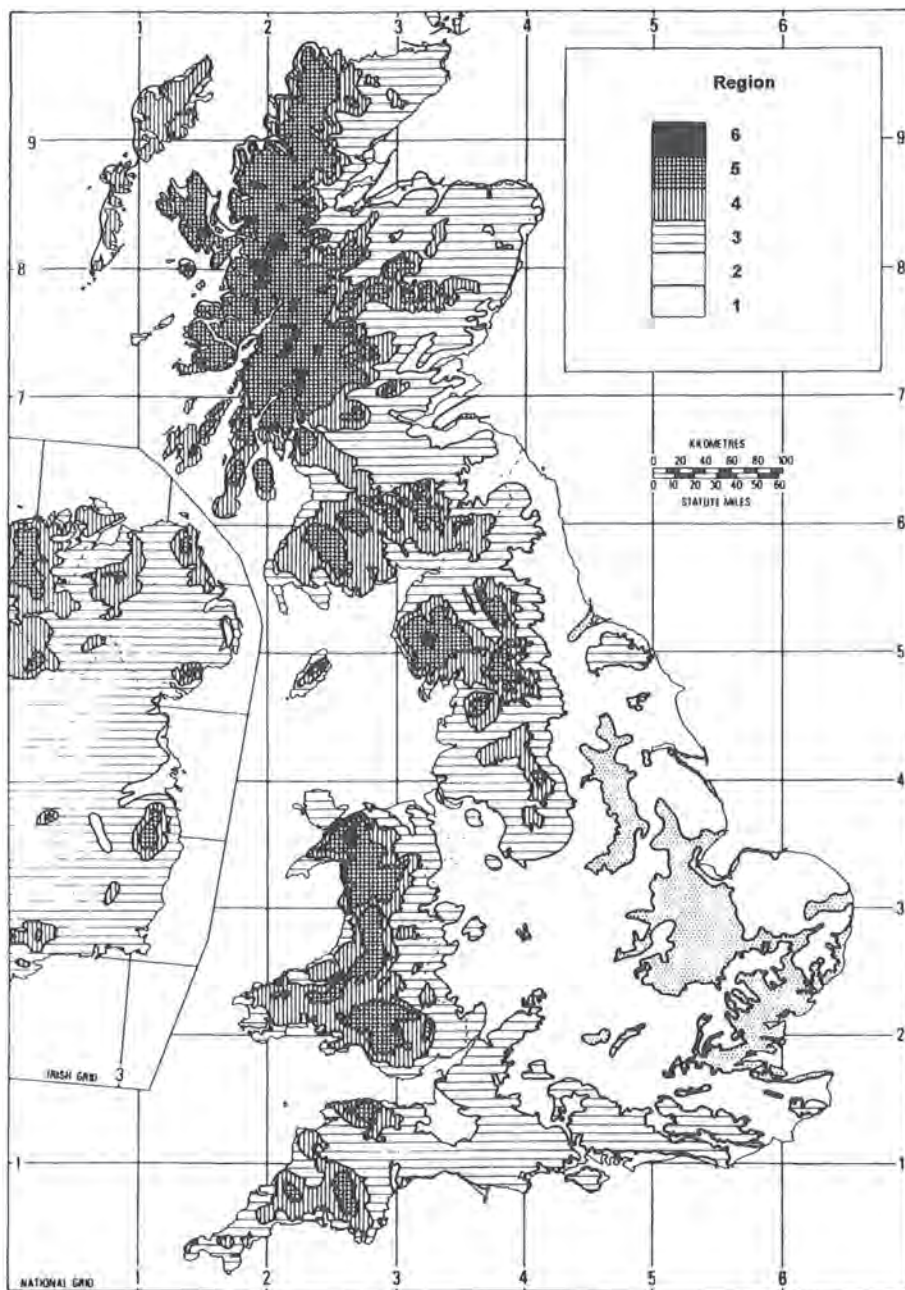
- a 24-hour period preceding an incident
- the duration of the incident (advice on the duration should be sought from the Fire and Rescue Service)
- an eight day period following an incident or other time period as dictated by site specific assessment.

The preferred method of estimating the rainfall depths is to use the depth-duration-frequency rainfall model contained on the *Flood Estimation Handbook* (FEH) CD-ROM (CEH, 2000), which provides location specific rainfall totals for given durations and return periods.

However, as a first estimate, it may be appropriate to refer to Figure 4.2, which provides average annual rainfall depths and those for the 24-hour and eight day 10 per cent AEP events.

Care should be taken to include any additional areas that might drain into the containment system (local, remote or combined) when making an allowance for rainfall depth in the capacity assessment.

Where rainfall, or the management of rainfall, is likely to present a significant problem, providing a roof over the containment should be considered.



Region	Standard annual average rainfall (mm)	Rainfall depth (mm) 10-year return period	
		24-hr duration	8-day duration
1	<600	29	54
2	600–800	32	65
3	800–1200	41	95
4	1200–1600	52	120
5	1600–3200	88	231
6	3200	106	288

Notes

It should be stressed that Figure 4.2 should only be used to derive a first estimate for considering containment volumes. This is for two reasons:

- 1 The figure is based on *Flood studies report* (Institute of Hydrology, 1975) data produced up to 1986.
- 2 Climate change effects since the publication of HR Wallingford (1986) will have resulted in different annual rainfall figures. Detailed design should therefore be based on the output of the FEH rainfall.

Figure 4.2 Average rainfall depths (from HR Wallingford, 1986)

4.3.4 Firefighting water and firefighting agents

This section provides:

- An introduction to firefighting water and firefighting agents (Section 4.3.4.1)
- Advice on the allowance to be made for firefighting water in the design of remote and combined systems (Section 4.3.4.2)
- Advice on delivery rates (Section 4.3.4.3)
- A review of ISO/TR 26368:2012 (Section 4.3.4.4)
- Advice on fixed firefighting systems (sprinklers) (Section 4.3.4.5)
- Reviews guidance by Local Government Association and Water UK (2007) (Section 4.3.4.6)
- Methodology for forecasting the volume of firefighting water (Section 4.3.4.7)

4.3.4.1 Introduction

It is difficult to provide general recommendations for capacity allowance for firefighting water as much depends on the nature of the site and the manner of response to an incident. However, since many incidents are likely to involve fire, and almost all 'worst case' scenarios involve fire, making adequate provision for retention or recycling of firefighting and cooling water is of critical importance.

Firefighting agents, including water-based foams, are accounted for in the estimation of containment capacity by making an adequate allowance in the design of the height of the wall (freeboard). The amount of freeboard required for firefighting foam should be agreed with the Fire and Rescue Service or occupational fire brigades but the amount should be no less than 100 mm.

In making recommendations, a distinction has to be made between local (bund) and remote or combined containment in terms of what is practicable.

It would normally be impracticable to design the local containment with sufficient capacity to contain the quantities of firefighting and cooling water that would be used in a major fire.

In practice, in the event of a major fire, cooling water would be sprayed on to any threatened primary container, either through hoses, monitors, or a fixed sprinkler or deluge system, or both. As a consequence, the bund could be partly or totally filled with cooling water leaving insufficient or no residual capacity to cope with any release of substance if the primary containment subsequently failed. In this situation the Fire and Rescue Service should be consulted and one of the following options agreed:

- procedures for recycling cooling water so that there would be no build-up in the bund. This would require the incorporation in the design of suitable facilities such as the provision of suitable pick-up sumps/transfer systems. (It should be noted that some stored inventories, eg fatty acid methyl esters (FAME) and ethanol, dissolve and emulsify in water and may not be suitable for recirculation as firewater).
- the maximum amount of cooling water that would be likely to be used in the worst case scenario, and increasing the capacity of the bund accordingly. Where cooling water is supplied through fixed installations, the maximum possible application will equal the capacity of the supply reservoir (although it may be replenished during an incident). Such installations are normally designed for a water delivery rate in the range of 2 to 20 l min⁻¹m². Where cooling water is applied by hose, perhaps to supplement the fixed installation, assessment of the volume should necessarily rely on assumptions about application rate and duration. As discussed above, in many situations it may be impracticable to provide the additional capacity.

In many cases this latter option would require the local containment to be several times larger than that required simply by the capacity of the primary containment. On most sites this could translate into very much higher bund walls that could then cause construction, operational and safety problems, and hinder the ability to fight fires.

In many instances, where fire is a credible scenario, local containment of firewater is unlikely to be a feasible option and therefore either tertiary containment, or for larger sites, remote secondary containment will be necessary. For local containment, other than the freeboard to retain a blanket of foam, no separate allowance above the height of the bund wall to contain the volume of substance (see Section 3.3.1) and the accumulated rainwater (see Section 3.3.2) will be required.

4.3.4.2 Allowance for firefighting water in the design of remote and combined systems

Remote and combined systems should have sufficient capacity to manage such firefighting and cooling water as could reasonably be expected to be used in a major fire. It is essential to consult fully with the Fire and Rescue Service to arrive at a reasonable volume estimate, taking into account the following:

- 1 The size and layout of the plant.
- 2 The nature of the materials present and the processes carried out.
- 3 The fire detection and response systems (eg fixed sprinkler installations, on-site firefighting capability) on (or proposed for) the site.
- 4 The Fire and Rescue Service's contingency strategy for dealing with an incident.
- 5 The Fire and Rescue Service's own delivery capability including the number and type of appliances that could respond to an incident.

It should be stressed that a credible scenario should be considered where perhaps the fixed sprinklers fail and the incident is dealt with by mobile deployment. It will therefore be important to discuss with the Fire and Rescue Service what their actual response might be to an incident over and above their planned first response. Regulators are increasingly asking COMAH establishments to produce firefighting plans as part of their emergency response measures. The failure to manage the firefighting water was one of the causes of the environmental harm that resulted from the Buncefield incident.

Based on these factors, and in consultation with the regulators and the plant operators, an appropriate capacity of containment can be determined.

On high or medium hazard rating sites (see Chapter 2) sufficient capacity should be provided to contain and/or manage all of the firefighting and cooling water that could reasonably result from a credible worst case scenario fire.



Where this would not be possible because of physical constraints, or where it would be difficult operationally, it will be necessary to review with the Fire and Rescue Service ways of reducing the anticipated quantities of firefighting and cooling water to a level that could be contained. This may involve, for example, one or a combination of the following measures:

- reduce the volume of the primary containment
- install or provided additional fixed fire sprinklers, monitors and detection systems
- compartmentalising the plant or site to limit the propagation of a fire
- recycling the firewater where this would not be hazardous (ie FAME, ethanol etc)
- using additional temporary pollution prevention measures deployed as part of an incident response plan (IRP) agreed in advance with the regulators. Advice on preparing an IRP and appropriate temporary pollution prevention measures are given in PPG21 (EA, NIEA, SEPA, 2009) and PPG18 (EA, NIEA, SEPA, 2000) respectively
- gaining the agreement of the Fire and Rescue Service, the regulators and the operators to a 'controlled burn' response strategy. Controlled burns are used to prevent or reduce water and air pollution from firefighting activities at industrial and commercial sites. However, these are only appropriate in very specific cases. Advice on controlled burn strategies is provided in PPG28 (EA, NIEA, SEPA, 2007)
- providing a means of removing contaminated firefighting water during an incident such as discharge to the foul sewer (with appropriate consent) or transporting to a suitable reception facility by road tanker.

For sites with a low hazard or risk rating it will be harder to justify the costs of full containment for firefighting and cooling water and in consultation with the Fire and Rescue Service, the regulators and the site operators, a balance should be struck between protection and cost. However, there are some facilities, for example those that fall within the scope of the OSR, for which a prescribed minimum containment volume is mandatory.

The volume of firefighting and cooling water released at a site during an incident may be limited by one or all of:

- the capacity of the fixed water delivery installations on the site (eg sprinklers, deluge systems, ring mains supplied by on-site storage tanks)
- the delivery capability of the fire brigade using tendered or pumped-in water
- the maximum quantity that can be delivered by fixed installations (ie the capacity of the delivery storage tanks or reservoirs, with due allowance for replenishment rate through, for example, water company mains).

By contrast, the delivery capability through fire brigade hoses if connected to the water company mains, or extracting from a watercourse, may be effectively unlimited so that the quantity of firefighting and cooling water delivered would depend solely on the demands of the incident.

4.3.4.3 Delivery rates

Table 4.3 provides an indication of water delivery rates from fire hydrants and fire tenders. To estimate the quantity of firefighting and/or cooling water that might be used during an incident, an inventory of fire hydrants on, or in vicinity of the site, should be completed that includes the potential delivery rates and supply capacity (ie it is connected to a public mains supply (or supplies), or fed from a storage tank with a fixed capacity).

There are a number of high hazard installations located on estuaries and in Port Authority areas. The Port Authorities have a responsibility to have equipment available for timely use in major emergencies and may include one or more fire tugs. Each tug is likely to have a water pumping capacity of the order of 2400 m³h⁻¹ (40 000 l min⁻¹)

Discussions with the Fire and Rescue Service will be required to determine the number and type of appliances that would be mobilised to site in response to an incident. They should also establish what their actual response might be to an incident over and above their planned first response.

Table 4.3 Typical water delivery rates for hydrants, hoses and fire tenders

Delivery appliance	Flow rate (litres/min)	Delivery capacity (litres)	Head (m)
Fire hydrant	>550 (delivery rate at hydrant)	Dependent on supply storage	>3
Hose (25 mm)	24	Dependent on supply storage	>4
Fire tender (average) 24 mm nozzle	Dependent on number of hoses	1200 to 2000	Up to 50
Fire tender (large) 24 mm nozzle	Dependent on number of hoses	Up to 4500	Up to 50

Further useful advice on application rates for firefighting media is provided at Annex D of EI (2012b).

4.3.4.4 ISO/TR 26368:2012 Environmental damage limitation from fire-fighting water runoff

Current guidance on the approach to calculating firefighting and cooling water volumes is given in ISO ISO/TR 26368:2012.

ISO/TR 26368:2012 provides advice on risk reduction strategies that are consistent with this guidance and methods to assess the volume of contaminated firewater that may be generated in response to an incident. The recommendations are only summarised here and reference should be made to the report for detailed guidance on the methods presented.

Volumes are determined for the following as a basis for calculating the maximum required retention volume for firefighting water:

- 1 The total volume of water likely to be used to fight the fire.
- 2 The containment volume provided for each separate contained area of the site (there may only be one).
- 3 The estimated total volume of contaminated firefighting water based on the largest volumes estimated at point 2.
- 4 The expected volume of rainfall.
- 5 The total required retention volume for contaminated fire water (points 3 and 4).

The largest volume calculated at point 2 is then selected as the initial estimate of the volume of contaminated fire water and an estimate is then compared with the fire water likely to be used for the site (point 1). The larger of the two volumes is selected as the required retention volume for contaminated fire water.

This pragmatic methodology requires some clarification:

- the potentially 'partial site' volume estimated at point 2 assumes that the incident can be contained within that part of the site. The risk of a localised incident spreading to other parts of a larger site should be considered as part of the risk assessment and discussed with the Fire and Rescue Service and the regulator
- no explicit mention is made in point 2 allowing for the complete failure of the primary containment during the incident. Estimating the local secondary containment volume available for firefighting water should assume a credible scenario that might include the complete failure of the primary containment.

ISO/TR 26368:2012 provides a number of suggested methods for determining the total volume water used to fight a fire:

- defining retention volumes by 'magic numbers' ('Sandoz' and 'Ciba' methods)
- estimating firefighting volumes by model curves
- a risk-based approach
- the 'VCI' methods
- ICI's guidelines for fires involving whole chemical plants.

These are discussed in Box 4.1.

Defining retention volumes by 'magic numbers' ('Sandoz' and 'Ciba' methods)

This deterministic approach is based on feedback from specific incidents and based on tabulated values. In general, the retention volume required ranges from between 3 m³ to 5 m³ per ton of material stored depending on the:

- stored quantity of flammable materials, to define size of compartment
- hazard categories of stored products
- expected fire duration.

This method has the advantage that it is simple to apply and requires little input data. However, the magic numbers are based on only a few case studies and are therefore difficult to extend to every potential fire scenario.

Estimating firefighting volumes by model curves

Water flow rates required by fire and rescue services to extinguish fires have been statistically analysed against the fire area for both small and large fires. It should be noted that there is a significant variability in the results of the analysis. However, relationships have been developed that, when combined with an estimate of fire duration, can provide an indication of the volume of water required to extinguish fires.

If adopting this method, the Fire and Rescue Service should be consulted to agree credible potential fire duration (see Section 4.3.4.2).

A risk-based approach

Reference is made in ISO/TR 26368:2012 to a risk-based approach (the 'Australian Method') for determining the required retention capacity for firefighting water that is similar in scope to this guidance. However, this approach should not be adopted in preference to that set out in this guidance.

The 'VCI' methods

The VCI guidelines presents a method for calculating the quantities of water required for fixed sprinkler systems for chemical warehouses and the containment of runoff water in the event of a fire. However, the calculation of delivery rates and volumes from sprinklers should be based on the method described in the following sub-section.

To ensure that the analysis reflects actual installed systems, the estimation of potentially contaminated water generated by a sprinkler system should be based on BS EN 12845:2009 (although for older systems it might be appropriate to refer to standards that prevailed at the time of installation such as the now superseded BS 5306-2:1990).

Analysis based on BS EN 12845:2003 is discussed in Section 4.3.4.5.

ICI's guidelines for fires involving whole chemical plants

ICI no longer exist as a corporate entity. However, they produced guidance (ICI, 1986) for internal use, on the demand flow rate and duration for fires at chemical plants, which has been widely used. The forecast of the total amount of firefighting water that might be used in the event of a fire affecting the whole of a chemical plant (as distinct from just a discrete area or fire compartment, assumed in the preceding approaches) is shown in Table 4.4.

Table 4.4 Forecast of firefighting water needed to tackle major chemical plant fires (courtesy ICI)

Plant hazard rating ¹	Firefighting water demand
High severity	Total demand 1620–3240 m ³ /hr for four hours
Medium severity	Total demand 1080–1620 m ³ /hr for four hours
Low severity	Total demand 540–1080 m ³ /hr for four hours

Notes¹

High severity includes plants with:

- over 500 tonnes of flammable liquid above its flashpoint
- over 50 tones LPG above its boiling point and over 50 bars
- over 100 tonnes combustible solid with ready flame propagation
- other factors what increase severity

Medium severity covers plants that fall between high and low severity ratings.

Low severity includes plants with:

- less than 5 tonnes flammable liquids above or below flashpoint
- less than 100 kg flammable gas under 1 bar or a flash liquid
- less than 5 tonnes readily combustible solid
- other factors that decrease severity

A summary of the methods presented in ISO/TR 26368:2012 is provided in Table 4.5.

Criteria		Method				
		Sandoz method	Ciba method	ICI method	VCI method	Australian method
Method definition type		Deterministic	Deterministic	Deterministic	Deterministic	Probabilistic (risk-based approach)
Sizing parameters		0 m ³ to 5 m ³ per ton of material (tabulated)	3 m ³ to 5 m ³ per ton of material	Only estimation of expected water flows according to fire risk severity	Tables (general case) plus specific tables for high-rise storages	Rainwater flow, firewater flow for typical fire scenarios
General size of basins		Maximum 1600 m ³	From 700 m ³ to 5000 m ³ , from standard curves	None defined	Tabulated	Two cases: 1 Sizing of a new facility. 2 Evaluation of existing capacity.
Input parameters	Risk classification			Two categories of fire severity: Weak risk: 240 m ³ /h to 1000 m ³ /h for four hours High risk: 1620 m ³ /h to 3240 m ³ /h for four hours	Specific 'Ki' rating	Input parameters according to two logigrams explaining methodologies pertaining to case (1) design and assessment of new water basins, and case (2) evaluation of pertinence of existing water basin
	Hazard category of substances	15 categories			Specific classification of goods	
	Possible fire size	Limited to compartment size	Limited by the largest compartment (max 3000 m ³)		Limited to compartment size	
	Possible fire duration		1h for 200 m ² to 5h for 1200 m ²			
Additional measures	Use of sprinklers	Influence of basin volume only for pharmaceutical goods	Considered in storage limitation and in sizing			A fire safety study is part of the methodology and may lead to the consideration of additional measures
	Limitation of combustible materials	Limited to compartment size	Limited to 250t or 600 m ² if no sprinkler		Limited according to fire hazard	
	Detection and alarm systems					
	Additional feature		Consider water consumption for cooling		Consider water consumption for cooling	

4.3.4.5 Fixed firefighting systems

BS EN 12845:2004+A2:2009 sets out the minimum requirements for the design, installation and maintenance of fixed fire sprinklers in buildings and industrial plants. Section 6 of the standard defines hazard classes depending on the combustibility of the materials stored and their fire load. Maximum storage heights of material are also specified depending on the method of storage. Hazard classes for a number of common stored materials are provided in Annex A to the standard.

Tables 3, 4 and 5 of the standard specify a 'design density' for each hazard class in terms of an effective discharge rate expressed in mm min⁻¹ (depth of water applied per minute of operation per unit area). The flow rate over the area operation can therefore be estimated.

BS EN 12845:2004+A2:2009 Section 8.1.1 specifies the minimum period over which the system should operate depending on the hazard class from which the total volume of water discharged via the sprinklers can be estimated.

However, where the system is connected to a town supply, there is in effect an exhaustible supply available and therefore the sprinklers could run for a considerable period of time.

The standard does not cover firefighting water that may be used other than in fixed sprinkler installations. So it may be necessary to allow for additional water applied to a fire by the Fire and Rescue Service and/or the occupational fire brigade in circumstances where the sprinkler system has been unable to extinguish the fire.

4.3.4.6 National guidance document on the provision of water for firefighting

Guidance by Local Government Association and Water UK (2007) has been published to promote co-operation between the Fire and Rescue Services and the water industry. Appendix A5 provides general flow requirements for firefighting for differing types of development.

4.3.4.7 Conclusions on forecasting firefighting water

This section provides guidance on a number of methods for estimating the potential volume of firefighting water that should be retained following an incident. It is not possible to offer any definitive guidance on the most appropriate method to a particular site and each will undoubtedly provide a different result. However, they will provide a starting point for discussion with the regulator and the Fire and Rescue Service from which a credible incident response scenario can be developed.

Box 4.2 recommends the issues that should be discussed with the Fire and Rescue Services to aid estimation of the volume of firefighting and cooling water that might have to be contained during an incident.

Box 4.2 *What to ask the Fire and Rescue Services*

What type and number of appliances would attend the site as part of a first response to an incident?
What is the capacity of these appliances?
Based on their experience of incidents at similar facilities, for how long would they anticipate having to apply firefighting and/or cooling water and/or foam?
Are they aware of any restrictions on the supply of firefighting water to the site?
If the incident were to escalate, what is the likely maximum number of appliances that could be called to the site?

Box 4.3 *Fire duration*

Where flammable materials are stored, estimating the potential duration of a fire has important consequences for:

- estimating the volume, of firefighting and cooling water that may have to be applied during an incident (an issue considered in this chapter)
- the fire resistance of the components of the containment systems including the walls, and perhaps more importantly, the materials used to seal any joints. These issues are discussed in Part 3.

The likely duration of an incident is clearly an imponderable, however, credible scenarios should be developed in consultation with the Fire and Rescue Services to inform the design of the containment system in respect of the issues discussed here.

It is noted, however, that commonly available intumescent construction sealants are fire rated for up to four hours. So, in the absence of any other information on the likely incident scenario, a minimum fire duration of four hours should be adopted when considering the application of firefighting and cooling water.

Table 4.6 summarises the site specific factors that might limit the volume and/or application rate of firefighting and cooling water during an incident.

Table 4.6 Factors that might limit delivery rates and volumes of firefighting and cooling water

Volume	Rate of delivery
<ul style="list-style-type: none"> ■ total stored on site in emergency storage ■ rate of replenishment from mains or other supplies ■ hydrant supply capacity – note for large sites, supply may be from different capacity mains or systems ■ number of firefighting tenders attending incident and their capacities ■ local supplies, ie rivers, lakes ■ potential for firewater recycling. 	<ul style="list-style-type: none"> ■ sprinklers ■ monitors ■ hydrants ■ firefighting tenders ■ pumps (from local supplies).

4.4 FREEBOARD IN BUNDS AND DYNAMIC EFFECTS

Freeboard is the increased height allowed in the design of structures to account for uncertainty. Using a sea wall as an example, a freeboard allowance would be made to increase the crest height of the wall to cater for the quantified effects of wind and waves, and other dynamic forces.

In the context of this guidance, it is an increase in the height of a containment wall to provide additional capacity over and above the minimum design volume requirement. As discussed in Section 4.3.4, a minimum freeboard of 100 mm should be allowed for firefighting agents (foam) in addition to the height of wall required to contain the volume of inventory plus rainwater.

In addition, the surge effects of the catastrophic failure of the primary storage vessel should be considered either explicitly in the design of the containment, or by making a suitable freeboard allowance. Quantification of such effects has been researched as summarised in Box 4.5.

Box 4.5 Summary of research on overtopping of bunds

Laboratory testing by Liverpool John Moores University for the Health and Safety Executive (Atherton, 2005) considered the overtopping of a vertical bund wall following the catastrophic failure of a primary containment tank. Such failures are rare, however experience has shown that when they do occur, a large proportion of the liquid is likely to escape over the surrounding bund wall or embankment even if the force of the wave impact does not damage the retaining structures.

The experimental work considered a number of tank and bund configurations, concentrating primarily on the ratio of the height of liquid stored in the tank to the height of the bund wall and the distance of the tank from the bund wall. As might be expected, a significant proportion (up to 70 per cent) of the liquid stored in a tall tank close to a low bund wall was lost to the containment.

Put into context of perhaps a 'real world' situation, the research indicates that following a catastrophic collapse, approximately 50 per cent of the inventory stored to a depth of 6.0 m in a tank located 7.0 m from a 1.2 m high vertical bund wall would not be retained by the secondary containment. Doubling the height of the wall would reduce this figure to about 25 per cent.

Earth embankment bunds that tend to have sloping faces were not tested, however, it could be anticipated that the losses would be even greater.

Similar experimental work was completed by Greenspan and Young (1978) as cited in WS Atkins Consultants (2001). This experimental work developed a relationship purely based on the ratio of the bund wall height to the height of retained inventory. Using the Atherton example, the Greenspan and Young work suggests that for a vertical wall again approximately 50 per cent of the inventory would be lost following catastrophic failure of the primary containment.

The research included sloping bund walls and as might be anticipated, a greater loss of inventory was predicted.

It is clearly impractical to construct a local secondary containment facility to prevent any spillage of stored materials following the catastrophic failure of the primary containment. While this mode of failure is rare, in high hazard situations consideration should be given to the provision of tertiary containment to cater for the 'failure' of the secondary containment. This mode of failure should be considered as part of the risk assessment process.

The work described in Table 4.7 is largely experimental and there is a degree of uncertainty in applying the results in designing a bund wall to cater for the potential effect of surge. So, in the absence of detailed analysis the following set out in Box 4.6 should be made where catastrophic failure of the primary storage vessel is considered a credible scenario.

Table 4.7 Surge allowance (in the absence of detailed analysis)

Type of structure (see Part 3)	Allowance
<i>In situ</i> reinforced concrete and blockwork bunds	250 mm
Secondary containment tanks	250 mm
Earthwork bunds	750 mm

Case study 4.1

Example of managing potential effects of overtopping, Plymouth, UK

Greenergy Plymouth Tank Farm site dates back to the late 1890s. The Mayflower and Cattedown Terminals were acquired as operating terminals in May 2008 and, following a review of systems and infrastructure, a major terminal upgrade project was completed including the upgrading or replacement of five tank bunds.

The joints to the existing concrete bund walls were re-sealed with fire retardant filler and over-plated stainless steel plate. A geomembrane liner with a basalt stone protection layer was laid over earth bund floors.

Two new bund walls were constructed, one with a propriety precast concrete wall system with joints again sealed with fire retardant filler and over-plated stainless steel plate, and the second using *in situ* reinforced concrete.

A review of major accident hazards determined that the catastrophic failure of one of the tanks could result in overtopping due to its proximity to the bund wall with losses into the adjacent Plymouth Sound estimated to range from 53 to 66 per cent of total tank inventory. To manage this risk a deflector plate was designed to minimise any losses on the seaward side of the tanks as well as prevent inundation from an extreme sea level surge and high waves.



4.5 SUMMARY OF RETENTION CAPACITY RECOMMENDATIONS

In the absence of any regulatory specific recommendations, such as facilities that fall within the scope of the OSR or COMAH containment policy, Table 4.8 summarises the guidance on containment capacity requirements and the process for estimating containment capacity is shown by Figure 4.3.

Table 4.8 Summary of retention capacity recommendations

Factor to be considered	Local containment capacity recommendations	Remote and combined system capacity recommendations
Primary storage capacity (ie possible storage inventory) Note this may be limited by the credibility of the scenario and need not necessarily result in a complete loss of inventory	Capacity at least 100% of primary capacity for single tank installations. Capacity based on risk assessment based on credible scenario for multi-tank installation taking into account tertiary containment provision.	Capacity at least 100% of primary capacity. Include capacity of all primary tanks in multi-tank installations.
Rainfall	For uncovered bunds provide sufficient freeboard for 10% AEP rainfall for: <ul style="list-style-type: none"> ■ 24-hour ■ the duration of the incident, plus ■ eight days (or other period appropriate to the particular site circumstances). 	As for local containment capacity recommendations plus an allowance for rain falling directly on to remote containment and areas of the site draining into it.
Firefighting and cooling water	No allowance specifically for firefighting water. Addressed via tertiary containment. Allowance for cooling water, or procedures for re-circulating cooling water, to be agreed with the Fire and Rescue Service.	Allowance for extinguishing and cooling water delivered through fixed and non-fixed installations based a credible scenario agreed with regulators and the Fire and Rescue Service. Development of the scenario can be informed with reference to the methods contained in ISO/TR 26368:2012 and by BS EN 12845:2004.
Firefighting agents (foam)	Allow freeboard height of containment required for primary inventory and rainwater of not less than 100 mm.	Allow freeboard height of containment required for primary inventory and rainwater of not less than 100 mm
Dynamic effects	Allow freeboard as set out in Box 4.5. For high hazard situations, consider impact of overtopping of the containment resulting from a catastrophic failure of the primary containment. Consider remote secondary or tertiary containment.	More appropriate means of containing inventory following a catastrophic failure of the primary containment.

The designer of the containment system should take into account the probability of a number of events occurring simultaneously. The worst case scenario for containment is represented by the design return period rainfall (eg the rainfall that is likely to occur, eg once in 10 years) coinciding with the sudden and total loss of primary containment and a fire involving applied firefighting water. At low risk sites or sites where it can be demonstrated that the probability of a simultaneous occurrence of events is sufficiently low, it may be possible to apply less stringent capacity requirements. Such relaxations should be subject to the designer's and site operator's discretion and the agreement of the various regulatory bodies in the light of the particular circumstances.

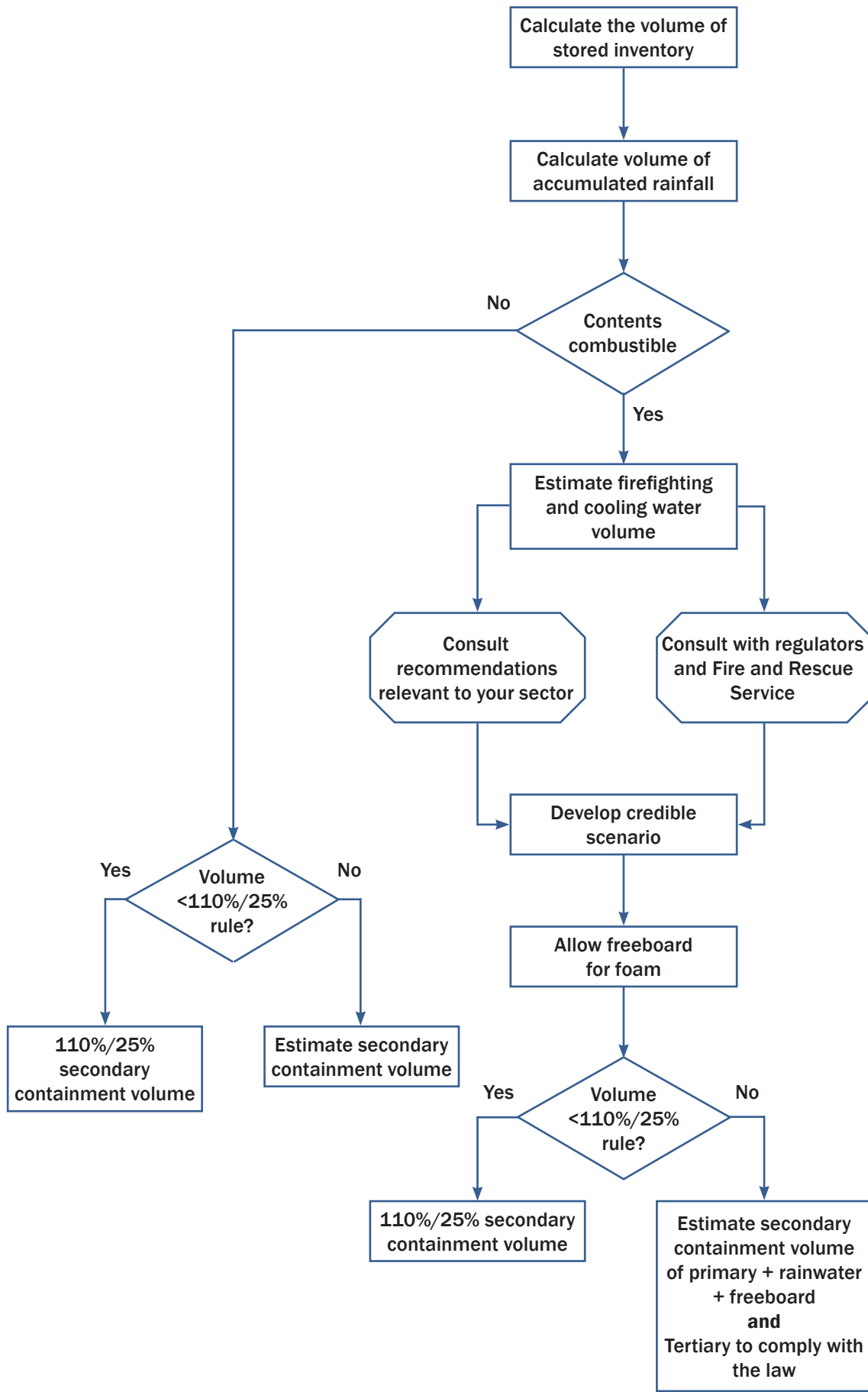


Figure 4.3 Process for estimating containment capacity

5 Existing installations

This chapter provides:

- An introduction to the classification, inspection, maintenance and modification of existing installations (Section 5.1)
- Advice on developing maintenance plans for existing facilities (Section 5.2)
- Advice on the classification of existing facilities based on the risk assessment methodology introduced in Chapter 2 (Section 5.3)
- Guidance on completing a baseline survey of an existing facility where no or limited records are available (Sections 5.4 to 5.7)
- Advice on completion of a gap analysis to establish the extent to which an existing facility meets regulatory requirements (Section 5.8)

5.1 INTRODUCTION

5.1.1 Asset management of existing facilities

In the UK, very few new containment systems are being built at this time. Much of the construction effort in containment systems involves:

- extension to existing facilities
- rearranging the containment to suit new production or process requirements
- upgrading to newer standard, often including a change in ownership of a facility.

As set out in the *Foreword*, CIRIA R164 focused principally on the construction of new containment facilities. However, this update provides guidance on managing existing older facilities. New aspects introduced include assessing the life expectancy of components and how best to inspect, maintain and repair them, as well as advice on modifying and extending them.

Recent inspections of existing containment facilities have identified significant uncertainty regarding the form of the construction and its compliance with good practice recommendations (HSE, 2011). Creating 'as-built' design information provides a sound basis not only to allow the designer and contractor to make informed decisions about how best to extend an existing facility, but also to assist the duty holder to demonstrate to the regulator that good practice is being implemented.

Attention is drawn to the requirements of the scope of the FWMA in relation to containment systems discussed in Chapter 1. Where a containment facility falls within the scope of the Act, a mandatory inspection regime may be required, irrespective of the form of construction.

5.1.2 Overview of chapter

This chapter draws together the recommendations that are relevant to the modification, extension or refurbishment of an existing facility that may also include the situation where a change in the nature of the inventory is required, or if the inventory is re-classified. It aims to enable the duty holder to ensure that their facility meets any minimum legislative or regulatory requirements.

Where records are incomplete or non-existent, a programme of investigation and analysis is likely to be required to demonstrate compliance, or highlight shortcomings with respect to legislative or regulatory requirements.

To consider the performance of a facility against the guidance contained in this publication, it will first be necessary to establish the class required for the installation as defined in Chapter 2. The information required to establish the class will fall broadly under the following headings:

- Volumes of primary and secondary and tertiary containment.
- Nature of material being stored and compatibility with form of construction.

- Potential pathways to sensitive receptors (drainage systems, topography etc).
- Form of construction of containment system (concrete/blockwork/earthworks etc).
- General condition of the facility (integrity of joints/penetrations, defects etc).
- In-service performance (ability to withstand applied loads/fire resistance).

Following this process should result in classification requirements for the containment against which the existing installation can be judged.

It is recognised that establishing the form of construction and in-service performance where no formal construction records are available is likely to require some form of specialist intrusive investigation. Guidance is provided on appropriate means of completing this 'baseline' survey in Section 5.4.

In circumstances where the baseline survey indicates that the class of containment for the existing facility falls short of that required by guidance, advice is provided on appropriate means of addressing the shortfall, ie a 'gap analysis', in Section 5.8. The gap analysis provides both a review of the risk assessment to identify any procedural methods that could be put in place to reduce the risk, as well as measures to address any particular issues with the construction of the containment system.

While the guidance in this chapter is aimed principally at 'benchmarking' a facility against the guidance contained in the rest of this publication, it is likely to be of value in establishing compliance with statutory or regulatory regimes.

The extent to which the benchmarking of a facility would lead to the retrospective application of remedial measures will depend on regime specific requirements. This is discussed in Chapter 1.

A flow chart summarising the process of assessing and classifying existing structures against the guidance contained in this publication is provided in Figure 5.1.

5.2 MAINTENANCE PLANS

A regular maintenance and inspection regime is essential if defects or leaks that could compromise the integrity of the primary, secondary or tertiary containment are to be identified in a timely manner. The EPR, PPC and COMAH Regulations require adequate inspection/maintenance procedures to be in place. Being unaware of defects in the containment facilities would be no defence should a pollution incident occur.

There is currently no specific guidance available on an appropriate inspection regime for containment facilities. However, EI (2010) provides an approach to managing inspection and maintenance as summarised in Box 5.1.

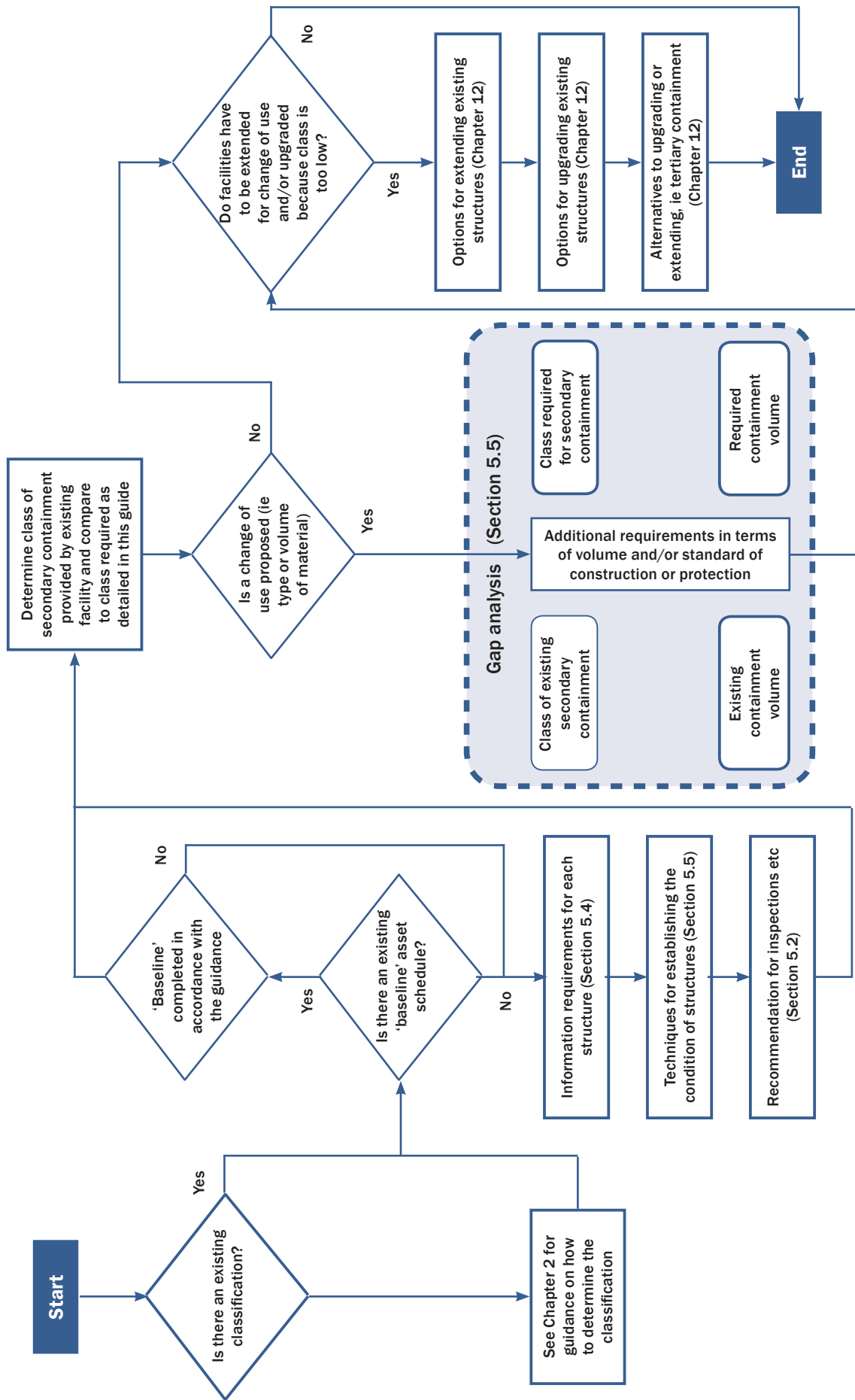


Figure 5.1 Assessing and classifying existing structures

Box 5.1 *Summary of high level framework for process safety management (from EI, 2010)*

Maintaining the integrity of plant and equipment is an essential requirement for health, safety and environment (HS&E) and process safety.

Management must ensure that the necessary inspection and maintenance requirements are identified and carried out to reduce the likelihood of a significant incident as a result of failure of plant or equipment.

It is recommended that:

- 1 Assets are uniquely identified on an asset register, which provides up-to-date asset lists and equipment records, including location and equipment specification data. The asset register provides a basis for inspection and maintenance planning.
- 2 The asset inspection and maintenance programmes are risk based and address and integrate long term asset integrity, HS&E and process safety compliance assurance.
- 3 There are procedures to ensure that asset inspection and maintenance programmes are reviewed regularly commensurate with risk, using findings from the programmes, industry experience and incidents to identify and address issues and opportunities for improvement, so that they are kept up-to-date as living systems.
- 4 Feasible plans and schedules are developed for execution of asset inspection and maintenance programmes.
- 5 Adequate numbers of competent personnel are available to carry out the inspection and maintenance programmes.
- 6 There are procedures to ensure that findings and recommendations from the asset inspection and maintenance programmes are appropriately prioritised and followed up.
- 7 Inspection and maintenance programmes are approved by specific named competent individuals.
- 8 Deviations from approved inspection and maintenance programmes are approved by specified named competent individuals commensurate with the risk.
- 9 Arrangements for inspection and maintenance programmes are understood and followed, and understanding of arrangements and compliance with them is regularly tested.

Compliance and performance trends are reviewed by specified levels of management.

Advice on developing an asset register for containment systems is provided in Section 5.4 and should be developed on a site by site basis.

Recommendations on asset inspection and maintenance programmes can be found in Chapter 5 of EI (2007) and is summarised in Box 5.2.

Box 5.2 *Suggested inspection and maintenance regime based on advice contained in environmental guidelines for petroleum distribution installations (after EI, 2007)*

Daily

- Walk round the site, identify and clear up any waste materials.
- Note signs of any deterioration of tanks or surroundings.
- Note any small leaks or spills, fix them and clean them up immediately.
- Check the separator(s) to ensure they are operating correctly.
- Inspect the tank bund valves to ensure they are closed.
- Remove any excess water from tank bunds (and other compounds) in accordance with the agreed procedures at the site. If rainwater is not accumulating where it might be expected, this can provide indication of a leakage from the containment and should be investigated further.
- Check drip trays and pans.

Weekly

- Remove any surface oil in the separator.
- Check that drain covers/grids are clear of debris.
- Wet stock reconciliation: compare metered usage of product recorded through pumps, and usage of stock in tank storage measured through regular tank dips.

Monthly

- Sample outflow from separators and analyse to check for compliance.

After rainfall

- Check external floating roofs and drain off accumulated water.
- Draw off water from external floating roof tanks if required.
- Check tank bunds and remove any excess water in accordance with the agreed procedures at the site. The oil-water separator should be inspected regularly. Arrange for accumulated silt to be removed when required, ensuring that the separator is refilled with water.

Containment facilities

Inspection and repair of containment structures should be carried out on a regular basis and the results recorded. For example, cracks in concrete, failure of flexible seals around pipes as they pass through bund structures and animal damage to earth bunds can all compromise the integrity of secondary containment systems. Instruction signs should be maintained and essential equipment, such as valve keys, should be checked to ensure they are in place. The location of any faults or defects should be recorded on a plan and linked to maintenance records of the actions taken to remediate them.

Inventory checks

These checks are based on:

- The level of the product in the tank (level check), or
- The mass of the product in the tank under static conditions (mass check), or
- The difference between the volumes pumped in and out of the tank over long periods compared to the change in stored volume.

The inventory checks are of particular importance as they can give the first indication of leakage from the primary containment where it is not necessarily visible.

Where components are critical to the performance of the containment system, the inspection should be completed by a competent person experienced in the particular type of structure, ie reinforced concrete walls, reinforced masonry walls, earth embankments, lining systems etc.

As a general guide it might be expected that:

- daily/weekly inspections are completed by the operations staff
- there is a formal inspection of the containment facilities by the works engineer every 6 to 12 months
- a detailed inspection of the containment facilities by a competent person or persons every five years.

However, the inspection regime should be developed in consultation with the regulator to be appropriate to risk and the age of the facility.

5.3 RISK ASSESSMENT AND CLASSIFICATION OF CONTAINMENT SYSTEMS

The starting point for any assessment should be a site risk assessment as described in Chapter 2. The output from the risk assessment is used to determine the appropriate class of secondary containment.

A duty holder should be able to demonstrate that the class of the existing containment is appropriate to the site risk rating, or if it is not, that there are other measures in place to reduce the risk of a loss of primary containment sufficiently to satisfy the law. This may be, for instance, the provision of tertiary containment.

The site risk assessment and containment classification should be reviewed periodically, but at least every five years or any other period agreed with the regulators, or where:

- there are any modifications made to the primary, secondary or tertiary containment
- the volume of material in the primary containment is increased
- the nature of the material in the primary containment is changed
- the nature of the material is reclassified
- the potential pathways and/or receptors have changed.

The third point is particularly relevant as this may increase the class of containment required and this might be difficult to achieve with the existing arrangement. For instance, blockwork bund walls are not suitable for providing class 2 or class 3 containment, or where fire resistance is required (see Section 7.3).



5.4 BASELINE SURVEY

5.4.1 Introduction

For facilities constructed post-1994, a full set of design documentation and construction (as-constructed) drawings should be available for a containment facility for all but the smallest sites. These records would have formed part of the health and safety file, which was a requirement of the Construction (Design and Management) (CDM) Regulations 1994 and more recently the Construction (Design and Management) (CDM) Regulations 2007.

However, it is commonplace, particularly for older sites, to find situations where the original design and/or as-constructed drawings are not available or are unclear. In these circumstances a baseline asset survey of the facility should be completed and reviewed by a competent person to demonstrate it is reducing risk sufficiently to satisfy the law. This type of baseline survey is often completed for bridges and older concrete structures where modifications are planned.

For a containment facility the baseline survey should include, but not be limited to, the information contained in Box 5.3.

Box 5.3 *Suggested scope of baseline asset survey*

Primary containment

- Volume.
- Nature of inventory.

Containment

- Local, remote and/or combined.
- Secondary and/or tertiary.
- Containment volumes for individual containment elements and site wide.
- Was the facility constructed to conform to a particular containment class (if known).

Type of construction (see Part 3)

- Concrete, blockwork, earth bund, tank etc.
- Design standards used, ie CP 110-1:1972, BS 8110-1:1997, BS 8007:1987 or BS EN 1992-1-1:2004 (Eurocode 2) etc (if known). If the year of construction or modification can be established, the design standard used can be established with reference to Boxes 5.4 and 5.5.
- Details of any linings/coating to the containment and the substrate this has been applied to (eg concrete or masonry).
- Reinforced masonry walls – check for the presence of reinforcement that is continuous and passes into the anchoring beam or slab.
- Where the bund is constructed in concrete or blockwork, the location, orientation, spacing and detailing of any joints and their ability to provide watertight containment.

Potential leakage pathways (see Part 3)

- Presence of waterstops in walls and floors across joints, including type/material.
- Presence of joint armouring plates across joints.
- Penetrations through the containment – type, method and type of sealing and age.
- General watertightness.
- Leak detection systems if installed.
- Means of emptying rainwater.
- Full details of the site drainage system.

Defects noted should be recorded on a plan, dated, photographed where appropriate and details of remedial works recorded along with date completed. Defects that should be recorded might include, but not be limited to:

- leaking cracks
- spalling of concrete or blockwork walls or base
- signs of corrosion in reinforced concrete or block work wall (rust staining etc)
- failures of sealing of pipe penetrations, wall joints and floor joints
- sealant has exceeded lifetime recommended by supplier

- misaligned sections of wall
- slumping of earth banks or noticeable variation in level along the crest
- animal burrows in earthwork embankments
- torn or damaged liners
- coatings de-bonding from the wall.

Failures that clearly compromise the containment integrity, for example holes or cracks that penetrate the bund wall, collapsed walls, missing floor sections etc should be rectified using risk-based prioritisation.

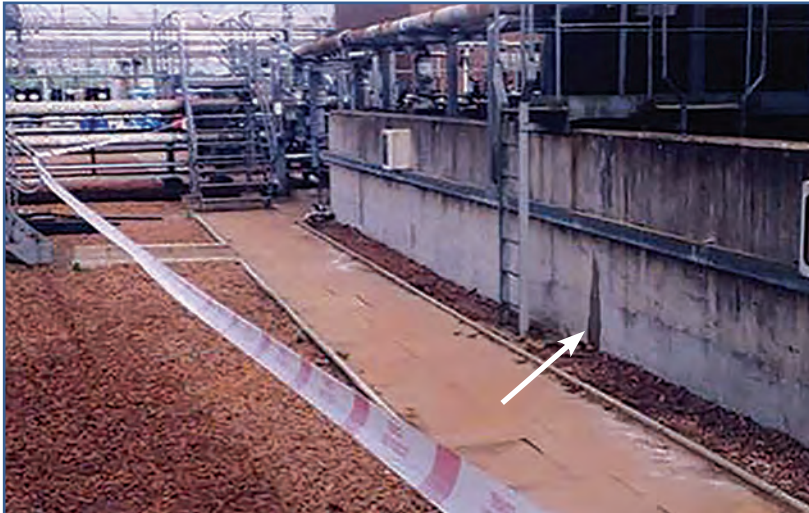


Figure 5.2 Arrow shows leaking crack in a bund wall (courtesy CH2M Hill, with permission from the Environment Agency)



Figure 5.3 Spalling of concrete over corroding reinforced bar, where cover is reduced by groove feature (courtesy CH2M Hill, with permission from the Environment Agency)



Figure 5.4 Rust staining that may indicate corroding reinforcement (or a metal fixing) (courtesy CH2M Hill, with permission from the Environment Agency)

Containment facilities should be inspected by a competent person who is familiar with the type of construction. This requirement applies to all persons involved in any subsequent repair process, including scheme designers, contractors and works inspectors.

5.4.2 Volumes of primary, secondary and tertiary containment

Volume of primary containment

Assessing the volume inventory held by the primary containment is addressed in Section 4.3.2.

Volume of secondary and tertiary containment

For smaller containment areas, where the base appears relatively level and the crest of the containment is at a constant height, it will be satisfactory to estimate the volume from the plan area and height to the crest of the containment.

For extended containment areas, simply multiplying the plan area of the containment by the height of the wall at its lowest point might overestimate the containment volume if there are significant variations in the level of the base (for instance if it is sloping to facilitate drainage). This is particularly the case for embankments with sloping sides. In these circumstances a topographic level survey of the base and walls should be completed to ensure the volume of containment is calculated to a reasonable degree of accuracy.

The topographic survey should also confirm that the crest of the bund is level. If not, calculating the effective containment volume should be based on the level of the lowest point on the crest of the bund.



Figure 5.5
Slumping of earth embankment

A topographic survey can also be used to generate a detailed plan layout where one does not exist.

When comparing against the 110 per cent capacity rule (see Section 4.2.1) the volumes of any parts of primary containment capacity below the level of the secondary containment except for the largest tank in the bund should be deducted from the overall secondary containment volume. This includes any supports, bases, pipework etc. When comparing against the 25 per cent rule, the volumes of any parts of primary containment capacity below the level of the secondary containment, supports, bases (including all tanks that are assumed to be

undamaged) and the like should be deducted from the overall secondary containment volume. This is shown in Figure 5.6.

Where there is a combined containment systems in place (local and remote) there may be significant containment volume in the transfer system. It may be appropriate to take this into account subject to a survey to confirm the volume and condition of the transfer system (see Chapter 10). When assessing the storage potential of the transfer system, care should be taken on sloping sites to ensure only the volume in the system up to the lowest point is taken, rather than the capacity of the pipes, manholes and/or channel.

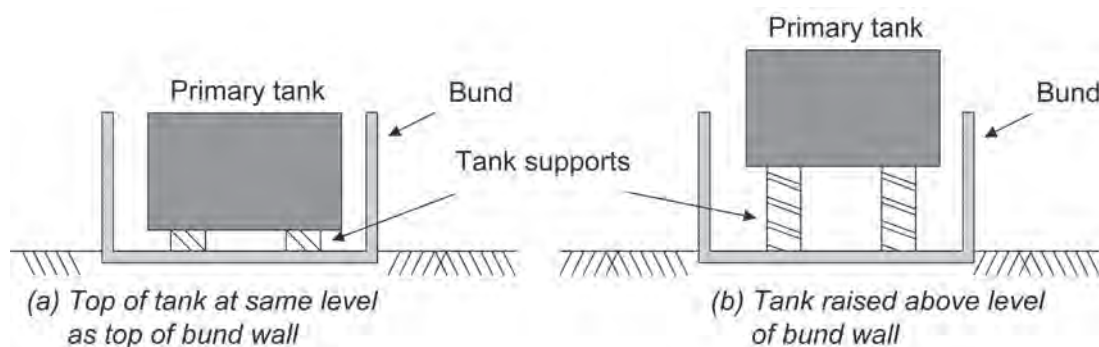


Figure 5.6 *Interpretation of the 110% capacity rule*

Case study 5.1

Example of inadequate secondary containment and drainage, Huddersfield UK (courtesy Environment Agency)

This case study relates to a manufacturer and repackager of a variety of chemicals such as fungicides, insecticides, pharmaceutical products and polymers. The site in the North East was bounded on the north side by the Huddersfield Narrow Canal, and on the remaining three sides by the River Colne.

In the early hours of 24 May 2010 a fire broke out in the engineering block in the north-west corner of the site. The fire is thought to have been caused by a pinhole leak of diesel fuel spraying onto the hot surface of the boiler and eventually igniting. The fire quickly spread to the waste area adjacent to the engineering block. This, in turn, ignited intermediate bulk containers (IBCs) containing solvents, which were stored in an open air waste compound adjacent to the engineering block and initiated a running pool fire, which soon overwhelmed the secondary containment available and spread to the warehouse building and then towards the bulk storage containment area in the centre of the site. The fire and rescue service were able to provide cooling to prevent the fire from spreading into the bulk storage area.



Approximately 5000 m³ of firefighting water and 20 m³ of foam were applied to the site in the first five hours of fighting the fire. The site's tertiary containment system was not able to cope with the quantities of firefighting water runoff and foam generated and consequently significant quantities escaped the site boundary into the River Colne.

Investigation of the incident identified that there were a variety of issues including the following:

- Inadequate drainage. Some of the drains were too small and the drains had not been inspected for a number of years and were unable to cope with the large volume of firefighting water runoff products. In addition, the part of the drainage system that relied on pumps was overwhelmed due to a lack of pump capacity and finally became unavailable when site power was switched off for safety reasons.
- The secondary containment to the bulk tanks was inadequate and in particular around the effluent tanks where the capacity was less than 110 per cent of the largest tank in the bund. It was also noted that the bund wall was cracked.
- Tertiary site containment was a combination of the effluent tanks, kerbing and drainage and was approximately 470 m³ – considerably less than the firefighting water and foam applied during the May 2010 incident.
- Poor storage of portable containers containing, in particular, flammable materials. During the fire, there were some plastic IBC containing flammable materials, which melted. The flammable materials caught fire and became mixed with other liquid materials that had escaped from plastic containers, at the site to cause a running pool fire across the ground, spreading the fire further.

Since the fire the company has made the following improvements:

- Repaired the kerbing along the southern boundary of the site, which is the most vulnerable area due to the slope of the site.
- Surveyed and traced all the site drainage to understand how firefighting water is transported around site during an incident.
- The quantity of firefighting water runoff, which might be generated during a future incident, has been assessed to evaluate what needs to be managed during the case of any future incident. With improvements on handling materials on site and discussions with the Fire and Rescue Service, the maximum quantity of firewater runoff has been estimated at approximately 3000 m³.
- Designed and built a containment system to contain the full contents of all the portable containers such as IBCs, containing flammable materials to minimise the risk of a fire involving the liquids in those containers spreading to neighbouring parts of the site.
- Reviewed their procedures for segregation of incompatible chemicals such as oxidisers and flammable materials.
- Improved bunding of bulk storage tanks containing flammable liquids.

Work is still ongoing at the site focusing in particular on combining the information gathered during the drain survey and calculation of firewater runoff to derive a plan for managing firefighting water runoff from future incidents.

There is also a programme in place to repair and improve the remaining existing bunds and also to establish a tertiary containment plan. The plan is likely to require improvements in transferring firewater runoff to the lowest part of the site by use of bund walls around the site boundary and large pumps, which will runoff an alternative power supply to the main site supply.

5.4.3 Nature of material being stored and compatibility with form of construction

Over time the nature of the material contained in the primary containment may have changed from when the facility was first installed.

It is therefore important to establish if the contents would be damaging to the containment system, ie are they likely to be aggressive to any existing concrete or blockwork walls or bases, joint sealants, lining systems, coatings or drainage systems where installed?

Where more than one material is stored within a common containment system, the effect of the 'cocktail' of chemicals on the bund and lining system should be assessed. However, chemicals that react with each other liberating heat and/or noxious gasses (ie incompatible materials defined in CA, 2008a) should not be stored within tanks protected by a common bund.

5.4.4 Potential pathways to sensitive receptors

Means of emptying rainwater

The means of emptying accumulated rainwater from within the bund should be established. Under no circumstances should an uncontrolled gravity discharge of rainwater from a containment bund be permitted, even where routed via an interceptor, unless it is draining to a further (tertiary) stage of containment.



Where this is a gravity connection, even when controlled by a penstock or valve, for a class 2 facility, this should be taken out if practicable. However, for a class 3 facility, these arrangements should be replaced with either a portable or fixed installation pump.

Rainwater that has accumulated within a containment bund may be contaminated by spillages and leakage from the primary containment. Rainwater should be tested before discharge to any drain or sewer, unless it is to be routed to treatment works specifically designed to accommodate this effluent. Procedures should be in place to remove any contaminated rainwater to a WWTW.

Site drainage and transfer systems

Should a containment system fail, it is important to identify all the possible pathways by which contaminants could reach sensitive receptors. One of the most common pathways is the site drainage system that might, for instance, discharge to a water body or to the ground.

Where there is any uncertainty about the layout, condition or capacity of drainage systems for trade waste a survey should be carried out. Potential hazards in terms of the system's ability to cope with major incidents should be identified. Typical hazards might include:

- combined surface and trade waste systems, especially where provided with storm overflows on or off-site
- direct runoff to surface and groundwaters (ie rivers and soakaways respectively)
- infiltration of contaminants through defective drainage
- unprotected clean water gullies and other devices for collecting stormwater from areas likely to become contaminated
- unprotected downpipe pipes on buildings that, if damaged (typically in a fire), could allow pollutants to enter storm drainage
- inadequate or poorly maintained valves and other devices used for flow control
- defective pipes or joints
- blocked gullies, pipes and drains
- inadequately sized systems (hydraulic capacity of the pipe is less than the estimated maximum flow – see Chapter 10)
- inadequate robustness or durability.

Any gullies or drains within the secondary containment should be identified and traced to ensure they do not provide a pathway for contaminants. Care should be taken on older sites, particularly those that may have been redeveloped to check for the presence of historic redundant systems, such as land drains, soakaways, abandoned boreholes sewers etc, which can provide such paths and compromise the integrity of the containment systems.

If comprehensive records are either not available or have not been maintained, the site drainage system (including surface water, foul and trade effluent systems) should be surveyed. This is normally completed by a CCTV survey that will also provide evidence of physical defects with the pipe work such as broken pipes, misaligned joints, root intrusion etc.

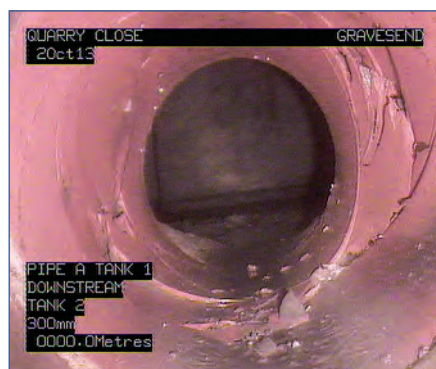
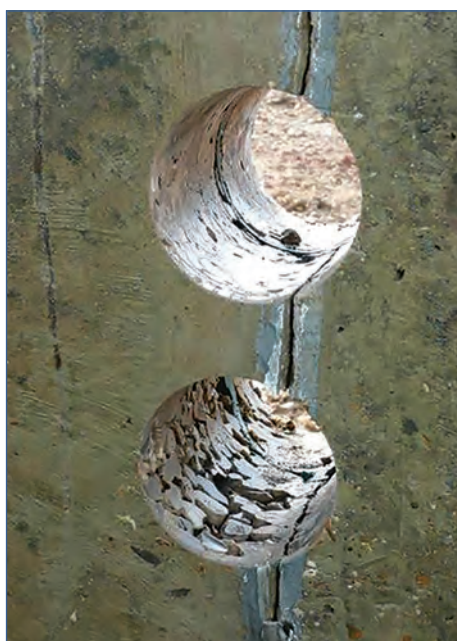


Figure 5.7
CCTV survey equipment and of a defect in a pipe (courtesy InSewer Surveys)



Note the blue PVC waterstop in the centre of the wall and full-depth honeycombed concrete in the lower core hole that is not evident at the surface.

Figure 5.8 Investigation of a wall joint (courtesy Environment Agency)

Once potential pathways have been established, the integrity of the pipe runs should be checked using a falling head test completed in accordance with BS EN 1610:1998.

Any drainage system that could provide a pathway for contaminated water if the secondary containment fails should have a means of closing the outfall at the site boundary or point of discharge. There are a number of proprietary systems available that can be operated remotely, or in reaction to changes in the quality of the discharge.

It should be noted that many sluice valves require a pressure head to seal effectively and therefore at low flows may not provide effective containment. So, if a valve is to be relied upon as part of the site containment, care should be taken to ensure it will provide an effective seal under the anticipated operating conditions.

However, once the outfall has been closed, the capacity of the drainage systems and any interceptors may be exhausted very quickly during an incident and may lead to spillage from manholes and chambers. This scenario should be considered during the risk assessment process to ensure that spillage from manholes can be contained.

In many cases the surface water drainage system on an industrial site will be provided with an interceptor to remove hydrocarbons washed from the surface of internal roads and areas of hardstanding. However, these are unlikely to be effective during an incident where the secondary containment fails and should not be relied upon to retain contaminated water entering the system as their operating capacity is likely to be exceeded. It should also be noted that firefighting foam inhibits gravity separation of hydrocarbons.

5.5 ASSESSMENT OF SPECIFIC CONSTRUCTION TYPES

5.5.1 Introduction

Determining the specific type of construction can be the most problematic issue in situations where no records exist. Fundamentally, the containment has to withstand the hydrostatic and hydrodynamic pressures should the primary containment fail and remain watertight for a minimum of eight days. This

is because following an incident, it may take a number of days to arrange for the disposal of the inventory and any contaminated firefighting water and foam.

In addition, where flammable materials are stored, the containment, including all its components (eg waterbars and sealants) should be capable of withstanding a fire.

The guidance set out below provides advice on assessing the integrity and structural performance of a secondary containment facility.

5.5.2 Competence

Where structural and/or geotechnical investigation and analysis is required to determine the form of construction of an existing facility, the advice of a competent person should be sought.

5.5.3 Investigation approaches

It should be noted that intrusive investigations, ie coring, can carry risks such as creating pollutant pathways through poor quality reinstatement of the core hole. Therefore, care should be taken to design the investigation to minimise such risk such as coring from the top, or from the outer face.

Where intrusive investigation is required, it should be co-ordinated with periods of routine maintenance (eg examination of form of construction of joints to coincide with sealant replacement, which should occur in accordance with the manufacturer's recommendations).

There are also a range of non-destructive tests (Bungey *et al*, 2006) that can provide information on the form of construction.

However, intrusive investigations should be not delayed if:

- the containment system is required to be class 3 and there is a lack of required asset information
- concerns have been raised (inspection/testing/rainwater leakage) over the integrity/suitability of the existing containment.

Where it is not reasonably practicable or considered uneconomic to determine the integrity and performance of a containment system, alternative means of reducing the potential risks sufficiently to satisfy the law should be sought such as providing tertiary containment.

5.5.4 Blockwork/brickwork

A well-rendered wall may easily be mistaken for a reinforced concrete wall. It may also be difficult to confirm if the wall has been reinforced. The retrofitting of cladding (sometimes undertaken for visual as opposed to pollution control reasons) may further obscure the condition.



Figure 5.9
A cover meter survey (courtesy
CH2M Hill, with permission from the
Environment Agency)

The structural strength of a blockwork or brickwork wall and its ability to withstand the loads imposed upon it depend not only on the reinforcement (if present) but the foundations.

If there are no details available, this will require investigation and is likely to include a dimensional survey, a cover meter survey to locate and size any reinforcement, and localised excavation of the foundations. Some intrusive investigation (breaking out local areas of wall) may also be required.



Figure 5.10 A metal waterstop in a wall joint (courtesy Environment Agency)

With the results of such an investigation, and with reference to design codes that were in force at the time when the wall was constructed, it may then be possible to estimate the structural strength of the wall. However, in practice, it is likely to be preferable to complete an *in situ* load test on the wall to determine if there would be significant movement or failure under service conditions. This is discussed in Section 5.7.2.

It should be noted that reinforced blockwork and brickwork is suitable only for class 1 containment, where no fire resistance is required and where it has been designed and constructed in accordance with a recognised code of practice (see Section 7.3). Good reinforcement should be continuous for the whole height of the wall and properly tied into the foundations. Typical details of properly reinforced blockwork and brickwork walls are given in Appendix A7.

If the blockwork or brickwork wall is unreinforced, then a structural assessment and risk assessments should be carried out to confirm satisfactory performance under relevant loads. If it is considered unfit for purpose, then engineering solutions should be considered to improve the integrity of the structure. This could involve replacement, strengthening, or the introduction of alternative containment measures such as using the blockwork wall as permanent formwork for a new reinforced concrete wall.

5.5.5 Reinforced concrete walls (with and without concrete bases)

As with blockwork walls, the structural strength of a reinforced concrete wall depends on the reinforcement, the specification of the concrete mix, and its foundations.

If the age of the structure is known, then it may be possible to infer some details of the construction from the structural code that prevailed at the time. The first national code of practice for reinforced concrete published in the 1930s has evolved ever since. A summary of the principal changes in reinforced concrete codes for structural and water retaining elements from CP 110-1:1972 and BS EN 1992-1-1:2004 (Eurocode 2) are provided in Boxes 5.2 and 5.3. For details of concrete design codes that preceded CP 110 earlier reference can be made to Clarke (2009).

As for blockwork walls, a dimensional survey, a cover meter survey, localised excavation of the foundations and intrusive investigations are likely to be required to estimate the structural strength of the wall.



Class 2 and class 3 containment systems should be constructed as properly reinforced concrete structures built to a water retaining code of practice (see Section 7.2.2).

Box 5.4 History of reinforced concrete design codes

The first code for concrete structures was introduced in 1934. This table lists evolution of the key codes of practice.

Date	Design codes
1938	<i>Code of practice for the design and construction of reinforced concrete structures for the storage of liquids</i>
1948	CP 114 <i>The structural use of normal reinforced concrete in buildings</i> (revised version published in 1957, published in metric form as Part 2 in January 1969)
1959	CP 115 <i>The structural use of prestressed concrete in buildings</i>
1960	CP 2007-2 <i>Design and construction of reinforced and prestressed concrete structures for the storage of water and other aqueous liquids</i> (published in metric form in 1970)
1965	CP 116 <i>The structural use of precast concrete</i>
1972	CP 110 <i>Code of practice for the structural use of concrete</i>
1973	Technical memorandum (bridges) BE 1/73 <i>Reinforced concrete highway structures</i> , BE 2/73 <i>Prestressed concrete highway structures</i>
1976	BS 5337 <i>Code of practice for the structural use of concrete for retaining aqueous liquid</i>
1984	BS 5400 <i>Steel, concrete and composite bridges, Part 4, Code of practice for design of concrete bridges</i>
1984	BS 6349 <i>Maritime structures</i>
1985	BS 8110 <i>Structural use of concrete, Part 1 Code of practice for design and construction, Part 2 Code of practice for special circumstances, Part 3 Design charts for singly reinforced beams, doubly reinforced beams and rectangular columns</i>
1987	BS 8007 <i>Code of practice for design of concrete structures for retaining aqueous liquids</i>
1990	BS 5502 <i>Buildings and structures for agriculture</i>
1997	BS 8110 <i>Structural use of concrete, Part 1 Code of practice for design and construction (revised)</i>
2004	BS EN 1992-1-1:2004 (Eurocode 2) <i>Design of concrete structures. General rules and rules for buildings</i>
2004	BS EN 1992-1-2:2004 (Eurocode 2) <i>Design of concrete structures. General rules. Structural fire design</i>
2005	BS EN 1992-2:2005 (Eurocode 2) <i>Design of concrete structures. Concrete bridges. Design and detailing rules</i>
2006	BS EN 1992-3:2006 (Eurocode 2) <i>Design of concrete structures. Liquid retaining and containment structures</i>

Reinforced concrete design**CP 110**

CP 110 described as 'the unified code' brought together codes for reinforced, prestressed and precast concrete. From CP 110 to current codes design has been based on specified concrete strengths. CP 110 was published in three parts:

- Part 1 *Design, material and workmanship*
- Part 2 *Design charts for singly reinforced beams, doubly reinforced beams and rectangular columns*
- Part 3 *Design charts for circular columns and prestressed beams*

The design charts in Parts 2 and 3 are based on the guidance given in Part 1. The code introduced the concept of limit state design, partial safety factors being applied to both material properties and loads (ie 'actions' in Eurocode terminology)

Characteristic strengths were specified for high yield reinforcement dependant on bar diameter and method of manufacture (410 N/mm², 425 N/mm² and 460 N/mm²), a partial safety factor of 1.15 was then applied to the characteristic steel strength.

BS 8110

BS 8110 was also published in three parts:

- Part 1 *Code of practice for design and construction.*
- Part 2 *Code of practice for special circumstances.*
- Part 3 *Design charts for singly reinforced beams, doubly reinforced beams and rectangular columns.*

In BS 8110, unlike CP 110, only a single characteristic steel strength of 460 N/mm² was specified for high yield reinforcement. A partial safety factor of 1.15 is applied to the steel strength.

In 1997 BS 8110-1 was revised with the characteristic strength for high yield reinforcement being increased to 500 N/mm².

Eurocode 2

There are four parts to Eurocode 2:

- Part 1-1 *General rules and rules for buildings*
- Part 1-2 *Structural fire design*
- Part 2 *Bridges*
- Part 3 *Liquid-retaining and containment structures*

Part 1-1 is the principal part, which is referenced by the three other parts. There are a number of differences between Eurocode 2 and BS 8110. The key differences are:

- Eurocode 2 is generally laid out to give advice on the basis of phenomena (eg bending, shear) rather than by member types as in BS 8110 (eg beams, slabs, columns).
- Design is based on characteristic cylinder strengths not cube strengths.
- The Eurocode does not provide derived formulae (eg for bending, only the details of the stress block are expressed). This is the traditional European approach, where the application of a Eurocode is expected to be provided in a textbook or similar publication.
- It allow for this type of detail to be provided in non-contradictory complementary information (NCCI) (see *Glossary*).
- Notations and units have been amended.
- The partial factor for steel reinforcement is 1.15. However, the characteristic yield strength of steel that meets the requirements of BS 4449 will be 500 MPa, so overall the effect is negligible.
- Eurocode 2 is applicable for ribbed reinforcement with characteristic yield strengths of 400 to 600 MPa. There is no guidance on plain bar or mild steel reinforcement in the Eurocode, but guidance is given in the background paper to the UK National Annex.
- The effects of geometric imperfection ('notional horizontal loads') are considered in addition to lateral loads.
- Minimum concrete cover is related to bond strength, durability and fire resistance. In addition to the minimum cover an allowance for deviations due to variations in execution (construction) should be included. Eurocode 2 recommends that, for concrete cast against formwork, this is taken as 10 mm, unless the construction is subject to a quality assurance system in which case it could be reduced to 5 mm or even 0 mm where non-conforming members are rejected (eg in a precast yard).
- It is recommended that the nominal cover is stated on the drawings and construction tolerances are given in the specification.
- Higher strengths of concrete are covered by Eurocode 2, up to class C90/105. However, because the characteristics of higher strength concrete are different, some expressions in the Eurocode are adjusted for classes above C50/60.
- The 'variable strut inclination' method is used in Eurocode 2 for the assessment of the shear capacity of a section.
- The punching shear checks are carried out at 2D from the face of the column and for a rectangular column, the perimeter is rounded at the corners.
- Serviceability checks can still be carried out using 'deemed to satisfy' span to effective depth rules similar to BS

8110. However, if a more detailed check is required, Eurocode 2 guidance varies from the rules in BS 8110-2.

- The rules for determining the anchorage and lap lengths are more complex than the simple tables in BS 8110. Eurocode 2 considers the effects of, among other things, the position of bars during concreting, the shape of the bar and cover.

Water retaining structures

CP 2007

The design approach in CP 2007 was based on CP 114 and CP 115, with some modifications. The code gave guidance on the provision of movement joints and details of various types of watertight joint. General guidance was given on construction.

BS 5337

The revised code was published in 1976 and the accompanying handbook was published in 1979. Two different design approaches were given:

- In-line with CP 110 (ie limit state design).
- In-line with CP 114 and CP 115 (permissible stress design as used in CP 2007).

The code defined two conditions for concrete exposed to water with limits to crack widths for each as follows:

Class A: Exposed to moisture or subject to alternate wetting and drying	0.1 mm
Class B: Exposed to continuous or almost continuous contact with liquid	0.2 mm

An alternative method of design was to limit the steel stresses.

BS 5337 required checks on early thermal stresses and required checks on critical reinforcement ratio, where reinforcement exceeds this ratio checks on crack spacing and crack width due to early thermal stresses are required.

BS 8007

The design approach in BS 8007 is to be in full accordance with BS 8110, the option for permissible stress design being removed.

Although the approach for dealing with early thermal effects was as the previous code (BS 5337), it was modified with more detailed guidance given. The equations for calculating crack widths due to flexure were modified to be in-line with BS 8110.

Eurocodes

Part 3 covers additional rules to those in Part 1 for the design of structures constructed from plain or lightly reinforced concrete, reinforced concrete or prestressed concrete for the containment of liquids or granular solids

Principles and application rules are given in Part 3 for the design of those elements of structure, which directly support the stored liquids or materials (ie the directly loaded walls of tanks, reservoirs or silos). Other elements that support these primary elements (for example, the tower structure that supports the tank in a water tower) should be designed according to the provisions of Part 1-1.

Part 3 does not cover:

- structures for the storage of materials at very low or very high temperatures
- structures for the storage of hazardous materials the leakage of which could constitute a major health or safety risk
- the selection and design of liners or coatings and the consequences of the choice of these on the design of the structure
- pressurised vessels
- floating structures
- large dams
- gas tightness.

Also, Part 3 is only valid for stored materials that are permanently at a temperature between -40°C and $+200^{\circ}\text{C}$. For the selection and design of liners or coatings, reference should be made to appropriate documents.

It is recognised that, while this code is specifically concerned with structures for the containment of liquids and granular materials, the clauses covering design for liquid tightness may also be relevant to other types of structure where liquid tightness is required.

In clauses relating to leakage and durability, this code mainly covers aqueous liquids. Where other liquids are stored in direct contact with structural concrete, reference should be made to specialist literature.

5.5.6 Earth bunds (including earth bases with reinforced concrete and blockwork walls) and liners

Unlined earth bunds rely entirely on the impermeability of the soils forming the base and walls to provide containment. In addition, the bund walls have to be designed to withstand the hydrostatic and hydrodynamic pressures should the primary containment fail. There are also a number of facilities comprising concrete wall and earth bases. In these situations the integrity and strength of the walls should be established as discussed in Section 5.5.5.

The impervious nature of soils is clearly a key aspect of ensuring containment. It is common practice to achieve this by providing a one metre depth or thickness of soil with a maximum permeability of $1 \times 10^{-9} \text{ ms}^{-1}$ (see Section 8.2.1).

An investigation is likely to include *in situ* and/or laboratory testing of the soils in the base and walls of the containment facility to establish the permeability of the soils and the ability of the embankment walls to withstand the imposed loading. Advice on commissioning a ground investigation and laboratory testing is provided in Chapter 8. A dimensional survey of the bund walls is also likely to be required.

Class 2 and class 3 earth bunds should be lined and therefore integrity testing (EA, 2009b) of the liner should be completed if there is no leak detection system in place (leak detection systems should generally be provided for a class 3 containment system – see Section 8.12). Beyond inspection for obvious damage to the liner, integrity testing should be completed by a specialist contractor.

EI (2014) provides advice on the design of lining systems (see Chapter 8). Some limited advice on the inspection and maintenance of existing liners can also be found in Chapter 7.

Where there is no liner in place, the decision to install one should be based on reducing risk sufficiently to satisfy the law and discussed with the regulator. For instance, the risk may be adequately mitigated by a sufficient depth of impermeable soil.

5.5.7 Remote secondary containment tanks

Where possible, the particular standard to which the tank was constructed should be established and inspected against the requirements of the standard.

External visual inspection of a secondary containment tank will indicate areas of corrosion, or signs of leakage through joints. However, it may not reveal any leakage through the tank bases.

Severe corrosion can significantly reduce the strength of a tank and its ability to withstand the hydrostatic and hydrodynamic forces imposed upon it should the primary containment fail. Where corrosion is found, specialist advice should be sought to assess if this will significantly impair the performance of the tank and advice sought on suitable repair measures. In extreme cases, the tank may have to be replaced.

Any signs of leakage at joints should be remedied as soon as is practicable.

Advice on the inspection and repair of storage tanks can be found in EEMUA (2003).

5.6 INTEGRITY OF CONTAINMENT SYSTEMS

5.6.1 Joints

Joints in walls and bases are the main source of weakness. The integrity of bunds relies on the performance of the sealant and waterstops. Older bunds from the 1960s to perhaps the 1980s were often constructed using profiled sheet copper across the joints. If present, these would resist chemicals

and heat. However, more recently, PVC waterstops have been used, which may be attacked by heat and chemicals. Several bunds at Buncefield constructed after 1990 and one built in 2000 were constructed without any waterstops.

It is important to establish if the joints in walls and bases are watertight as well as what material, if any, is across the joint. One method is to core down from the top of the wall to confirm if there is a waterstop, or investigate with a borescope inserted into the joint. However, this would probably require removal of any fibreboard and joint sealant.



Figure 5.11
A plated joint (courtesy CH2M Hill, with permission from the Environment Agency)

fire, with a heat-resisting (intumescent) seal bonding the plate to the concrete. Typical plating over and repair details are provided in Chapter 12.

Adjacent wall panels should be orientated such that differential movement caused by thermal expansion during a fire will not cause bursting at the joints. All joints should be fully dowelled and establishing if they have been installed should be included as part of the investigation of the structural strength of the wall. However, it is likely to require an intrusive investigation on at least a sample of joints. Details of appropriate joint details are provided in Appendix A5.

The main function of the sealant is to keep stones out of the joint, so that when it expands thermally, the stones do not spall the edges and stop the joint closing. Their secondary function is to restrict ingress or egress of liquids, but cannot be guaranteed to stop them.

Where waterstops have not been provided, or it is not possible to determine if they were installed during construction, consideration should be given to upgrading the waterproofing at joints. In its simplest form this might involve plating over the joints with sheet steel, anchored to the concrete with provision for thermal expansion, and where there is the risk of



Figure 5.12
A joint that has failed due to thermal expansion because of inadequate dowel provision across the joint. Note also that the tie bolt holes at the foot of the wall also leaked during the incident (courtesy CH2M Hill, with permission from the Environment Agency)



Figure 5.13 A kicker joint (note the use of hydrophilic sealants is not recommend)



Note the pipe is bearing on the formed hole such that the infill concrete or mortar beneath will not form an adequate seal. In addition there is no puddle flange on the pipe.

Figure 5.14 A retrospectively installed pipe penetration. (courtesy CH2M Hill, with permission from the Environment Agency)

Kicker joints where the wall has not been properly tied into the foundation are also one of the main areas for potential failure. Checking for continuity of reinforcement across this joint should be included in the structural investigation. Honeycombing of the concrete is a common problem at the kicker due to poor compaction, and the concrete should be carefully inspected for this defect at this location for signs of leakage, dampness or lime staining.

The typical components of a reinforced concrete wall are shown in Appendix A6.

5.6.2 Penetrations through the containment

The location of all penetrations through the containment should be noted. It is important that each one of these should be tested for watertightness (see Section 5.7.3).

Particular attention should be paid to any grouted-up tie-bolt holes, or sealing of old pipes, cable duct etc. These have been shown to be a particular source of weakness, although they might be difficult to locate on older structures, or where a coating has been applied.

The means of sealing the penetration through the wall is important, as during a fire the seal can fail either because of the high temperatures, or significant loads that can develop due to differential movement where the pipe is anchored by a puddle flange or similar. Advice on sealing pipework, ducts and other penetrations through bund walls is provided in Section 12.7.

Penetrations through a containment wall (apart from overflows in the 'freeboard zone') should be avoided where possible. Those that are necessary should be constructed in accordance with the details provided in Chapter 7.

Where penetrations have been made in existing containment walls, the key issues are the suitability of the waterproofing and provision for movement in the event of a fire. Examples of potentially problematic installations include:

- pipes in over-sized holes
- pipes in over-sized holes with (flammable) gaiters
- pipes cast into the wall that expand and cause the concrete to fail because it is not reinforced and properly tied in
- pipes that have no puddle flanges or have inappropriate flange spacing.

The survey of the facility should include details of all the penetrations and, where possible, details of how they have been installed in the containment wall.



*Figure 5.15
Over time, sealants will detach from the sides of joints and must be regularly inspected and replaced (courtesy CH2M Hill, with permission from the Environment Agency)*

5.7 IN-SERVICE PERFORMANCE

5.7.1 Details of any linings/coating to the containment

Linings to earth bunds are discussed in Section 5.5.6.

Where possible, the details of any protective coating that have been applied to concrete and blockwork walls should be established.

If no details are available and there are no obvious signs of coatings having been applied (penetrative coatings for instance may not be visible) then it should be assumed that none have been applied.



Some surface coatings can have a service life as little as two years. However, if no records are available and the coating is older than two years it should be treated as ineffective, unless its integrity can be demonstrated.

It should be noted that rendering a blockwork wall does not make it suitable for providing class 2 or class 3 containment. Blockwork walls or rendered blockwork walls in class 2 or class 3 situations should either be replaced, or alternative measures put in place such as tertiary containment to reduce risk sufficiently to satisfy the law.

5.7.2 *In situ* load testing

An alternative to confirming the structural strength of a blockwork or reinforced concrete wall through detailed investigation is to complete an *in situ* load test. This requires applying a horizontal force to the wall equivalent to the full hydrostatic pressure plus any dynamic forces that could occur, and monitoring the wall for signs of movement or the development of cracks.

5.7.3 Watertightness

Testing watertightness on anything other than a small bund is likely to be problematic due to the volumes of water required, its subsequent disposal and the ability to detect very small drops in water level attributable to leakage (see Section 6.3.7).

One of the most vulnerable locations for leakage other than at joints is it at the kicker joint. Where rainwater regularly accumulates within a bund, tell-tale signs of leakage at the kicker joints are sometimes apparent on the outside face of the wall.

So, as a minimum, joints and bund penetrations should be tested for watertightness using a local 'limpet dam' or similar. For class 3 containment, a selection of wall panels should be tested in addition to the joints.



Advice on leakage testing joints and wall panels should be sought from a specialist contractor.

5.7.4 Containment tanks

Tanks used to provide secondary or tertiary containment should be inspected at regular intervals informed by manufacturer's recommendations and a risk assessment.

Where it is not possible to visually assess signs of leakage (such as for tanks constructed off the ground) and detection monitoring is not installed, periodic watertightness tests should be completed (see Section 6.3.2).

Items subject to deterioration should have particularly detailed inspections and regular maintenance including:

- welded joints
- bolted and riveted joints
- joint sealants
- laps and seams
- tank bottoms (if accessible)
- protective coatings
- pipe and other connections
- valves
- access hatches
- surfaces subject to corrosion by weathering or aggressive attack.

Welded joints corrode more rapidly than the parent metal, particularly at the base of tanks and at positions subject to exposure and aggressive conditions. Ultrasonic and X-ray techniques can test weld integrity. Site welding repairs must be carried out to the same standard as the original tank specification. Advice on integrity testing of containment tanks can be found in EEMUA (2003).

5.7.5 Leak detection systems (if installed)

Where installed, advice on testing leak detection systems should be sought from the manufacturer and/or installer. An overview of leak detection systems is provided in Section 8.12.

Case study 5.2

A baseline study: compliance and options assessment – bulk fuel tanks and bunds, UK

A tank farm terminal in the north-west of the UK provided storage for around 50 000 tonnes of gasoline, fuel oil and other petroleum products. The CA required that as the site had 'in-scope' gasoline tanks the installation should update their major accident prevention measures with a risk assessment (RA) and assess compliance against the minimum standards for primary, secondary and tertiary containment.

The operator commissioned a consultant to:

- identify representative (credible) release scenarios and complete the RA
- assess compliance of plant, equipment and containment measures against current guidance (HSE, 2009a), CA (2008a) and CIRIA R164)
- identify options for enhancing and upgrading the containment
- implement operational and management (O&M) improvement measures.

The RA required the development of a conceptual source-pathway-receptor model. Sources and release volumes were determined from an assessment of foreseeable (credible) release events. The principal pathway was identified as site drainage and receptors identified through an assessment of the environment setting of the site.

The scope of the compliance and options assessment included:

- primary containment and equipment including tanks, pipelines, flow lines, vent systems etc
- secondary containment comprising the earth bunding to bulk tanks, concrete and masonry bunds to the biofuels and additives tanks and kerbing to the yard, equipment and transfers areas
- tertiary containment including infrastructure drainage, sumps and interceptors, bypass and overspill lagoons, attenuation areas etc
- an asset register was developed for the primary, secondary and tertiary containment based on an examination of engineering drawings and maintenance records together with a site inspection to identify all tanks and equipment. O&M controls were also examined
- the review of the secondary containment highlighted several construction issues, including the use of non fire-resistant mastics in joints. Inspection of the earth bund walls and floor indicated that they generally met with surge and impermeability requirements, however, settlement had compromised bund capacity. A remedial works plan was therefore developed and agreed with the CA to enhance the bund arrangements
- the assessment of the tertiary containment included a review of CCTV surveys and drainage plans and calculation of the required a site-wide containment capacity. The tertiary containment capacity was found to be inadequate for several of the credible scenarios considered. The remedial works plan included measures to enhance tertiary containment arrangements.

5.8 GAP ANALYSIS

The primary aim of the baseline asset survey should be to identify any defects or issues with the secondary containment that would render it ineffective irrespective of class. These defects should be addressed using risk-based prioritisation, or alternative measures put in place, such as tertiary containment, to reduce the risk sufficiently to satisfy the law.

By comparing the results of the baseline asset survey with the specific recommendations for the design and construction of containment systems discussed in Part 3 of this guide, the class of containment provided by the existing installation can be determined.

The class of the existing installation can then be compared to the class required by the risk assessment completed following the guidance in Chapter 2. Should the class of the existing containment fall short of that required by the risk analysis, a gap analysis should be completed to identify the particular shortcomings. Chapter 12 provides advice on the repair and upgrading of existing installations.

Where practicable, these shortcomings should be addressed. However, if it is not considered practical then alternative measures should put in place such as tertiary containment to reduce the risk sufficiently to satisfy the law.

5.9 KEY RECOMMENDATIONS

The key recommendations drawn from this chapter are summarised in Table 5.1.

Table 5.1 **Key recommendations**

Duty holders should prepare an appropriate inspection and maintenance regime for their facilities.
Where one does not exist, each containment facility should be classified using the methodology set out in Chapter 2 of this guide. The classification should be reviewed at least once every five years, or where: <ul style="list-style-type: none">■ there are any modifications made to the primary or secondary containment■ the volume of material in the primary containment is increased■ the nature of the material in the primary containment is changed.
A baseline asset survey of each secondary containment facility should be completed to enable the class to be determined.
A gap analysis should be completed to highlight any shortcomings with the existing secondary containment facility compared to the class required by the use. Where practicable, these shortcomings should be addressed. However, if it is not considered practical then alternative measures should put in place such as tertiary containment to reduce the risk sufficiently to satisfy the law.

6 Introduction to bunds

This chapter provides:

- A definition of a bund (Section 6.1)
- A general overview of design and performance requirements for a bund (Section 6.2)
- Advice on design issues (Section 6.3)
- A summary of general arrangement recommendations (Section 6.4)

6.1 DEFINITION OF BUND

The definition of the term ‘bund’ in the context of this guide is provided in Section 3.2.

“a facility (including walls and a base) built around an area where potentially polluting materials are handled, processed or stored, for the purposes of containing any unintended escape of material from that area until such time as remedial action can be taken. Bunds are usually structurally independent from the primary containment tank”.

As discussed in Chapter 3, the site-wide containment has to retain not just the content of the primary containment but rainfall and, where potentially flammable materials are present firefighting, and cooling water and firefighting foam. These products have to be retained for a minimum of eight days and in some circumstances a considerable period longer while arrangements are made for disposal.

In some sectors of industry the term ‘catchpit’ is used in place of bund. It implies, generally, a small facility, however, as this guide deals with all sizes of facility from small to very large, the term bund is used throughout.

Bunds may be used in a number of different situations, providing local secondary containment at, for example, IBC/drum stores, a small single tank installation, extensive tank farms (see Figure 6.1) and large chemical processing plants. In general where used to provide local containment, bund walls tend to be low in relation to the height of the primary container and for reasons of jetting (see below) and surge (see Section 4.4) there is ideally a large clearance between the two.



Figure 6.1 A bunded tank farm (courtesy Steve Flynn, Rawell Environmental Ltd)

An alternative form of bund, commonly termed a collar bund, is shown in Figure 6.2. Full height collar bunds are built close to the primary vessel, with a height equal to the maximum storage depth of liquid in the primary vessel. Three-quarter collar bunds are not as high but the gap between them and the primary vessel is larger. These are also referred to as ‘cup-tanks’ and are referenced in European Commission (2006). As the annulus between primary and secondary containment is likely to constitute a confined space, a particular issue with collar bunds is that it makes it difficult to inspect the primary containment and visually inspect for signs of leakage. However, detection systems can be installed to monitor for leakage.

It should be noted that while collar bunds may appear similar to double skinned tanks, they differ in that the ‘bund’ element is structurally independent from the primary containment. This is not the case for double skinned tanks and for this reason the second skin of the double skinned tank is not considered to provide secondary containment.

However, where class 1 containment is required, the range of products marketed as ‘integrally bundled tanks’ may be appropriate subject to meeting the requirements set out in Section 7.4.1.

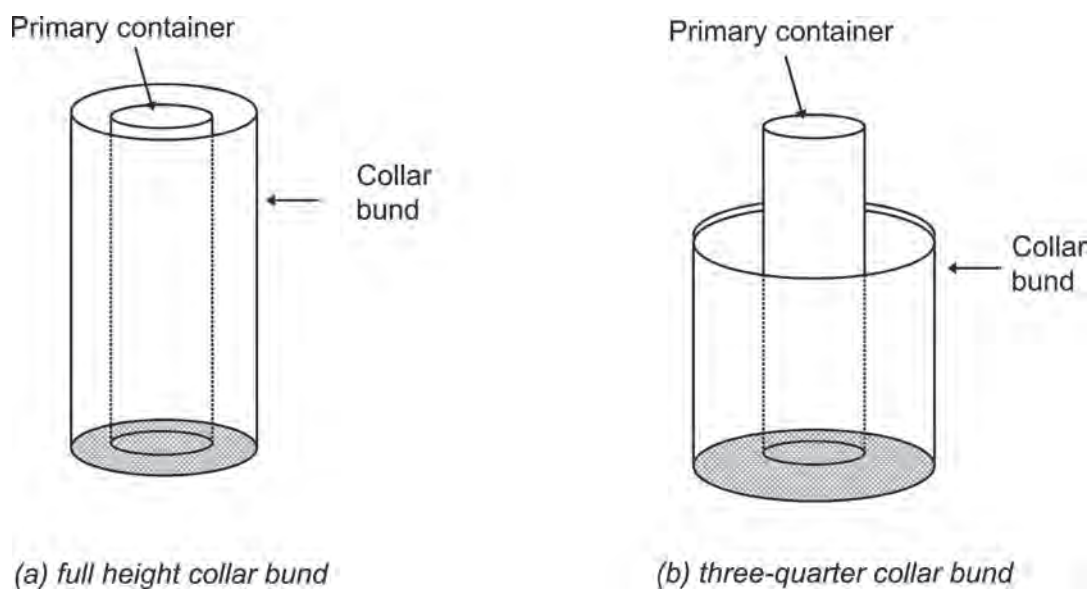


Figure 6.2 Collar bunds

Bunds can also be used in linear form to protect against leaks from pipework. For pipework laid below ground the bund normally takes the form of a covered channel or culvert (although below-ground pipework should be avoided where possible). They can also be used to protect against the failure of primary containment within buildings. The recommendations presented in this section are applicable to each of these situations.

6.2 OVERVIEW OF DESIGN AND PERFORMANCE REQUIREMENTS

This section provides a general overview of the performance requirements for bunds and introduces a number of key design and construction considerations.

The design recommendations differentiate between containment classes 1, 2 and 3, as defined in Chapter 2, by specifying a range of structural design standards and physical arrangements to permit effective performance and monitoring specific to each class.

Specific design and performance criteria for various forms of bund construction are provided Chapters 7 to 9 (see Table 6.1).



Table 6.1 *Forms of bund construction*

Type of construction	Chapter
<i>In situ</i> reinforced concrete and masonry bunds	7
Earth banked containment basins (lagoons), earth bunds and earth floors	8
Secondary containment tanks	9

In general bunds provide a passive defence against escape of pollutant in that they do not require operator intervention in the event of failure of the primary containment. For this reason they are usually seen as the first line of defence against pollution, frequently in combination with remote secondary or tertiary containment systems (see Section 3.2). However, active intervention may be required during some incidents. This may involve managing cooling and firefighting water.

Bunds provide visible protection, which may be both an advantage and a disadvantage. Visibility is an advantage in so far as a bund's superficial condition and fitness for purpose (or alternatively, defects) will be readily apparent. The physical presence of a bund is also a constant reminder to operatives that hazardous or polluting materials are present. However, visibility is a disadvantage in that it can lead to a false sense of security, resulting in the view that other protective measures, including safety and environmental management procedures, need not be taken seriously. For example, small but important changes that could affect the performance of the bund during an incident (breakdown of seals, widening of cracks in winter etc) may go unnoticed on a day to day basis by operations staff.

The monitoring and maintenance of bunds may sometimes be overlooked. However, they should be considered as important assets and a fundamental part of the overall process infrastructure with an inspection and maintenance regime to match. Advice on appropriate inspection and maintenance regimes is provided in Chapter 5.

The Buncefield incident in December 2005 highlighted many shortcomings with the design and construction of the secondary containment facilities at the site that failed leading to a MATTE. The subsequent HSE (2011) report contained a number of recommendations for the design and construction of secondary and tertiary containment that have been reflected in this guide.

The recommendations in this section relate equally to the maintenance, extension and modification of an existing bund as well as the construction of a new containment facility.

In summary, bunds should be designed and constructed to comply with a number of performance criteria that should take into account all credible:

- modes of escape of pollutant from the primary storage vessel
- modes of failure of the bund
- incident scenarios
- loadings
- chemical and physical exposure (particularly fire).

These are discussed in Section 6.3 and summarised in Box 6.8.

Most of the good practice recommendations described in Part 3 apply equally to all classes of containment with restrictions or enhancements for the higher risk classes. Table 6.2 provides an indication of the nature of the different requirements, although it is important that the reader is aware of the context in which they are made, and should refer to the relevant sections in Part 3 of this guide.

Table 6.2 Summary of key design recommendations

Design Issue	Section	Comments
Chapter 4 Containment system capacity		
Fire duration	Box 4.1	All classes
Local secondary containment	4.2.1	All classes
Site-wide capacity	4.3	All classes
Chapter 6 Introduction to bunds (see also Boxes 6.6 and 6.7)		
Height of wall	6.3.1	All classes
Freeboard	Box 6.2	All classes
Proximity to bund wall	6.3.1	Only a consideration for class 2 and class 3
Jetting	6.3.1 and Box 6.3	Only a consideration for class 2 and class 3
Leakage detection from primary containment vessel	6.3.2	Only a consideration for class 3 where primary containment vessel rests on bund floor
Drainage from bunds	6.3.2	No provision for gravity drainage should be made for class 2 and class 3
Pipework	6.3.3	No penetration of the bund wall should be permitted for class 2 and class 3
Impermeability testing	6.3.7	Leak testing of all joints and penetrations upon completion of construction works a requirement of class 2 and class 3
Structural independence	6.3.10	All classes although integrally banded tanks may be suitable for class 1
Chapter 7 In situ reinforced concrete and masonry bunds		
Competence	7.2.1	Design and construction should be completed by competent personnel
<i>In situ</i> reinforced concrete bunds	7.2.2	Design EN 1992-3:2006 as liquid containing and retaining structure
Joints	7.2.4	Waterbars to be installed in expansions and contraction joints and be resistant to attack by inventory and fire resistant where flammable inventory is stored
Kicker joints	7.2.4	Waterbars installed in kicker joints for class 2 and class 3
Reinforced masonry bunds	7.3.1	Only suitable for class 1 and where inventory is not flammable
Chapter 8 Earth banked containment basins (lagoons), earth bunds and earth floors		
Competence	8.1	Design and construction should be completed by competent personnel
Site investigation	8.1	Detailed site investigation required for all classes to BS EN 1997-2:2007
Design	8.1	Design to be in accordance with BS EN 1997-1:2004
Maximum permeability of soils used for earth embankment construction	8.2.1	$1 \times 10^{-9} \text{ ms}^{-1}$
Earth floors to bunds and lagoons	8.2.1	Equivalent of 1 m depth of soil with a maximum permeability of $1 \times 10^{-9} \text{ ms}^{-1}$
Liner	8.3	Required for class 2 and class 3 unless a significant depth of <i>in situ</i> low permeability soil is present in which case this may be relaxed in consultation with the regulator
Leak detection	8.3	Required for class 3 unless a significant depth of <i>in situ</i> low permeability soil is present in which case this may be relaxed in consultation with the regulator
Chapter 9 Containment tanks (see also Tables 9.1 and 9.2)		
Leak detection	6.3.2	For class 3 leakage detection where tank rests directly on the ground
Chapter 10 Transfer systems (see also Table 10.1)		
Catchment surfacing	10.4	Resistant to inventory and fire plus additional redundancy for higher classes
Catchment construction	10.5	Number of options available including soils, paving, concrete slabs and asphalt and dense bitumen macadam
Transfer system capacity	10.4	Designed to cater for flows arising from a credible scenario

Table 6.2 Summary of key design recommendations (contd)

Pipework and channels	10.4	Designed to be liquid tight and resistant to inventory. Material suitability
Dual purpose systems	10.4	Surface water drainage system should not be used a part of the transfer system
Pumps	10.4	Where the transfer system is reliant on pumping, provision for failure
Monitoring systems	10.4	CCTV surveillance of above ground pipe networks, flow metering of pipe runs, alarm systems and other forms of remote monitoring
Chapter 11 Sacrificial areas and temporary containment		
Sacrificial areas and temporary containment	11.1	Used only as means of mitigating the failure of secondary containment, rather than a replacement for it

6.3 DESIGN CONSIDERATIONS

6.3.1 General arrangement

This section provides:

- bund shape and compartmentation
- height of bund walls
- proximity to primary storage
- jetting.

Bund shape and compartmentation

The shape of a bund should be kept as simple as possible, taking operability requirements into consideration. Complicated footprint shapes tend to lead to difficult structural detailing at corners with a consequent increased risk of failure. The footprint area will be determined by the assessed capacity requirement for the bund discussed in Chapter 4 together with any height limitations for the bund wall. In some circumstances it may be preferable to provide a larger bunded area than the capacity requirement dictates, simply to avoid complicated detailing.

Compartmentation of large bunds (eg bunds around tank farms) into smaller areas means that minor spillages from the primary containment may be confined to a relatively small area, typically the immediate vicinity of a leaking tank. This has several advantages including:

- separation and handling of contents
- a reduction in the risk of escape of polluting material from the bund (because the area it occupies is smaller)
- easier recovery of the material from the bund, and less contamination of that material
- fire control and making the recirculation of firefighting or cooling water easier (greater depth for pick-up for a given volume of water)
- a reduction in the risk of damage to neighbouring tanks and facilities
- maintaining reserve capacity while emptying or during maintenance works.

A typical example of compartmentation is shown in Figure 6.3.



Figure 6.3
A compartmentalised bund (courtesy Seaman Corporation)

It is not necessary for the dividing walls in a bund to be impermeable to the same extent as the bund walls. If the compartmentation is to be designed to be effective during a major incident, the dividing walls should clearly be strong enough to withstand a full hydrostatic head of liquid and surge loads. Care should be taken to ensure that the dividing walls do not compromise the integrity of the bund floor.

Making the height of dividing walls lower than the perimeter walls provides a further level of protection, allowing full bunds to overflow into adjacent compartments.

Height of bund walls

A bund wall should be high enough to retain the contents of the primary storage, with appropriate allowances for rainwater and firefighting water (see Chapter 4). In addition, ‘fixed’ freeboard allowance for firefighting foam and for surge should be provided. These are summarised in Table 6.3.

Table 6.3 Freeboard allowances

Minimum allowance for firefighting agents (foam)	100 mm
Plus surge allowance (in the absence of detailed analysis) for:	
■ <i>in situ</i> reinforced concrete and blockwork bunds	250 mm
■ secondary containment tanks	250 mm
■ earthwork bunds	750 mm

While these considerations dictate the minimum wall height, there are a number of considerations that should be taken into account in deciding the maximum height. Generally bund walls should not exceed 1.5 m in height to:

- enable visual inspection of the bund walls and floor
- facilitate firefighting operations
- ensure relatively easy egress from a bunded area in the event of an emergency
- reduce the risk of the bunded area becoming a confined space by encouraging natural ventilation.

There will be circumstances where, for operational or conflicting safety reasons, it will be necessary for a bund wall to exceed 1.5 m high and in such cases a risk assessment should be completed and the HSE and, if appropriate, the Fire and Rescue Services consulted. It will be essential to provide adequate means of escape for personnel (eg steps or step irons) and to make deep bunds secure against unauthorised access (eg security fencing). The increased risks to operatives from denser than air hazardous vapour accumulations in deeper bunds should also be considered.

Where, due to the constraints on the maximum height of wall, it is not practical to accommodate for the effects of surge in the design of the local secondary containment, an alternative is to provide tertiary containment.

Clearly the height recommendation cannot be applied to collar bunds where the issues to do with firefighting, access by personnel and ventilation are very different and should be addressed specifically for each installation.

Proximity to primary storage

The greater the distance between a bund wall and the primary containment, the less is the risk of failure or bund overflow through:

- surge (see Section 4.4)
- a damaged bund wall falling onto and damaging primary containment (and vice versa)
- jetting.

Given the wide variability of sites, it is not possible to provide definitive recommendations on appropriate minimum distances. However, increasing the distance between the primary containment and the bund will require greater space on a site and can significantly increase the cost of construction.



For class 3 containment the bund wall should be situated so that no structure within the bund is closer to the wall than a distance equal to the structure's own height.

Jetting

The failure of a storage tank through, for example, a rupture or corrosion of the side wall, could result in the escape of a jet of liquid with sufficient force that it projects over the bund wall. This phenomenon is referred to as jetting.

The potential for failure through jetting is minimised by:

- keeping primary storage tanks as low as possible
- increasing the height of the bund wall
- building the bund wall as far away from the tank as necessary.

Box 6.1 provides a method for calculating the minimum height of a bund wall, or the minimum distance from a tank to a bund wall, to ensure that any discharge through jetting is contained within the bund.

Where it is not practical to locate the bund wall so as to contain jetting discharge, baffle plates can be installed.

For exceptionally high primary vessels where there is a risk of fire, following this guidance might result in limiting the effectiveness of firefighting due to the large distances from the bund wall to the vessel. The Fire and Rescue Services should be consulted on this matter.

Box 6.1 Method for calculating bund geometry to prevent jetting

For a small diameter sharp edged discharge orifice, it can be demonstrated that:

$$l^2 = 4 C_v^2 (z-h) (H-z)$$

where C_v = coefficient of velocity

In practice, $C_v \cong 0.99$. Assuming $C_v = 1$ leads to the conservative solution:

$$l^2 = [4(z-h)(H-z)]^{0.5}$$

For a given value of h , it may be shown the l is a maximum when:

$$z = 0.5H + 0.5h$$

which leads to the solution:

$$l_{max} = H-h$$

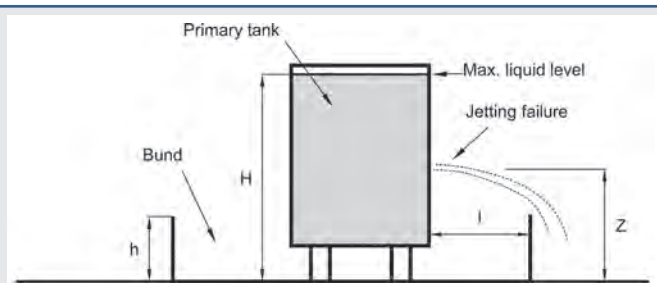


Figure 6.4 shows an example of an installation vulnerable to jetting failure.



Figure 6.4 Example of installation vulnerable to jetting of fuels over the bund wall (courtesy CH2M Hill, with permission from the Environment Agency)

6.3.2 Drainage and leakage detection

This section provides:

- arrangements for drainage within bunds
- detection of leakage from the primary storage vessel within bunds
- drainage from bunds.

Drainage within bunds

Drainage within a bund (or compartment where dividing walls are provided) should:

- collect any liquid that enters the bund (eg rainwater) and provide a means for it to be emptied
- drain spilled material away from the immediate vicinity of the primary tank to another part of the bund where it will be less of a hazard and easier to deal with. This is particularly relevant to larger multi-tank sites where flammable or volatile liquids are stored.

Within small bunds, the floor should be laid to a cross fall to prevent rainwater or leakage from the primary tank from ponding. A minimum fall of one per cent (1 in 100) is recommended as in practice it can be difficult to construct a bund floor to a shallower fall. A sump at a low point in the bund floor will facilitate emptying, but can make construction more difficult. Slot or channel drains across part or the whole width of the bunded area are an alternative to a single sump. These should be designed to be integral to the bund floor construction and not simply cut into an existing slab. Reinforcement cover should be maintained.

For extensive bunded areas it is not normally practicable to provide a fall across the whole site and, in any case, this would be undesirable since it could encourage the spread of escaped liquid. Where extensive bunded areas are compartmented, a sump can be incorporated within each compartment but care should be taken over its construction to ensure that it is not a potential source of leakage.

Where there is the potential for immiscible inventory to be collected in a sump (ie oils) there is a risk that it could be emulsified during pumping allowing it potentially to bypass any downstream interceptors. This should be considered in the design of the drainage disposal system.

Where sumps are provided, and especially if they are to be used to remove firefighting water during an incident, they should be accessible without having to enter the bund. In practice, therefore, sumps should be placed adjacent to bund walls, rather in the centre of the containment area.

Leakage detection from the primary containment

It is important to be able to detect if there is leakage from a primary storage vessel so that remedial action may be taken. If a tank is supported clear of the floor of a bund, any leakage should be relatively easy to detect. However, if the base of the tank rests directly on the bund floor, any leakage is likely to go undetected until there is enough to seep out from beneath the tank and form a visible accumulation in the banded area. Even then, the leakage could be mistaken in some circumstances for rainwater. Also, if there was a defect in the bund floor in the area beneath the primary tank, any leakage could escape to the environment without detection.



The installation of leak detection systems (see Section 8.12) is one of the additional measures that distinguish a class 3 containment from class 1 and class 2 and their installation should therefore be subject to a risk assessment. However, they should be installed in circumstances where there is insufficient clearance between the base of a primary containment and the bund floor to enable visible inspection for class 3 containment systems.

The design of systems for leakage detection from primary containment is outside the scope of this guide, however, some sources of guidance are provided in Box 6.2.

Box 6.2 Leakage detection guidance

- API (2005) *Welded storage tanks for oil storage*: details of a number of systems recommended by API (2005) are provided in Appendix A3)
- Appendix H of BS EN 14015 *Specification for the design and manufacture of site built, vertical, cylindrical, flat-bottomed, above ground, welded, steel tanks for the storage of liquids at ambient temperature and above*
- CDOIF (2013b) *CDOIF guidance – leak detection*: provides guidance on the detection of hydrocarbons following the failure of primary containment)

Inventory (wet stock) reconciliation may also provide a means of detecting leakage. However, reliance on this method of leakage detection should be discussed and agreed with the regulator.

Drainage from bunds

Bunds should not be equipped with means for gravity discharge, even if lockable valves are provided, unless the bund is part of a larger combined system (see Section 3.2) designed to the same class as the bund itself.

Provision should be made to empty rainwater and other liquids from bunds using mobile or fixed pumps.

As it is likely that any rainwater in a bund will become contaminated, unless it is to be drained to an on-site treatment works, or discharged with the appropriate consent to a trade effluent sewer, it should be routinely sampled and analysed so that it may be disposed of in an appropriate manner.

For this reason pumps should only be operated manually following a visual inspection of the bund contents, rather than relying on automatic starting triggered by interface probes (or similar) to detect pollution of accumulated rainwater.

6.3.3 Pipework and associated equipment

Piercing the walls or floor of a bund for pipework, ducts, control cable etc, introduces a source of potential leakage and, with the exception of overflow pipes, should be avoided unless there is no practical alternative.

Where practical, pipework should be routed over the top of the bund wall, rather than through it.

However, where penetrations cannot be avoided, careful detailing of the means of sealing these is essential. This is covered in Chapters 7 and 8 for *in situ* reinforced concrete and blockwork and earthwork bunds respectively.

Where bunds may be required to retain flammable liquids, which are less dense than water, they should incorporate syphon overflow arrangements. In the event of the bund capacity being exceeded (eg by firefighting water) these will prevent burning liquid spilling over and thereby spreading the fire to other parts of the site. In this situation the preferred option is to provide an aqueous phase removal system that does not require piercing the bund wall, however, where this is not possible, the piercing should be within the freeboard zone. The principle is illustrated in Figure 6.5.

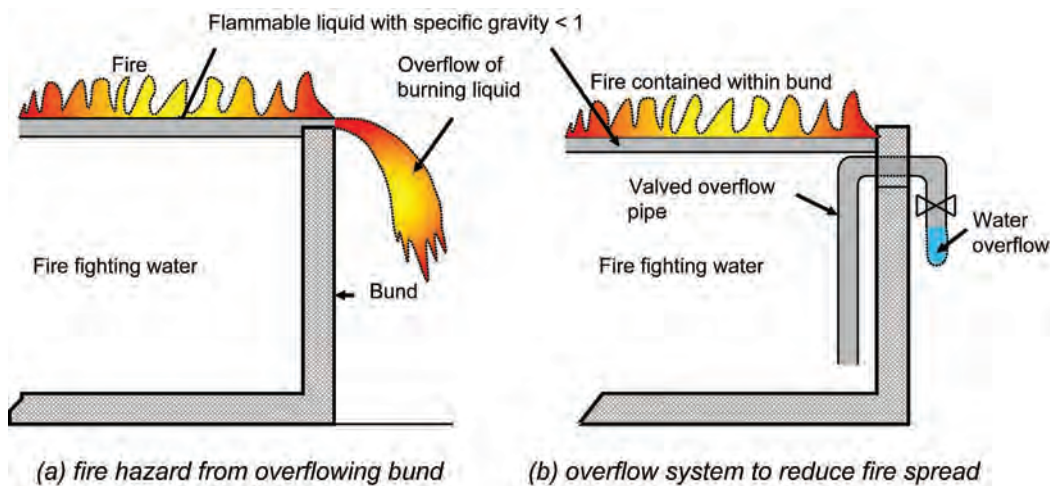


Figure 6.5 Bund overflow arrangements to inhibit spread of fire (courtesy CH2M Hill, with permission from the Environment Agency)

Pipework, pumps, valves and associated equipment are frequently most vulnerable elements to failure and leakage. Where possible, this equipment should be located within the banded area such that the inventory would be contained in the event of failure. However, such equipment should be suitably ignition protected where it may need to operate in a flammable atmosphere and consideration should be given to operability.

An alternative may be to locate pumps in their own separate banded or contained area.

6.3.4 Capacity

Detailed guidance on calculating the required capacity of bunds is presented in Chapter 4.

6.3.5 Retention period

Any liquid that has collected in a bund following an incident should be removed as soon as possible to minimise the risk of subsequent leakage from the bund, or damage to the bund caused by aggressive materials that were part of the inventory.

Where an incident involves only an individual storage tank, or a discrete area of a plant, it may be possible to make provision for emptying the bund and the safe disposal of the contents within a few days. However, in the case of major incidents, emptying and disposal of the contents of a bund may take weeks, even months.

The duration over which the contents may have to be retained has particular implications for the selection of construction materials or the choice of protective coatings where aggressive materials are to be contained.

6.3.6 Impermeability

In most cases it is uneconomic to construct and maintain a bund to be completely impermeable or 'watertight' and the performance specification should ideally include recommended levels of impermeability. The impermeability of a bund is a function of the:

- intrinsic porosity of the material(s) used in its construction (eg concrete, earth, steel)
- way in which the bund is designed and constructed or fabricated using those materials.

However, it would be impracticable to build a bund to a precisely specified level of impermeability and indeed to measure whether that impermeability had been achieved. Consequently, with the exception of soil structures, this guide does not include a performance criterion for impermeability, but prescribes instead a method specification, ie recommends methods of design and construction that if executed in accordance with the specification will result in an adequate level of impermeability.

In practice, where the concern is 'short-term' retention of liquids, it is normally the design detailing of the bund and workmanship during construction (honeycombing, cracks, joint sealing etc) that has the most significant impact on the permeability of the structure, rather than the porosity of the materials themselves.

For bunds that are prefabricated using steel sheet, or built *in situ* using concrete or masonry, adequate impermeability will be achieved provided they are designed and constructed in accordance with the relevant British Standards and codes of practice and the other recommendations given in Chapters 6, 7 and 8 of this guide.

6.3.7 Testing for leakage

For bunds up to 25 m³ capacity and constructed from concrete or masonry it is practical to test for leakage by filling with water using the following recommended methods:

- 1 On a dry day the bund should be filled to brimful capacity (ie until the bund begins to overflow) with water containing a marker dye.
- 2 The bund should be covered (to reduce evaporation) and left for six hours after which there should be no drop in the water level.
- 3 If the bund is found not to be watertight then the source of the leak should be identified and remedied.
- 4 The test should be repeated until the bund is found to be watertight.

However, this will only provide evidence of gross leakage as shown by the example in Box 6.3.

Box 6.3 Impermeability test calculation

- Assume a nominal bund 1.5 m high and 3 m by 5 m in plan area.
- The total internal surface area is 26.5 m².
- Assume a permeability of the walls and base to be $1 \times 10^{-9} \text{ ms}^{-1}$.
- The flow rate through the bund wall and base is $2.65 \times 10^{-8} \text{ m}^3\text{s}^{-1}$.
- Over a period of six hours the loss of water would be $5.72 \times 10^{-4} \text{ m}^3$.
- Over the 15 m² plan area the drop in level would be 0.04 mm and is not practically measurable.

For larger bunds, testing by filling with water becomes increasingly impractical in terms of dealing with both the supply and disposal of the quantity of water involved. However, testing of sections of bund can be completed by installation of a local dam.



Leak testing of all joints and wall penetrations should be completed for class 2 and class 3 bunds upon completion of the construction works.

6.3.8 Strength

Bunds, or proposed modifications to existing bunds, should be designed to withstand:

- The static and dynamic loads that would be exerted by the escape of liquid in the event of the failure of the primary containment.
- The weight of the primary containment when filled with liquid, and any other forces arising from

activities carried out within the bunded area, acting on the base of the bund. The primary storage vessel should not be supported on the bund walls, for example on joists spanning across the top of the walls, as the primary storage vessel and the bund would no longer be structurally independent. If the tank was supported in this way, any impact on the bund may have an adverse effect on it, possibly causing it to fall.

- External actions (for example vehicular impact against the wall).
- Wind loading. This is only likely to be a significant issue for taller (collar) bunds.
- Stresses induced by ground conditions, for example, differential settlement.
- Normal thermal and shrinkage movement of the wall itself.
- Expansion of any embedded components (eg penetrating pipes or other inserts in the wall, heated by solar gain or a fire).
- Additional thermal expansion arising from leakage of warm inventory into the bund and/or its subsequent ignition and burning for several hours.

These loadings and actions are considered below.

Hydrostatic loads

The hydrostatic load should be calculated using the specific gravity of the heaviest liquid that could enter the bund. However, the specific gravity should be taken as not less than 1.0, even where the contained liquid has a lower specific gravity. This is to allow for the possibility that a bund will be filled with firefighting or cooling water.

Depending on the nature of construction, primary storage vessels should be designed to resist floatation should the bund fill with water when they are empty. In some circumstances, it may be necessary to provide adequate foundation to the concrete bund to prevent floatation.

Hydrodynamic loads

The sudden failure of a primary liquid storage tank can result in a wave or surge of liquid across the bunded area. At the same time, because its mass is far less than its liquid contents, the ruptured tank could be propelled in the opposite direction to the main release. There are therefore two loading components to be considered:

- the hydrodynamic force of the wave of liquid hitting the bund wall
- the impact on the bund wall, and possibly other primary tanks, of debris from the ruptured primary tank.

These loads can be difficult to quantify (see Box 6.4).

Box 6.4 *Hydrodynamic forces*

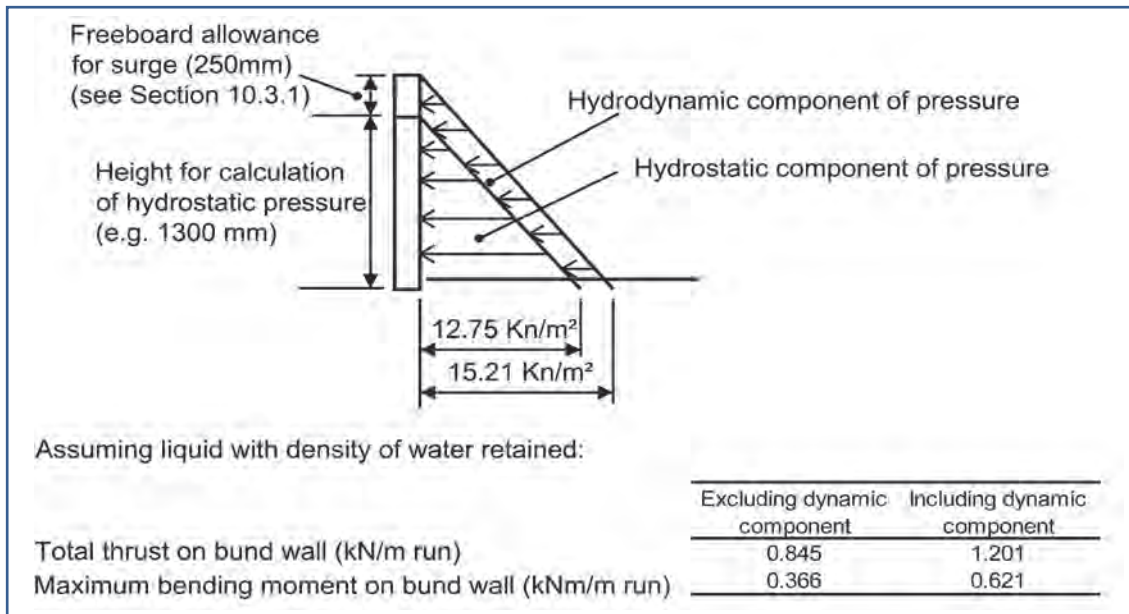
Wilkinson (1991) has reviewed work on model experiments that predict peak hydrodynamic pressures of up to six times the hydrostatic head in collar bunds and later theoretical work that predicts three times hydrostatic head. The impact force of any debris from the damaged primary tank will clearly be heavily dependent on the form of construction of the primary container and the nature of the incident.

3D computational fluid dynamics is an evolving branch of fluid mechanics that may provide a solution to quantifying the hydrodynamic forces that can act on a bund wall following the catastrophic failure of the primary containment. However, the application of CFD in the design of containment systems is beyond the scope of this guide and specialist advice should be sought.

Due to the uncertainty with respect to hydrodynamic loading on shallow bunds, a pragmatic approach should be adopted by assuming that the hydrodynamic forces are taken into account. This can be achieved by designing the walls for a hydrostatic head calculated in relation to the bund height inclusive of the minimum freeboard of 250 mm for dynamic effects. For example, on a typical bund wall designed for 1.3 m depth of liquid, the inclusion of a 250 mm freeboard in the hydrostatic loading calculations results in an increase in pressure of 36 per cent and of 69 per cent in bending moment at the foot of a

wall (see Box 6.5). Where remote secondary and/or tertiary and/or combined containment is in place, ie sole reliance is not being placed on a local secondary bund, the consideration of hydrodynamic forces is less important. However, this is provided there is sufficient site-wide containment constructed to an appropriate class in place to deal with a failure due to hydrodynamic effects.

Box 6.5 Calculation of hydrodynamic loads on bund walls



Water from fire and rescue service hoses

The force of water issuing from fire brigade hoses is unlikely to be a significant issue except in the case of earth bunds where this might cause erosion. Earth bunds are considered in Chapter 8.

However, a number of the Fire and Rescue Services are now equipped with pumps that can operate at high pressure. The designer should confirm with the Fire and Rescue Service the equipment that is likely to be deployed during an incident.

External actions (impact etc)

Accidental impact damage from vehicles operating in the vicinity of the bund should be considered. If a risk assessment concludes that there is a significant likelihood that an impact could occur, it may be more appropriate to provide mitigation measures in the form of crash barriers, rather than accommodate in the design of the bund wall. However, crash barriers should not be secured to the bund wall.

Wind loading

Wind is unlikely to be a significant component of loading except for collar bunds, where the recommendations of EN 1991-1-4:2005+A1:2020 should be followed.

Collar bunds should be designed for a 50-year return period loading, making the assumption that the annular space between the primary tank and the bund is empty. Where the annular space is open to the atmosphere, particular attention should be paid to wind suction forces in accordance with the advice contained in BS 6399-2:1997.

Stresses induced by ground condition

Uneven ground bearing pressure can result in differential settlement, which may cause cracking and leakage in bunds. The risk of differential settlement should be assessed by a detailed ground investigation. Following construction, periodic checks should be made to check differential settlement

has not occurred. Advice on the inspection of existing facilities is provided in Chapter 5, and for on-site investigations in Chapter 8.

Shrinkage

Concrete will shrink inducing stress in the walls and slabs as part of the curing process, when temperatures drop, or when exposed to leakage of cold inventory. Catering for shrinkage in the design of concrete bund walls and slabs is considered in Section 7.2.3.

Expansion of embedded components

While not recommended by this guidance, it may be necessary to route pipework and other conduits through the bund wall. Guidance on ensuring a liquid-tight seal around a penetration is provided at Section 7.2.5). This may require the pipe or conduit to be rigidly fixed into the bund wall using a puddle flange or similar. Any loads induced in the pipe or conduit, such as thermal expansion during a fire, would therefore be transferred into the wall.

The potential loads imposed by pipes or conduits anchored into the bund wall should be accounted for in the structural design.

Thermal expansion

When exposed to heat such as from the leakage of warm inventory or a fire, bund walls will expand. Catering for expansion in the design of concrete bund walls and slabs is considered in Section 7.2.3.

6.3.9 Durability

A bund and all its components should have a design life of 50 years (although it may be appropriate to review the design life as part of the design process) and is capable of withstanding:

- 1 **Weather:** in most situations a bund wall will be exposed to the weather on both faces and should be designed accordingly. Where bunds are located on industrial sites where corrosive materials are handled, the effects of atmospheric corrosion should also be taken into account.
- 2 **Aggressive materials present in the ground:** the most frequent problem is with naturally occurring sulphates, which attack concrete. As a consequence of previous industrial use the ground may be contaminated with other materials, which are harmful to some construction materials. Ground conditions should be assessed as part of a detailed site investigation and appropriate precautions taken. For concrete in contact with the ground, it should be specified in accordance with BS 8500-1:2006+A1:2012
- 3 **Disturbance:** durability should include resistance to burrowing animals and tree roots.
- 4 **Abrasion:** floors of bunds may be subjected to traffic abrasion where materials are moved around within the bund. Heavily loaded fork lift trucks can be particularly damaging. Surface treatments and finishes should be designed accordingly. Where surfaces have become eroded, crack detection is much more difficult.
- 5 **Fire:** a bund and its components should be able to withstand the effects of a fire of the anticipated maximum duration and intensity, without collapsing or leaking. In the absence of any advice from the Fire and Rescue Service (see Box 4.1).
- 6 **Material that escapes from the primary storage:** a bund should be able to resist the damage from inventory that escape from the primary storage vessel, without collapsing or leaking, for the specified retention period (a minimum of eight days).

It should be noted that it is all components of the bund construction, including waterstops and joint fillers that should be durable and able to withstand the environmental factors. Recommendations for joints in bund walls and floors are provided in Chapter 7.

To achieve the required durability, it may be necessary to apply a surface protection system to the bund construction. Appendix A4 lists the chemical, fire and weathering resisting properties of a range of protective surface protection systems that are available for protecting concrete and masonry.

6.3.10 Structural independence

To ensure its effectiveness, a bund should be built so that it acts independently of the primary containment and other ancillary structures such as crash barriers etc.

Although, it is not possible to avoid altogether the risk that the failure of the primary container will affect the bund (eg it may simply fall on it), or vice versa, structural independence minimises that risk significantly.

6.3.11 Accessibility

Adequate accessibility is important for three reasons:

- 1 To permit visual monitoring for leakage from the primary containment.
- 2 To allow inspection of the inside face of the bund for signs of deterioration.
- 3 To facilitate maintenance of the bund.

A minimum clearance of 750 mm should be provided to allow access to the inside face of a bund wall, and 600 mm for access to the floor underneath the primary containment. However, larger storage tanks are usually built off a prepared base resting on the bund floor, so access to the bund floor is not possible. In such cases leakage detection measures should be installed to give early warning of leakage from the base of the primary tank. Details of leakage detection systems are given in Section 6.3.2.

Close proximity of the bund wall to the primary containment may render it a confined space, which would hinder regular inspection.

This is particularly important because it is this area of the bund floor that is often most heavily loaded and is therefore most vulnerable to failure. In the absence of leakage detection, chronic leakage through the base of the tank and through a cracked bund could go unnoticed.

6.4 SUMMARY OF GENERAL ARRANGEMENT RECOMMENDATIONS

Table 6.4 summarises the general performance criteria for bunds.

Table 6.4 Performance criteria for bunds

Aspect of performance	Criteria
General arrangement	Size and layout should take account of all credible modes of failure of primary containment.
Drainage and leakage detection	Gravity discharge arrangements from the bund should be avoided where possible unless part of a combined system (see Chapter 3). Leak detection is provided beneath primary containment where there is insufficient clearance to make visual inspections.
Pipework and associated equipment	Penetrations of bund walls avoided where possible. Overflow arrangements to draw off aqueous phase during an incident provided for potentially flammable inventory. Pumps, pipework, valves and associated equipment located within containment.
Capacity	See Chapter 4.
Retention period	Should be designed as a liquid retaining structure.

Table 6.4 Performance criteria for bunds (contd)

Impermeability	For earth structures: not less than the equivalent of 1 m depth of soil with a permeability coefficient of 1×10^{-9} m sec ⁻¹ . In addition lining systems may be required (see Chapter 7). All other forms of construction: 'watertight' or liquid retaining as defined by compliance with British Standards or other recognised standards appropriate to the form and/or materials of construction and containment class.
Strength	Capable of withstanding the static and dynamic loads associated with: <ul style="list-style-type: none"> ■ release of liquid from primary storage tanks ■ release of water from hoses during firefighting operations ■ wind. Bund floor to be capable of withstanding loads from activities within bunded area and the effects of differential settlement.
Durability	Capable of resisting the effects of weather, aggressive ground conditions and abrasion (in each case assuming a durability life of 50 years unless otherwise specified), fire and, depending on the primary storage inventory, corrosive materials (for the duration of the specified retention period).
Structural independence	Bund walls to be structurally independent from the primary containment. Where possible, bund walls to be supported independently from primary containment.
Accessibility	Walls and, where practicable, floors to be sufficiently accessible to permit inspection and for maintenance to be carried out. Where access to parts of the floor is not practicable (eg large tanks sited directly on the bund floor) provision should be made to detect any leakage through the base of primary containment.

Table 6.5 summarises the key performance recommendations for each class of containment.

Table 6.5 Summary of key performance recommendations by class

Recommendation	Containment class		
	Class 2	Class 2	Class 3
a Provide not less than 750 mm clearance between primary tank and bund walls for maintenance access.	Desirable	Recommended	Recommended
b System to detect leakage from primary tank in situations where not practicable to provide clearance between base of tank and bund.	Desirable	Desirable	Recommended
c No structure within bund to be closer than its own height to the bund wall.	Not necessary	Desirable	Recommended
d Pumps*, valves, couplings, delivery nozzles and other items associated with the operation of a primary container to be located inside the bund or within a separately bunded area.	Desirable	Recommended	Recommended
e Penetrations of the bund wall to be avoided.	Desirable	Recommended	Recommended
f No provision for rainwater draw-off via a valved outlet in bund wall.	Desirable	Recommended	Recommended
g Take account of possible jetting failure.	Desirable	Recommended	Recommended
h Take account of surge effects.	Desirable	Desirable	Recommended

Note

* pumps should be selected to be suitably ignition protected where they may need to operate in a flammable atmosphere.

7 *In situ* reinforced concrete and masonry bunds

This chapter provides:

- A brief introduction to *in situ* reinforced concrete and masonry bunds (Section 7.1)
- Advice on the design, detailing and construction of *in situ* reinforced concrete bunds (Section 7.2)
- Advice on the design, detailing and construction of *in situ* reinforced masonry bunds (Section 7.3)
- Advice on prefabricated bund construction (Section 7.4)

7.1 INTRODUCTION

This section gives general guidance on designing and building bunds using reinforced concrete and reinforced masonry. This guidance is equally applicable to the modification or extension of an existing bund as it is to the design and construction of a new facility

This guidance fills the gaps in current structural design code, BS EN 1992-3:2006, whose scope specifically excludes structures containing polluting materials.

The quality of design and construction is fundamental to the integrity of the containment system. It is therefore imperative that any designer, contractor or maintenance works operative engaged to construct, extend or modify a containment system is experienced in designing and constructing to the relevant class of containment. As a minimum, the parties should have a proven history of carrying out the relevant type of work.

All works need to be properly designed, whether it is the construction of a new or replacement bund, the extension or modification of an existing bund, or repair and maintenance work as set out in current standards.

7.2 *IN SITU* REINFORCED CONCRETE BUNDS

7.2.1 Introduction

Designing impermeable, durable and buildable bunds requires careful consideration of the way concrete as a material behaves. It is also important to consider how concrete structures react to loads, temperature changes, drying shrinkage determination due to local atmospheric conditions and differential movement of supports.

There is much general advice available on reinforced concrete structures and many professionals who are experienced in their design and construction. For this reason, this guide focuses on the important performance differences between what is ostensibly a reinforced concrete wall and a water-retaining containment bund that will need to retain liquids for long periods and, where flammable inventory is present, resist a fire.

The differences are to produce reinforced concrete that has specific detailing (eg at construction and movement joints), a narrower structural crack width (eg caused by shrinkage) and is durable.

It is for these reasons that the design of a bund, or modification or extension to an existing bund, should be completed by a competent person experienced in the particular performance requirements

of a containment system set out in this guide. Similarly, the works should be completed by a contractor familiar with the particular methods of construction and workmanship required to deliver a durable, watertight bund (ie designed as a liquid-retaining structure).

It is also good practice for the construction works to be independently verified (ie the works are supervised) to ensure what is built meets the owner/operator's objectives and complies with relevant guidelines and statutory duty (as applicable).

7.2.2 Design approach

Reinforced concrete bunds should be designed and built to comply with the requirements of BS EN 1992-3:2006 and specifically tightness class 1 for all classes of containment together with the specific additional requirements set out in this chapter.



BS EN 1992-3:2006 is concerned with liquid retaining and containment structures. However, where aggressive substances may be present, additional corrosion protection may need to be considered.

BS EN 1992-1-1:2004 provides guidance on the general design principles for reinforced concrete including designing for durability.

7.2.3 Crack control

To achieve an impermeable concrete structure requires cracking in the finished product to be controlled and the elements of the structure to be properly joined. There are two types of crack structural and non-structural, which are discussed in Section 7.1.

Adhering to the design codes will limit predicted structural cracking to acceptable limits. For BS EN 1992-3:2006 tightness class 1, these are specified as 0.2 mm where the ratio of hydrostatic pressure to thickness of the wall is less than or equal to 5 and 0.05 mm where the ratio exceeds 35. For intermediate values of this ratio linear interpolation may be used.

Non-structural cracking occurs in many structures due to:

- stresses due to applied loads
- thermal expansion or contraction
- shrinkage as the concrete dries, hardens and cures
- settlement of the concrete in its wet state
- poorly constructed daywork joints
- differential settlement of the underlying ground
- application of service loads before the concrete has fully cured.

Joints provide the greatest risk of failure, so their number should be minimised as far as is reasonably practicable by increasing the amount of reinforcement and thickness of the slab and walls. An alternative option to minimising the number of joints in floor slabs is to use steel fibre reinforced concrete, or low shrinkage concrete. Advice is provided by Concrete Society (2009a).

7.2.4 Joint detailing

'Movement joint' is the general term for joints intended to open and close. Movement joints intended to allow expansion are formed with a compressible foam spacer and movement joints intended to allow contraction are often formed with a crack inducer to permit shrinkage. There are also construction joints that are not intended to open (eg kicker joint).

The designer needs to consider long-term drying shrinkage movement, thermal movement (summer to winter) and risk of exceptional movement such as in the event of a fire. Movement during a fire can be

minimised through adopting a low thermal expansion design philosophy by, for example, specifying a limestone coarse aggregate.

Movement joints in walls should be formed with de-bonded dowels to prevent differential rotational movement and the failure of seals where there is a fire risk. If joints are provided in the angle of a corner, then when the wall expands in a fire, the thermal expansion can force the walls out of plane and once the fire is extinguished, the cooling, contracting wall may leave a large gap between wall sections.

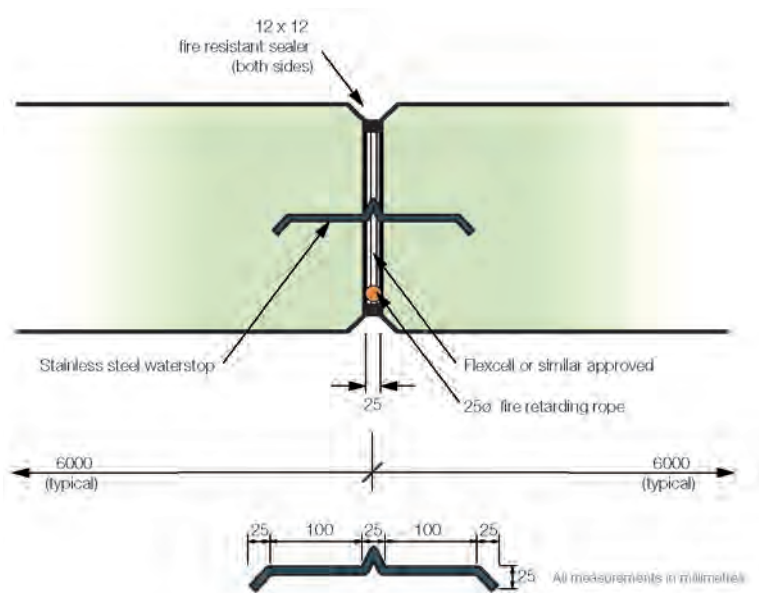
To prevent out of plane movement during an incident, dowels should be provided across all joints:

- for **expansion joints**, these are de-bonded dowels
- for **contraction joints** and construction joints, the reinforcement is carried through the joint and acts as a dowel.

De-bonded dowels should be provided in base slab joints to prevent differential vertical movement between slabs when subjected to loading and during curing as these movements could put extra (unnecessary) stress on waterstops. Dowels are provided in walls for similar reasons but particularly in the event of a fire where substantial expansion is likely.

Typical joint details are provided in Appendix A5.

Waterstops should be installed within both expansion and contraction joints. Note that the waterstop should be resistant to attack from the primary inventory and where flammable materials are stored, are fire resistant. Stainless steel and/or copper waterstops can be manufactured for such situations as shown by Figure 7.1.



Notes

- 1 Fire retarding rope to be placed on both sides of an internal bund wall.
- 2 Waterstop, rope and fire resistant sealer to be omitted in bundwalls footings.
- 3 Stainless steel for waterbar to be grade 316 and 1.0 mm thick.

Figure 7.1 Stainless steel waterstop joint detail (from HSE, 2009a)

It should be noted that reinforced concrete walls are often constructed off ‘kickers’, which are construction joints at the base of the wall. Construction joints (the joint between different concrete pours where no movement joint is required) do not normally require waterstops provided the concrete is carefully scabbled and cleaned prior to casting the wall.

However for class 2 and class 3 bunds, waterstops should be included in the kicker joint (see also Section 7.2.12 on the suitability of waterstops).

7.2.5 Penetrations

Where penetrations through bund walls cannot be reasonably avoided, careful detailing is required to ensure they do not provide a leakage pathway during an incident. Large differential movements can occur during a fire and, if a pipe is restrained as it passes through the bund, the forces generated can cause the wall to fail.

An arrangement with a puddle flange cast into the wall inherently provides fire resistance and, if installed correctly, a watertight form of construction. In particular the flange should be adequately tied into the wall by ensuring the concrete is properly compacted around the flange and the reinforcement above the flange should be continuous to the top of the wall. As discussed, if this type of penetration is to be adopted then the potential loads imposed on the bund wall should be considered in the design.

An example puddle flange penetration detail is shown in Figure 7.2.

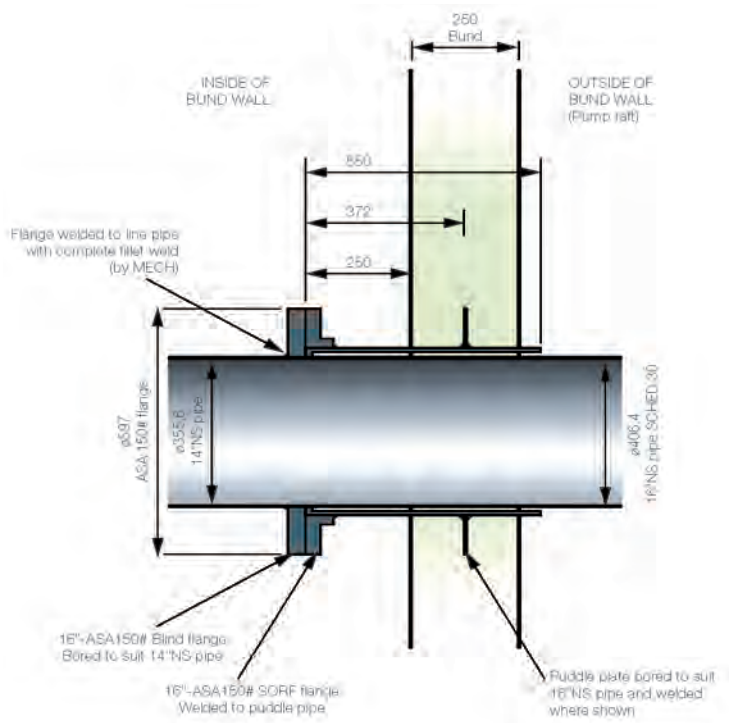


Figure 7.2 Example of a puddle flange penetration (from HSE, 2009a)

Where the pipe or duct is not tied into the wall, a sealed sleeve arrangement will be required to enable the annulus to be adequately sealed. Where potentially flammable inventory is to be stored, metal split fire protection plates should be installed to provide fire protection to the sealant.

An example penetration detail is shown in Figure 7.3.

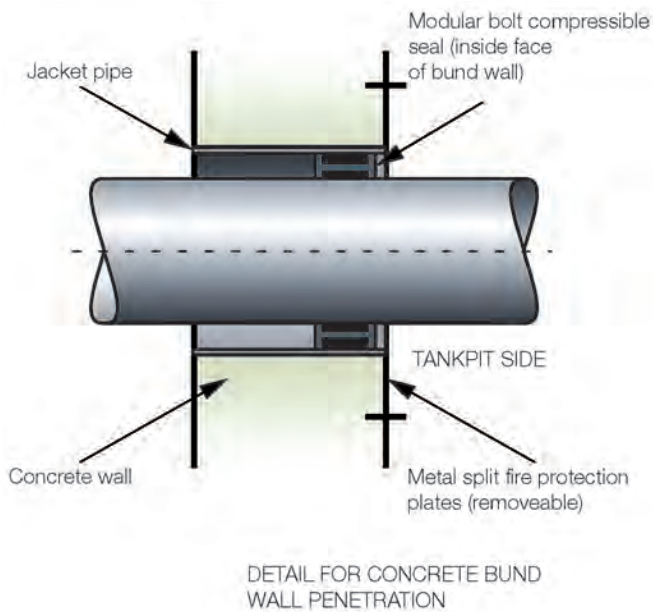


Figure 7.3 Example wall penetration (from HSE, 2009a)

Penetrations through floor of the bund are **not** recommended.

7.2.6 Joint sealants

The sealant is not the primary means of waterproofing a joint, but is intended to assist and to keep debris out of joints. Surface sealing of joints is wholly inadequate for a liquid-retaining structure, as the seal will deteriorate and may fail under hydrostatic pressure or may burn in the event of a fire.

Careful specification and application of joint sealants is necessary to ensure the satisfactory performance of a bund. This is particularly important given the potentially aggressive environment within which they may have to perform, eg from interaction with the hazardous substances that they may need to contain when released from primary containment, or exposure to fire.

There is a wide variety of sealants available. While some are designed for general purpose applications others have been developed for very specialised and specific situations. Sealants differ in physical and chemical composition, methods of application, durability and cost. Guidance on sealant selection and application is given in BS EN ISO 11600:2003+A1:2011, BS 6213:2000 and CIRIA (1991).

To ensure satisfactory performance of sealants, the manufacturers' instructions should be followed closely.

It should be noted that sealants have a finite life and therefore the planned maintenance for the bund should include their replacement approximately every 10 years. Advice on the lifetime of the sealant should be sought from the manufacture. Any existing sealant will need to be raked out back to sound material, which is then cleaned thoroughly, primed and then new sealant applied.

7.2.7 Surface protection systems

Surface protection systems are discussed in Section 12.2.3.

7.2.8 Concrete production

Ready mixed concrete should be obtained from suppliers who are registered with the Quality Scheme for Ready Mix Concrete (QSRMC) (see *Websites* box at the end of this chapter). This provides a quality management system and product conformity certification for the design, production and supply of ready mixed concrete.

Batching should not be completed on site as it will not fall within the QSRMC unless it is a fully certified plant operation to BS EN ISO 9001:2008.

Concrete should be specified to BS EN 206-1:2000 and BS 8500-1:2006+A1:2012. In addition, the guidance of BS EN 1992-3:2006 should be allowed with respect to cement content requirements.

7.2.9 Shuttering and formwork

Shuttering for bund walls should be robust and adequately secured by means of braces and props. Avoid through-wall tie-bolt holes when constructing concrete bund walls, or where this is not possible, use proprietary 'leave-in-place' flanged or water-stopped versions (see Figure 7.4).

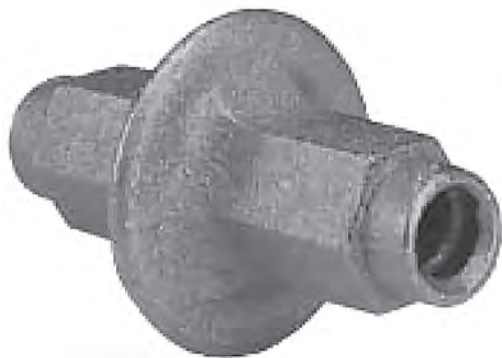


Figure 7.4 A 'leave in place' flanged tie bar

Formwork should be erected such that:

- any joints are impervious
- it will withstand the hydrostatic pressure of the fresh concrete
- it forms a seal against previous concrete construction (kickers etc).

This will prevent the loss of fines during casting that can lead to honeycombed, porous concrete.

7.2.10 Reinforcement fixing

Reinforcement should be fixed accurately and securely to prevent it being displaced while the concrete is being placed and compacted. Displacement can result in serious structural weakening and/or durability problems. For example, increasing the reinforcement cover compared to that designed can significantly reduce the structural strength of a wall in bending. Conversely, reducing the cover will lead to reduced protection to the reinforcement, so shortening their life by accelerating corrosion.

7.2.11 Slip membrane

A slip membrane of 1000-gauge polyethylene or similar material should be laid beneath bund floor slabs to:

- prevent loss of cement and fines from the concrete mix
- provide a smooth and regular slip surface to minimise resistance to thermal and shrinkage movements of the bund floor.

The membrane should be laid on minimum 50 mm sand blinding to prevent puncture by the underlying sub-base or formation. Adjacent sheets should be joined using either taped or double folded laps to make them waterproof. It should be noted that the membrane should not be considered a 'waterproof membrane' in terms of the containment system unless it is specifically designed to fulfil this role.

Where the bund floor is to be designed as a fully restrained slab (with no provision for movement around the perimeter), using a slip plane should be avoided. Instead, the bund floor should be cast on top of

a lean-mix concrete blinding laid on top of a prepared sub-grade without a polyethylene membrane to ensure the bund floor, blinding layer and subgrade act monolithically.

In general, the workmanship should follow the recommendations by Concrete Society (2009a).

7.2.12 Waterstops and joints

For waterstops to be effective, they should be positioned carefully, joined using the methods specified by the supplier and the concrete thoroughly compacted around them. A poorly installed waterstop can result in a greater leakage through a joint than if one had not been installed in the first place.

Hydrophilic waterstops are used widely in reinforced concrete construction. However, these should not be used for bunds as they do not work with non-aqueous liquids and are not particularly effective in conditions where the joint is generally dry, with only occasional aqueous wetting, as is the case with a bund wall or floor.



Note
The thickening of the edge of the slab for the ring beam

Figure 7.5 Waterstop tied into reinforcement cage at the kicker and rear face waterstops at the planned slab joints (courtesy H W Coates Ltd)

7.2.13 Concrete placing and compaction

The general advice contained in Concrete Society (2008) should be followed when placing and compacting concrete. It also provides advice in concreting in hot and cold weather.

It is essential that the concrete is thoroughly compacted to remove any air pockets and small air bubbles if the desired design strength, impermeability and durability of the bund are to be achieved. It is important also to avoid over-compaction, particularly in bund floor construction as this can lead to segregation.

The concrete should be placed as quickly as possible. Double-handling should be avoided to minimise segregation.

When casting slabs, the passage of wind over the surface will cause shrinkage that might lead to cracking and provision should be made to prevent this with wind breaks. Surfaces should be sheltered from direct hot sunlight with covers (eg polythene), which will also aid curing.

The concrete producer can add water to ensure the correct consistency is achieved, but once supplied, the contractor should not add any extra water to the mix and should ensure all forms are clean and free from standing water in them.

Walls should be cast full height (above the 'kicker' joint) in one pour to avoid horizontal joints that can provide a potential leakage path.

7.2.14 Concrete finishing

In most situations, bund floor slabs should be power float finished or finished with a vibrating beam/razorback and bull float to close surface pores and cracks. Consideration should also be given to a final finish with a broom to give a slight anti-slip texture.

7.2.15 Concrete curing

Immediately after compaction, concrete slabs and the cast tops of the walls should be covered with polythene, ideally a tent arrangement over slabs or with wet hessian covered by polythene sheeting. Alternatively a curing membrane may be applied. Over-rapid drying results in a poor-quality surface with reduced strength and durability and can lead to plastic shrinkage cracking (see Figure 7.6).



Figure 7.6 Plastic shrinkage cracks (courtesy Concrete Society)

Curing should be maintained for a period of seven days. For walls, formwork should be struck and then sheet protection such as polythene should be applied to cure the concrete effectively. Loading a slab before the concrete has fully cured can lead to deformation and cracking.

7.2.16 Typical reinforced concrete bund details

Typical details for a reinforced concrete bund are provided in Appendix A6. These are for illustrative purposes only and should not be used as the basis for a detailed containment bund design.

7.3 REINFORCED MASONRY BUNDS

7.3.1 Introduction

This section gives guidance on designing bunds using reinforced masonry (blockwork and brickwork). Unreinforced masonry should not be used for bund construction because of its susceptibility to thermal and shrinkage cracking and vulnerability to impact damage.

The use of reinforced blockwork should be restricted to bunds for class 1 containment only as, even if lined with waterproof render, it is unlikely to resist fire without significant thermal expansion, cracking and possible failure. Reinforced brickwork, other than grouted cavity construction should not be used for bunds.

Blockwork bund walls should be designed in accordance with BS EN 1996-1-1:2005+A1:2012.



7.3.2 Forms of construction

Forms of masonry wall construction are set out in Table 7.1 and typical details for a reinforced masonry bund are provided in Appendix A8. These are for illustrative purposes only and should not be used as the basis for a detailed containment bund design.



Given the relatively large amount of thermal and drying shrinkage movement that occurs in blockwork walls it is necessary to incorporate movement joints with waterstops at approximately six metre intervals. Such movement joints are very difficult to seal effectively and blockwork should not be used for any class of bund other than for small bunds, ie where the walls will be less than six metres long.

The inside face of a blockwork bund should be rendered with a sand/cement render. Further protective coatings may then be required depending on the material stored in the primary containment.

Table 7.1 Forms of masonry wall construction (for class 1 only unless otherwise stated)

Form of construction		Suitability for bund wall construction
a	Structural concrete blockwork with vertical reinforcement in filled cores.	Susceptible to thermal and drying shrinkage.
b	Concrete blockwork used as facing skin or cladding for reinforced concrete bund wall.	Suitable for all classes provided that the reinforced concrete wall is properly designed and constructed. Provides protection to concrete in the event of fire.
c	Structural brickwork with reinforcement in bed joints only.	Should not be used. Insufficient strength to withstand lateral loads from liquid in the event of an incident. Poor resistance to impact damage. Susceptible to thermal and shrinkage cracking.
d	Brickwork as facing skin as in (b).	Suitable for all classes as (b).
e	Grouted cavity brickwork (brickwork acts as permanent shuttering for reinforced concrete (see Figure 7.7).	Suitable for all classes provided reinforced concrete in cavity is properly designed. Brickwork skin provides additional protection to concrete.
f	Pocket wall, Quetta bond wall and vertical slot walls in blockwork or brickwork (see Figure 7.7).	May be suitable subject to incorporation of sufficient reinforcement and provision of adequate concrete cover.

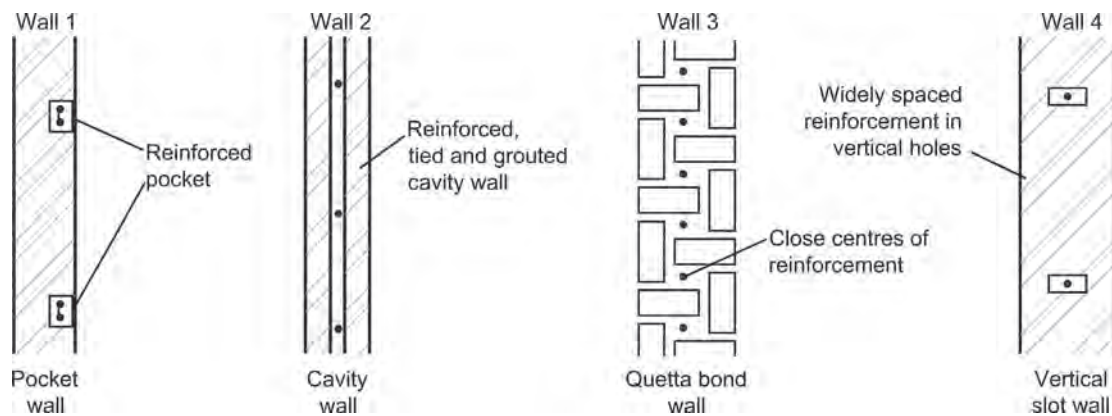


Figure 7.7 Composite masonry and concrete wall construction

7.4 PREFABRICATED BUNDS

7.4.1 Introduction

The performance criteria developed for bunds in this guide excludes double-skinned tanks on the grounds that the inner and outer containers, which make up the items, are structurally joined or interdependent. In general, these are primary tanks with a second 'skin' placed around it and a very small gap between the two.

However, where class 1 containment is required the range of products marketed ‘integrally bundled tanks’, are considered acceptable as long as they provide sufficient containment to comply with the capacity requirements set out in Chapter 4.

SEPA (2014) advises that:

“Some proprietary integrally bundled tank systems take the volume of the primary tank into account when calculating secondary containment capacity, and provide additional secondary containment capacity of less than 110 per cent of actual primary tank capacity. This is generally acceptable where, if there was a leak in the primary container, inventory could find its own level in both containers. In this instance the primary container contributes to the total containment capacity, which as long as it totals 110 per cent, will be acceptable.”

The construction of bunds or containment tanks with precast concrete segments (multi-straked tanks) is discussed at Section 9.2.8.

The following guidance is therefore concerned solely with prefabricated bunds that conform to the performance criteria set out in Box 6.8.

7.4.2 General description

A prefabricated bund is a prefabricated tank, usually constructed from steel or plastics, inside which the primary container is placed. One-piece prefabricated bunds are available in capacities up to 100 m³, with the maximum size usually being dictated by the difficulties in transportation.

Larger bunds may be constructed on site by joining together two or more prefabricated sections. A lid (or roof) may be provided to keep out rainwater.

7.4.3 Specification and procurement

Prefabricated tanks are manufactured items and their detailed design is outside the scope of this guide. The following information is limited to general guidance.

Prefabricated bunds should comply with the capacity recommendations given in Chapter 6. The requirement for access for inspection, or alternatively provision for leakage detection, are described earlier in this chapter.

Prefabricated tanks used as bunds should be designed in accordance with the relevant material structural codes to withstand the hydrostatic and hydrodynamic forces that would result from a failure of the primary containment. Where there are no relevant structural codes a prospective purchaser should require the supplier to provide evidence, in the form of independently certificated test results or analyses. This is to ensure that the product is capable of withstanding the forces resulting from a failure of the primary storage vessel (see Section 6.3.8) and can provide the service life required by the operator.

A prefabricated bund should not rely on a structural link with the primary tank for its stability.

7.5 INSTALLATION

The installation requirements for prefabricated bunds are product and site-specific. Suppliers should provide the necessary installation instructions to cover a specified range of site situations, and guidance on how to cater for site conditions that fall outside that range.

Installation instructions should cover at least the following aspects of delivery and installation:

- loading and unloading
- support requirements
- any ancillary protection requirements

- health and safety requirements and need for notices
- commissioning.

7.5.1 Testing

Where prefabricated bunds are constructed under factory-controlled conditions in accordance with an appropriate British Standard or code of practice (for example, BS 799-5:2010 for tank manufacture), testing for leakage should be in accordance with those standards or codes. Where this does not apply, or where the relevant standards or codes do not include provision for leakage testing, prefabricated bunds should be tested in the same manner as described for *in situ* bunds (Section 6.3.7).

7.5.2 Maintenance

The supplier of a prefabricated bund should provide full instructions on inspection and maintenance covering at least the following:

- details of any finishes or other protective measures to be applied at time of installation
- frequency of inspection
- preventative routine maintenance requirements
- damage repair.

Prefabricated bunds should be inspected regularly for signs of damage, deterioration or general wear, and to ensure that nothing has collected in unroofed or uncovered bunds to reduce their effective capacity.

Websites

Quality Scheme for Ready Mix Concrete (QSRMC/CPC): www.qsrmc.co.uk

Accessed 29 May 2014

8 Earth banked containment basins (lagoons), earth bunds and earth floors

This chapter provides:

- An introduction to earth bunds and lagoons (Section 8.1)
- Advice on appropriate design criteria for lagoons and earth bunds (Section 8.2)
- The measures that distinguish the three classes of construction for lagoons and earth bunds (Section 8.3)
- Determining the required capacity (with reference to Chapter 4) and siting of lagoons in relation to sensitive receptors (Sections 8.4 and 8.5)
- Advice on completing a ground investigation and the permeability requirements for lagoons and earth bunds (Sections 8.6 and 8.7)
- Advice on general design and construction issues, lining systems and anchorage and protection of liners, pipe entries through embankment walls and leakage detection systems (Sections 8.8 to 8.12)
- Advice on maintenance (Section 8.13)

8.1 INTRODUCTION

Where the site topography, land availability and the ground and soil conditions are suitable, earth embankments can provide a cost effective means of providing both local secondary containment (earth bunds) and remote secondary, tertiary or combined containment basins (lagoons) as shown by Figures 8.1 to 8.3. Bunds are also formed with concrete or masonry walls with earth floors.



Figure 8.1 Large earth embankment bund (in service) (courtesy Oil Spill Solutions Ltd)

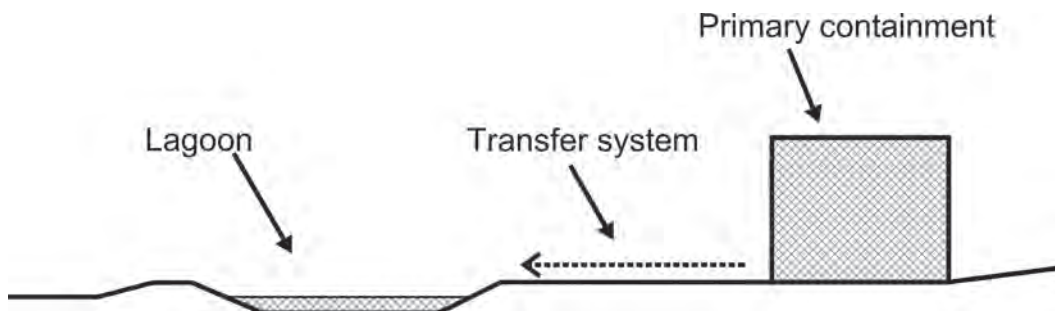


Figure 8.2 Earth banked lagoons for 'local' containment

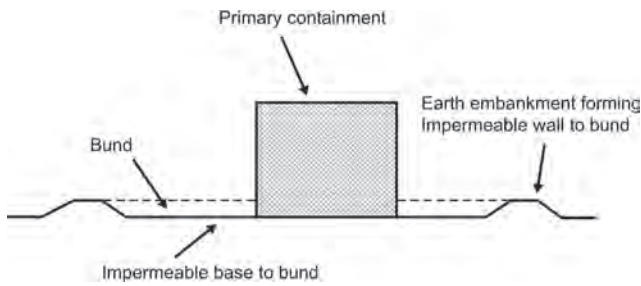


Figure 8.3 Earth banked lagoons for 'remote' containment



Earth bunds and lagoons may be constructed either above or below the surrounding ground level and formation level is often determined by the economic advantage of balancing cut and fill. Depending on the soil type, but particularly its impermeability and stability, and the environmental sensitivity of the site (resulting in a site classification – see Chapter 2), they may need to be lined using an impermeable membrane or other suitable liner.

It is expected that few sites will be able to rely on the use of *in situ* soils and it is more likely that soils will need to be imported and reworked, with or without admixtures, particularly where they are to be used for bund walls.

This chapter relates principally to the formation of containment systems from earth embankment sides with earth floors at existing ground level (bunds) or below ground level (often referred to as 'lagoons'). It also applies to the earth floor of a bund where the containment walls are formed in reinforced concrete or blockwork. Recommendations on reinforced concrete walls are provided in Chapter 7 and a typical construction detail is provided in Appendix A8.

This section sets out design criteria with the aim of achieving containment systems that are of an equivalent standard to those constructed using concrete and other conventional construction materials.

The properties of soils can vary significantly, both spatially, seasonally (or as a result of antecedent weather conditions) and over time. The permeability can vary by several orders of magnitude within a matter of metres for what may appear a homogeneous soil, and changes in moisture content can have a marked effect on stability and bearing capacity.

Earth bunds and earth floors should be designed in accordance with the requirements specified in BS EN 1997-1:2004 and the ground investigation executed in accordance with BS EN 1997-2:2007. A general introduction to Eurocode 7 is provided in Driscoll *et al* (2008).

BS EN 1997 explicitly states that appropriately qualified and experienced personnel are to provide the input data for geotechnical designs and that only they should carry out the design and ground investigations.



The variability and relative unpredictability of soil as a construction material, and the absence of recognised design standards, makes differentiation between classes 1, 2 and 3 of construction more difficult than it is with other forms of construction. A simple approach to classification has been adopted Section 8.3.

8.2 DESIGN CRITERIA FOR LAGOONS AND EARTH BUNDS

This section sets out appropriate design criteria and ways these should be satisfied. The essential requirements are an acceptable level of impermeability, stability and durability.

8.2.1 Soil permeability limits

It is not possible to achieve a completely impermeable soil structure and there will be some seepage from any unlined lagoon, however carefully constructed.

Based on industry guidelines drawn from the design of landfill containment systems, it is accepted good practice that a minimum one metre thickness of soil with a permeability of no greater than $1 \times 10^{-9} \text{ ms}^{-1}$ should be provided. This is particularly important beneath a tank or tank floor where any leakage may go undetected for extended periods. Further advice is provided in CA (2008b).

The same performance requirements could be achieved by providing a less thick layer of less permeable material.

Typical values for the permeability of soils are shown in Table 8.1 and it is evident from this that only soils with a high clay content will give the required level of impermeability. It should be noted that there are many instances of naturally occurring clays that do not meet this recommended performance requirement, or contain lenses or bands of higher permeability silts and sands.

Table 8.1 Permeability of soils by broad category

Soil type	Coefficient of permeability (ms^{-1})	Relative permeability
Coarse gravel	Exceeds 10^{-3}	High
Sand	10^{-3} to 10^{-7}	Medium to low
Silt	10^{-7} to 10^{-9}	Very low
Clay	Less than 10^{-9}	Impervious
Concrete (for comparison)	10^{-10} to 10^{-12}	Impervious

8.2.2 STABILITY

Lagoons and bund embankments should be designed and constructed to meet the following stability criteria:

- embankments to be accessible to, and capable of, withstanding the loads from machinery and vehicles used during maintenance and emptying operations
- embankments to remain stable during rapid drawdown and filling
- embankments to be capable of withstanding the erosion from heavy rainfall
- embankments to be capable of withstanding erosion by any firefighting water likely to be used in the event of an incident, or wave action due to wind
- no reliance should be placed on short-life (defined here as less than 20 years) impermeable liners to provide or improve embankment stability (unless the lifetime of the facility is less than 20 years)
- the design should include measures to prevent the actions of burrowing animals
- an appropriate factor of safety should be included. These are described in BS EN 1997-1:2004 as ‘partial factors’ and the choice of value depends on whether the particular parameter was directly observed (ie *in situ* or laboratory testing) or a characteristic value is being used.

8.2.3 Durability

Lagoons and earth bunds should be designed for a durability life of 20 years subject to normal routine maintenance. In assessing durability life, it should be assumed that the lagoon or earth bund remains empty for the whole period and that the earthworks and any lining systems incorporated in the works will be exposed to the weather.

Lagoons that form part of the site-wide containment (local secondary or tertiary – see Section 3.2) should not be used as permanent storage or for balancing purposes (unless for the recirculation of firefighting water) as this would reduce their effective capacity.

8.3 CLASSIFICATION OF CONTAINMENT



There are no British Standards or codes of practice that explicitly cover earth structures for retaining liquids, and therefore it is not possible to define the differences between class 1, class 2 and class 3 containment construction in terms of modifications to 'normal' standards.

However reference to BS EN 1997-1:2004 and BS 6031:2009 should be made in the planning, design and construction of the works. In particular Section 7 of BS 6031:2009 covers the design of earthworks and the stability of slopes.

Nevertheless, it is still important to try to differentiate between the classes to reflect the range of environmental sensitivities that exist and thereby ensure that the most appropriate measures are put in place at each site. This is discussed as follows.



Where the soil conditions are favourable, or can be engineered to be so, in general class 1 containment can be satisfactorily achieved by an unlined lagoon. However, extra precautions should be taken for class 2 and class 3 containment. For a class 2 lagoon the floor and banks should be lined with a suitable impermeable liner. For a class 3 lagoon, the same as class 2 plus a suitable leakage detection system (see Section 8.12) to allow periodic monitoring of the integrity of the containment.

These general requirements are illustrated in Figure 8.4.



However, in some circumstances, it may be possible to demonstrate that the risk can be reduced sufficiently to satisfy the law for class 2 and class 3 containment systems without the provision of a liner. This might be, for instance, when the site is underlain by several metres of homogeneous impermeable clay. This will be a matter for agreement with the regulator.

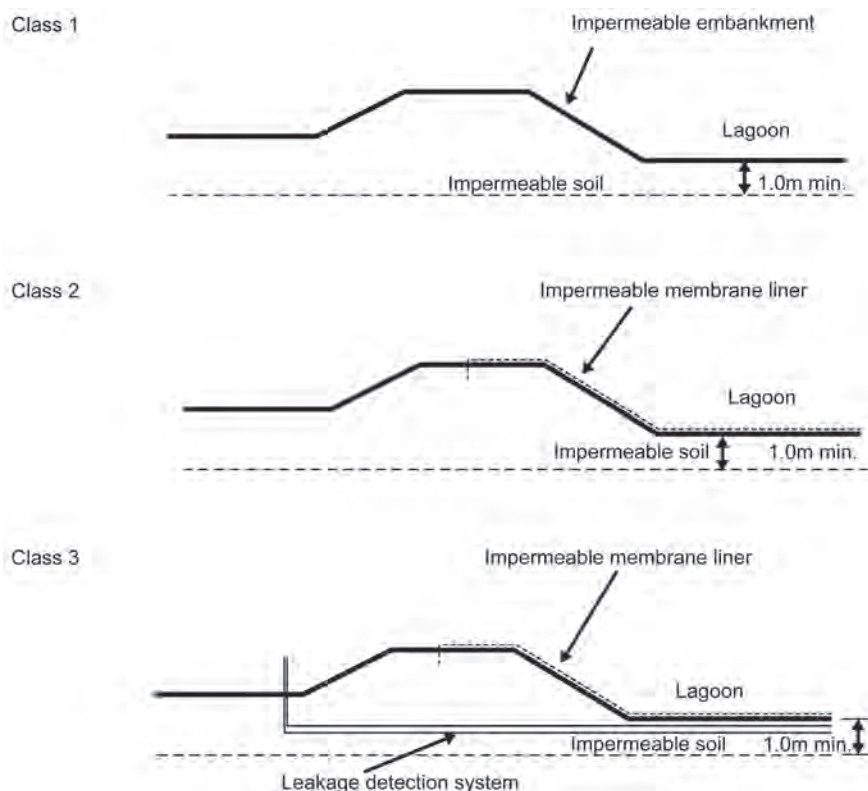


Figure 8.4 Classification of lagoons

It should be stressed that in all cases the ground and soil conditions should comply with the impermeability, stability and durability criteria set out previously. Where impermeable linings and leakage detection systems are required these are as an **additional** level of protection and **not** to compensate for inadequate ground and soil conditions.

8.4 CAPACITY

The capacity of a lagoon or earth bund should be calculated in accordance with the recommendations given in Chapter 4.

As noted in Section 4.4, the sloping internal face of an earth embankment has been shown to increase the risk of overtopping by surge, and that earth embankments are more prone to settlement and erosion than a concrete or blockwork bund wall.

Therefore a minimum freeboard of 750 mm should be provided for earth embankment bund walls (see Box 4.5).

8.5 LOCATION OF LAGOONS IN RELATION TO RECEPTORS

In the absence of specific controls governing the siting of containment lagoons (secondary or tertiary – see Section 3.2) in relation to watercourse or the sea and subject to obtaining the regulator's approval for a particular site, the requirements included in the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (SSAFO) Regulations 2010 should be adopted. These are currently (2014) being revised.

Schedule 1, Regulation 6 states:

“No part of the silo, its effluent tank or channels or any associated pipes shall be situated within 10 metres of any inland or coastal waters which silage effluent could enter if it were to escape.”

In addition lagoons (see Section 3.2) should not be sited within 50 m of a borehole used to abstract water. Details of licenced abstractions can be obtained from the regulators.

8.6 GROUND INVESTIGATION

BS EN 1997-2:2007 makes compulsory the provision of a ground investigation report as part of the geotechnical design process. Such an investigation survey will normally involve a desk study, reconnaissance of the site and an investigation of the soils. The ground investigation should be managed by a suitably qualified person (normally a chartered geotechnical engineer).

8.6.1 Desk study

The importance of carrying out a thorough desk study in the early stages of planning the works cannot be overstated. A lagoon or earth banked bund may cover a large site area and it is essential that any features, which could affect performance, are identified. A study of maps and plans of the site, particularly older documents, and discussions with the local authority and local utility providers may reveal features, which are no longer apparent, such as infilled drains and wells, dried up streams and old building lines.

In mining areas, enquiries should be made to the Coal Authority about past and present mining operations and any existing, or predicted, problems with subsidence locally (see *Websites* box at the end of this chapter).

Geological maps and borehole records can be obtained from the British Geological Survey (see *Websites* box).

8.6.2 Site reconnaissance

Site reconnaissance entails a methodical physical inspection of the site to identify features that could cause construction difficulties or longer-term reliability problems.

Topography is an important factor, not only in terms of facilitating drainage into the lagoon or bund, and other operational considerations, but also in relation to the possibility of slope instability evidenced by sloping walls, trees and fences. This can occur on slopes as shallow as 1 in 10. Abrupt changes in local topography may indicate changes in ground conditions.

Vegetation is an important indicator of soil types and groundwater levels. Reeds and willows, for example, indicate a high water table (which could make a lined lagoon impracticable), whereas bracken and gorse usually indicate a well-drained soil with a low water table. As with topography, abrupt changes in vegetation may mean significant changes in ground characteristics.

8.6.3 Soils investigation

The two most important characteristics of the soil that govern whether *in situ* soil can be used (with or without modification, eg by incorporation of admixtures, or compaction) are:

- 1 **Permeability:** can a one metre thick layer of soil with a maximum permeability of $1 \times 10^{-9} \text{ ms}^{-1}$ be reasonably achieved?
- 2 **Stability:** the soil should remain stable under changing conditions (particularly moisture content changes) and, when formed into an embankment, meet the requirements of Section 7.2.2.

The physical properties of the soils are generally determined by the recovery of samples for laboratory testing as part of the ground investigation, although some testing is completed *in situ*. The ground investigation should be informed by the desk study and site reconnaissance to ensure that representative samples are obtained across the site. The design of the site investigation to include the location of boreholes and/or trial pits and the suite of *in situ* and laboratory testing required should be completed by competent personnel.

Assessing the suitability of soils to meet the characteristics requires interpretation of the ground investigation and laboratory testing data, and should also be completed by competent personnel.

8.7 SOIL PERMEABILITY

8.7.1 Permeability assessment

The permeability of the soils underlying the site should either be established *in situ* in accordance with BS 5930:1999 or by the laboratory testing of a sample in accordance with BS 1377-5:1990.

It should be noted that the testing methods recommended by these two British Standards are progressively being superseded by BS EN 1997-2:2007.

It will be important when designing the site investigation to ensure sufficient tests are completed to provide a representative estimate of the permeability across the site and for the full depth of soils, ie a minimum of one metre below the proposed floor level of the bund with samples taken at varying depths. Tests should be completed on the material that is to be used to form the walls and floor of the containment area.

Any exploratory holes excavated as part of the ground investigation should be reinstated to ensure they do not provide a potential pathway to groundwaters. Advice for sealing boreholes is provided in EA (2012).

Generally, experience has shown that the most suitable soils for constructing impermeable embankments and lagoons contains between 20 and 30 per cent clay, the remaining fraction being well-drained sand and gravel. Soils of this type are likely to remain stable even when subject to significant changes in moisture content. Soils with a clay content much below 20 per cent are likely to exceed the recommended permeability limit of $1 \times 10^{-9} \text{ ms}^{-1}$ whereas if the clay content is much higher than 30 per cent they are

likely to be difficult to form into a stable embankment and they will have a greater tendency to shrink and crack on drying. The clay content of a soil is determined from particle size distribution analysis completed in accordance with BS 1377-5:1990.

Where the permeability of the soil on site is found to be too high it may be possible, depending on the type of soil, to reduce it to a satisfactory level by consolidation or reworking, or by blending it with imported clay-rich soils or minerals such as bentonite.

8.7.2 Effect of soil consolidation

The impermeability (and shear strength) of a clay soil can be improved by consolidation. During consolidation, the voids between the particles in the soil mass are reduced in size, making it more difficult for water to percolate. The maximum density that can be achieved through consolidation is related to the moisture content of the soil and compactive effort applied. In practice the compactive effort relates to the type and weight of compaction machinery used, the thickness of the layers in which the soil is placed, and the number of passes of the compacting machinery.

For each soil and level of compactive effort there is an optimum moisture content for the achievement of maximum density and a slightly higher moisture content for the achievement of minimum permeability. At moisture contents below the optimum, a clay soil becomes increasingly stiff and an increasing amount of compactive effort is required to break down the soil structure. Conversely, at moisture contents above the optimum, a clay soil becomes more difficult to work owing to the build-up of pressure in the water-filled pores.

The optimum moisture content for a particular soil (assumed to be homogeneous) is established by laboratory testing and will determine:

- 1 The minimum permeability that can be achieved given the natural moisture content of the soil on site.
- 2 The extent to which the moisture content of the soil on site should be changed in order to achieve the required level of impermeability.

8.8 DESIGN AND CONSTRUCTION

8.8.1 Design

Earth embankments forming part of a lagoon or bund should be designed in accordance with the requirements specified in BS EN 1997-1:2004 by appropriately qualified and experienced personnel.

Eurocode 7 is concerned with the design of earthworks in general, rather than liquid retaining structures and therefore appropriate allowances for the hydraulic loads which will arise in the event that a lagoon or earth bund fills with liquid (perhaps very rapidly) as a result of an incident should be made. A full consideration of this issue in the context of flood embankments is covered in CIRIA, Ministry of Ecology, USACE (2013).

Details of a typical embankment construction are provided in Appendix A8.

8.8.2 Construction

Site preparation

For lagoons:

- sites should be carefully cleared of all debris, vegetation and top soil, the latter being set aside for reuse
- soft spots or pockets where the soil type or condition have the potential to create areas of higher

permeability should be excavated and filled with soil of the same parameters as elsewhere on the site

- sewers or pipes, which pass under the site or within 10 m of it, should be stopped and sealed, and diverted as required
- drains or watercourses that cross the site should be diverted. Culverting beneath the site should not be used as an alternative.

For earth bund embankments:

- the site of the embankment should be cleared and prepared as for lagoons
- unless cut-off trenches are to be constructed, the embankment site should be loosened to a depth of approximately 300 mm before the first layer of embankment fill is placed.

Placing and compaction of impermeable fill material

The required moisture content of the fill material should be specified based on the results of the ground investigation and laboratory analysis.

The compaction of the fill material can be based either on a performance based specification, ie *in situ* testing of the completed works to ensure the specification is met, or a method specifications such as the *Manual of Contract Documents for Highway Works* (MCHW) (DfT, 199b), which specifies layer thicknesses and number of passes for a particular type of plant and soil type.

So far as is possible, each layer of soil should be placed and compacted along the entire length of the embankment or section of lagoon base in one continuous process. This is to avoid creating discontinuities that could lead to differential settlement and areas of weakness and potential leakage.

The interface between a concrete structure and earthwork bund, for instance where it is proposed to incorporate a valve chamber within the earth bund wall, is a potential area of failure and should be avoided where possible.

Where containment is to be provided by *in situ* reinforced concrete or blockwork bund walls and earth floors the foundations to the bund wall should be keyed into the earth floor (see Appendix A8).

Embankment and lagoon base protection

Unless they are to be covered with a hard pavement or a separate membrane lining, embankment sides and tops should be covered evenly with 150 mm of topsoil and seeded with grass. Grass can aid protection of the embankment by the establishment of a good grass sward together with appropriate forms of reinforcement, if required. Grass should be maintained by mowing or grazing to establish a good sward and prevent the establishment of self-sown trees. Well maintained grass can assist in preventing weather erosion and can also provide protection against damage from firefighting water and wave action. Advice on appropriate seed mixes can be found in Hewlett *et al* (1997).

On no account should shrubs or trees be allowed to establish on embankments, where they would seriously impair stability, or on lagoon floors, where they could create a leakage path.

The banks and base of a lagoon should be adequately protected against scouring at the points where site drains discharge and where, in an emergency, firefighting water would be likely to enter.

Protection from burrowing animals should be provided. This can be in the form of netting or mesh placed under the topsoil layer.

8.9 EMBANKMENT AND LAGOON LININGS



One of the principal differences in the recommendations for class 1 and class 2 and class 3 lagoon and bund construction is that class 2 and class 3 should both incorporate impermeable membrane linings.

There are many types of lining system each with their own advantages and disadvantages when used in the potentially aggressive environment of a containment system.

Where the bund is to contain flammable substances any lining system should be fire resistant or provided with a layer of protective material to ensure its integrity is maintained during an incident. It is therefore important that protection from fire is included in risk assessment for selecting different types of lining systems. The BS 476 series of standards provide a good guide.

A summary of commonly used lining systems is presented at Part 4 of HSE (2009a) and is reproduced at Table 7.2 for reference.

It should be noted that the 'advantages' and 'disadvantages' may vary subject to site conditions. The list is indicative only and not exhaustive. Fire resistance is covered in the table to reflect the current knowledge of performance based on product information, performance in fire incidents and some testing that has been carried out by operators.

Table 8.2 Lining system options (HSE, 2009a)

Option	Advantages	Disadvantages	Fire resistance	Cost*
Synthetic				
Polyethylene (HDPE)	<ul style="list-style-type: none"> resistant to water, hydrocarbon and most chemicals. 	<ul style="list-style-type: none"> requires protective layer potential hidden problems around seals and penetrations base ground to be prepared well, ie remove stones, requires a layer of gravel and sand/geotextile before the liner requires specialist installer to weld joints. 	<ul style="list-style-type: none"> very low burns readily if unprotected 	Medium
Polypropylene (PP)	<ul style="list-style-type: none"> resistant to water and oils easier to lay than HDPE. 	<ul style="list-style-type: none"> limited resistant to fuels requires protective layer potential hidden problems around seals and penetrations base ground to be prepared well, ie remove stones, requires a layer of gravel and sand/geotextile before the liner requires specialists installer to weld joints. 	<ul style="list-style-type: none"> very low burns readily if unprotected 	Medium
Synthetic rubber and EPDM	<ul style="list-style-type: none"> resistant to water. 	<ul style="list-style-type: none"> not resistant to oils and fuels requires protective layer. 	<ul style="list-style-type: none"> very low burns readily if unprotected 	Medium
Polyvinylchloride (PVC)	<ul style="list-style-type: none"> resistant to oils and water. 	<ul style="list-style-type: none"> not resistant to fuels requires protective layer potential hidden problems around seals and penetrations base ground to be prepared well, ie remove stones, requires a layer of gravel and sand/geotextile before the liner requires specialist installer to weld joints. 	<ul style="list-style-type: none"> very low burns readily if unprotected 	Medium
Polyurethane (PU)	<ul style="list-style-type: none"> water resistant 	<ul style="list-style-type: none"> not resistant to oils and fuels requires protective layer 	<ul style="list-style-type: none"> very low burns readily if unprotected 	Medium
Structural				
Concrete	<ul style="list-style-type: none"> proven durability able to cast around penetrations well suited to small congested areas hydrocarbon resistance. 	<ul style="list-style-type: none"> requires joints for construction and movement requires regular maintenance of joint and penetration sealants and cracks can buckle under heat net excavation waste can be high potential for settlement and cracking. 	<ul style="list-style-type: none"> very good joints and penetrations are the weakness 	High

Table 8.2 Lining system options (HSE, 2009a)

Shotcrete (spray applied concrete)	<ul style="list-style-type: none"> ease and speed of installation as concrete is sprayed on plant can be operated from outside the bund if necessary proven durability able to cast around penetrations hydrocarbon resistance. 	<ul style="list-style-type: none"> specialist contractors required requires joints for construction and movement requires regular maintenance of joint and penetration sealants and cracks can buckle under heat. 	<ul style="list-style-type: none"> very good joints and penetrations are weakness 	Low
Sand bitumen	<ul style="list-style-type: none"> remains flexible after installation resistant to puncture cracks can be repaired easily using hot bitumen hydrocarbon resistance. 	<ul style="list-style-type: none"> specialist contractors required requires joints for construction and movement requires regular maintenance of joint and penetration sealants and cracks can buckle under heat. 	<ul style="list-style-type: none"> very good joints and penetrations are weakness 	Low
Fibreglass	<ul style="list-style-type: none"> easy application suited to small areas hydrocarbon resistance. 	<ul style="list-style-type: none"> inflexibility needs to be catered for in design to allow for thermal movements and avoid overstress and de-bonding. 	<ul style="list-style-type: none"> low may require additional fire protection measures 	Low
Mineral				
Bentonite (geosynthetic clay liner) (pre-hydrated or dry bentonite requiring <i>in situ</i> hydration)	<ul style="list-style-type: none"> hydrocarbon resistance lower maintenance self-sealing properties if punctured pre-hydrated can be laid at performance specification required. 	<ul style="list-style-type: none"> requires a protection layer potential hidden problems at penetrations potential for drying out on slopes <i>in situ</i> hydration to dry system to achieve performance specification required can be uncertain. 	<ul style="list-style-type: none"> good as geotextile mat protected by layer of soil/stone 	Medium
Clay	<ul style="list-style-type: none"> inert material that has retained plasticity once in place hydrocarbon resistance. 	<ul style="list-style-type: none"> labour intensive, weather dependent and time consuming activity in spreading and compacting the clay requiring significant vehicle movements may not be safe to carry out installation while tanks are in service due to machinery requirements. 	<ul style="list-style-type: none"> high (non-flammable thick malleable layer) normally covered with top soil layer which provides further resistance 	Medium

Note

* costs are indicative and may vary based on installation issues and scale.

Further, detailed guidance is provided in EI (2012c) that seeks to provide a method for:

- appraising liner design criteria
- appraisal of options
- installation
- operation
- decommissioning.

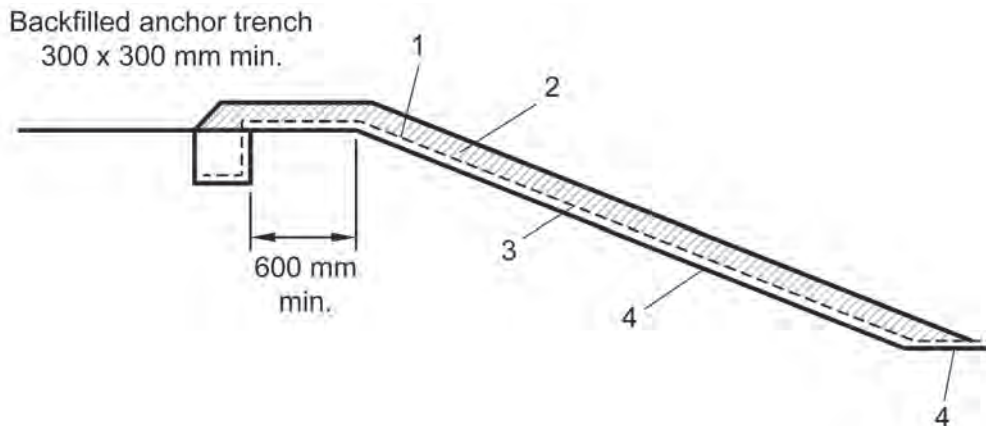
There are a number of parallels with the waste management industry where landfills are lined with geomembranes to contain leachates that are potentially harmful to the environment. The Environment Agency has produced a number of guidance documents on the specification, installation and testing of geomembranes that can be found on their website (see *Websites* box). EA (2009b) stresses the need for quality control in the manufacture and installation of geomembranes. It also makes it a requirement of the environmental permit for the landfill containment system that a construction quality assurance (CQA) plan is prepared for the works.



Where a liner is to be installed for a class 2 or class 3 lagoon, the works should be completed in accordance with a CQA plan.

8.10 ANCHORAGE AND PROTECTION

Membranes need to be securely anchored and protect from mechanical and UV damage. A typical method is illustrated by Figure 8.5.



Notes

- 1 Impermeable lining membrane.
- 2 150 mm to 300 mm layer of stone-free soil to provide UV protection. Maximum bank slope 1 in 3 for soil stability. Steeper slope possible by placing the soil layer on a synthetic fibre underlay on top of the membrane.
- 3 50 mm sand blinding or geotextile mat to protect membrane.
- 4 Embankment and base soil treated to prevent weed growth.

Figure 8.5 Typical arrangements for protecting and anchoring a membrane liner

A similar detail is provided where an earth-floored containment with *in situ* reinforced concrete bund walls has to be lined (see Figure 8.6).

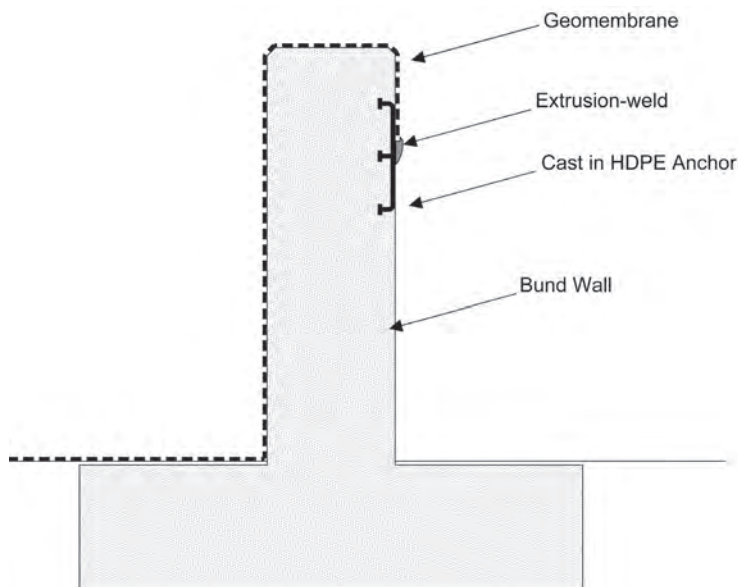


Figure 8.6 Typical arrangements for anchoring liner to concrete bund wall

Embankments should be sufficiently large and structurally stable to allow for movement of mechanical plant, which may be used for maintenance of the banks. Concrete or hardcore ramps may be required for access into bunded areas and concrete headwalls may be needed for pipe or channel inlets and outfalls. The construction of these elements should be carried out carefully to protect the integrity of impermeable liners, particularly at the joints between concrete and liner. Granular overburden is often provided both to protect a liner and to allow access for machinery. Further detail can be found in CIRIA, Ministry of Ecology, USACE (2013).

8.11 PIPE ENTRIES THROUGH EMBANKMENTS

Unless it is not reasonably practical to do so, embankments should not be penetrated below the design liquid surface level. Where it is necessary for a pipe to penetrate an embankment, a sleeve should be installed through the embankment through which the pipe will pass and be sealed as shown in Figure 8.7.

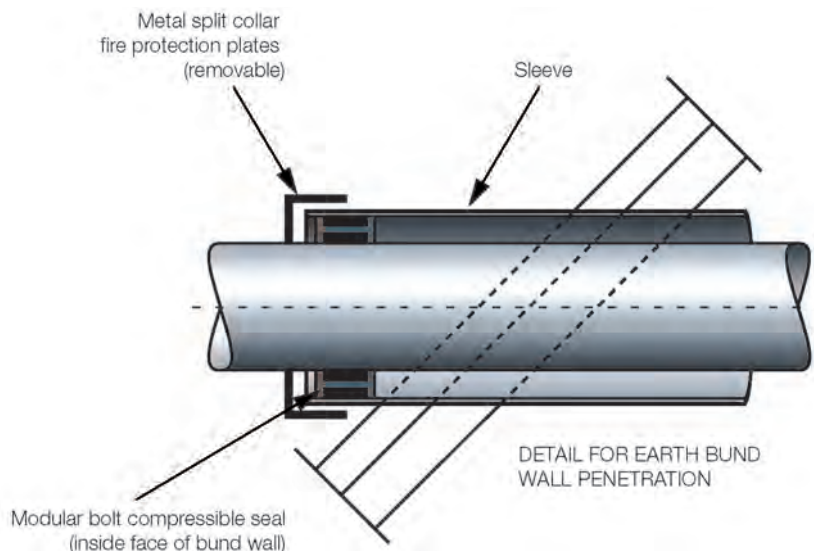
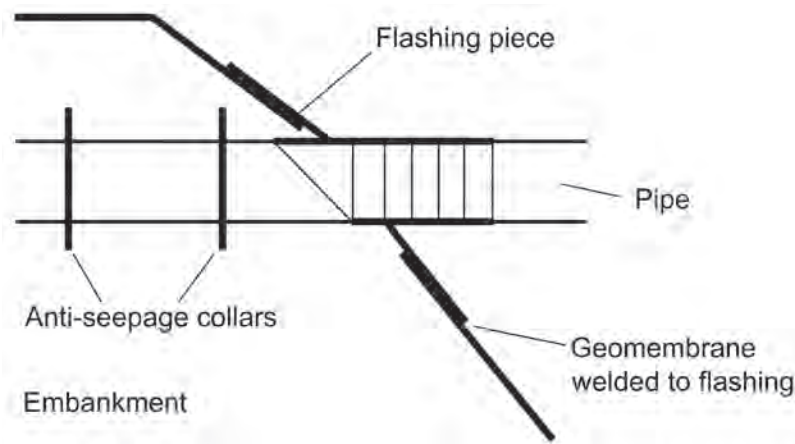


Figure 8.7 Detail for earth bund wall penetration (HSE, 2009a)

Anti-seepage collars should be provided along the sleeve at a spacing of not more than 10 times the pipe diameter and a flashing piece welded to the liner and secured around the sleeve by stainless steel band clamps or similar (see Figure 8.8).



Note

The pipe is inserted through a purpose made flashing, compatible with and welded to the main liner. Stainless steel outer clamps fix the pipe to the sleeve flashing

Figure 8.8 Arrangement for sealing pipe penetrating a geomembrane liner

8.12 LEAKAGE DETECTION FOR CLASS 3 LAGOONS AND BUNDS

Leakage detection is a requirement for class 3 containment lagoons so that they can be routinely tested for impermeability.

Several systems are used for leakage detection including the following:

- groundwater monitoring by boreholes **external** to the containment would be considered an example of good practice (this will only detect a leakage of contaminant from the containment system)
- resistivity measurement (EA, 2009b). This method is often used to check the integrity of the geomembranes during installation
- monitoring of underdrains or fin drains laid beneath the liner, although these might create a pollutant pathway if not properly capped.

Typical details of leak detection systems are provided in Appendix A3.

8.13 POST-CONSTRUCTION

While site investigation can provide an indication of the *in situ* permeability of soil or the characteristics of imported soil, where possible, cores should be taken of the completed works to confirm the permeability of the as-constructed structure.

8.14 MAINTENANCE

Regular inspection and maintenance helps prevent damage to liners from rodents and other burrowing animals. High tensile steel wire reinforced geosynthetics are available for protection against such attack. Alternatively, fine mesh wire netting may be used. These can also help resist erosion from weathering and/or wave action.

Maintenance of erosion damage caused by weathering and surface wave action may be minimised by the use of revetments or rip-rap placed on the embankment slope.

Depending on the nature and extent of any site damage, and the type of liner, it may be possible to make site repairs by patching. Instructions on repairs should be provided by the liner manufacturer or supplier. On sites with a high hazard or risk rating the entire damaged section should be replaced with undamaged material. Where a liner has deteriorated generally through age, it should be replaced entirely. Guidance on the inspection of liners can be found in EI (2012c).

Systematic regular inspections should be carried out. Vulnerable areas requiring special attention during maintenance inspections include:

- pipe entries, particularly if they penetrate the embankment
- the foot of embankments
- joints and discontinuities, particularly between dissimilar materials.

Websites

British Geological Survey: www.bgs.ac.uk

Coal Authority: <http://coal.decc.gov.uk>

Geomembranes (specification, installation and testing): <http://tinyurl.com/o3ryvyr>

Accessed 29 May 2014

9 Containment tanks

This chapter provides:

- A definition of a containment tanks and the factors to consider in their design and specification (Section 9.1)
- A review of options for tanks constructed above ground that could be used to provide containment (Section 9.2)
- A review of tanks constructed below ground that could be used to provide containment (Section 9.3)

9.1 INTRODUCTION

Chapters 6, 7 and 8 provide guidance on the design of containment bunds. However, tanks are an alternative means of providing remote containment. Tanks have an advantage over bunds due to their potential greater storage depths and smaller footprint per cubic metre of storage volume. In addition, it is more practical to cover tanks so managing accumulations of rainfall can be avoided.

Containment tanks should be designed, constructed, inspected and maintained to give the same level of integrity as the primary storage vessel. It may be possible to convert a primary containment vessel into a containment tank where there is insufficient space to provide alternative arrangements.

Depending on the site topography and layout, a pumped transfer system may be required. Figure 9.1 illustrates typical arrangements for above ground tanks using either a pumped or by gravity transfer system.

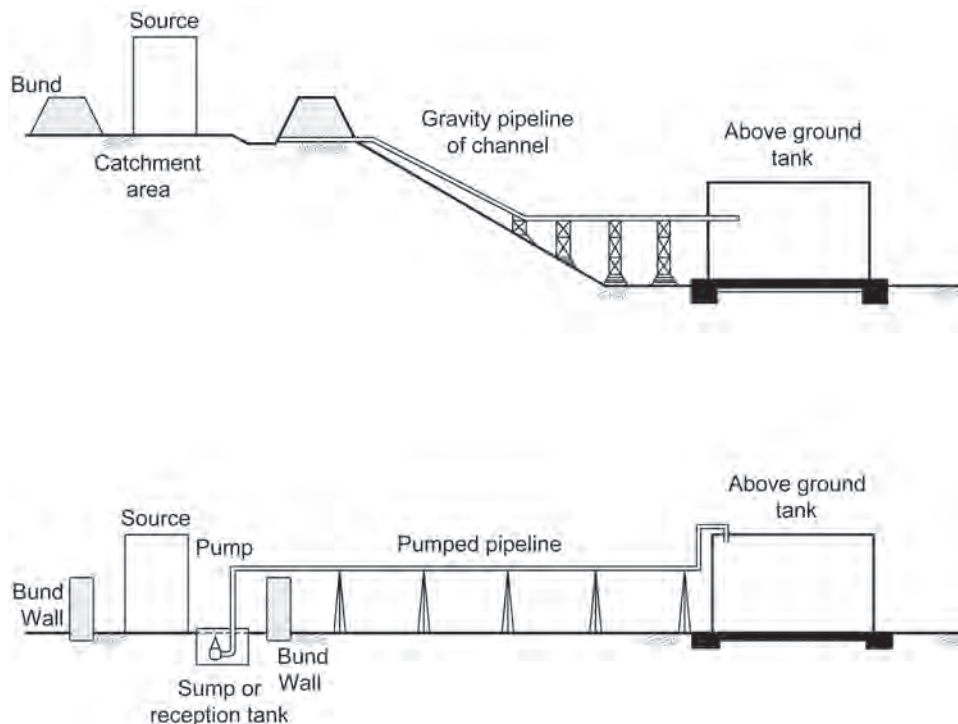


Figure 9.1 Typical arrangements for above ground tank systems

Factors that should be taken into account in selecting a containment tank include:

- site location
- topography
- ground conditions

- access provision
- overall site risk and classification (established in Chapter 2)
- health and safety requirements.

Each situation is likely to be different and so it is not possible to provide generic guidance. However, parameters including retention time, quantity and the nature of the material should be considered when selecting tank type, size, design standards and protective finishes.

9.1.1 Capacity

Where a tank is covered, rainfall can be excluded from the assessment of the containment capacity but rainfall at the source during the incident should be accounted for.

Advice on the required containment capacity is provided in Chapter 4.

9.1.2 Freeboard

A minimum 250 mm freeboard should be provided as buffer capacity for all containment tanks. No overflows are permitted within the freeboard depth.

The most onerous loading conditions should be considered for design purposes, ie the overall (tank-full) depth of the tank, including freeboard, should be taken as the maximum design depth when assessing the static head of contained liquids.

9.1.3 Leak detection

Depending on the class of the containment required, leak detection systems should be incorporated for ground-bearing tanks (see Section 6.3.2).



9.1.4 Inspection

Containment tanks should be subject to periodic examination and testing to ensure their integrity. Advice on a suitable examination and testing regime can be found in EEMUA (2003).

9.1.5 Firefighting water reservoirs

- Containment tank may have a dual use, for example to provide firefighting water during an incident but once depleted, to store contaminated runoff from the fire suppression activities. However, if they are mains-fed, care should be taken to prevent back-syphoning of any stored contaminated water into the mains water supply.
- Installation should comply with Water Supply (Water Fixings) Regulations 1999 or in Scotland with Scottish Water (2004).
- Firefighting water stored in tanks (or lagoons) may, in certain circumstances, be reused as firefighting water. However, such water may contain entrained flammable products that might further fuel the fire if recycled. If there is a risk that entrained flammable products might be present where a firewater lagoon is to be used as additional storage, there should be a mechanism to ensure that firewater does not become contaminated.

9.2 TANKS CONSTRUCTED ABOVE GROUND

9.2.1 Suitable tank systems

The majority of large capacity above ground containment tanks are assembled on site from prefabricated components, although *in situ* reinforced concrete construction is sometimes used where a characteristic

such as robustness is a particularly important factor. The principal categories of tanks suitable for above ground containment of hazardous substances include:

- proprietary cylindrical tanks as used for agricultural wastes
- welded steel tanks as used for oil, petroleum and other liquid products
- sectional steel rectangular liquid storage tanks
- reinforced plastics tanks
- reinforced concrete tanks
- reinforced concrete/masonry tanks.

Other materials sometimes used for above ground tanks include stainless steel, aluminium and plastics, although plastics can have poor fire resistance.

Protection from corrosion and aggressive conditions may be provided by a range of coatings including bitumastic paints, epoxy coatings, and rubber and glass linings. However, it is not possible to generalise on appropriate protective systems as these will depend on the particular circumstances of the site.

Another important aspect in selecting an appropriate tank is its ability to withstand inventory and firefighting water at potentially high temperatures as well as the thermal stresses this may induce in any lining system.

The various aspects of design, specification, fabrication and site works for above ground tanks considered suitable for containment, together with the relevant British Standards and codes of good practice, are summarised in Table 9.1 and in the following sections. Table 9.2 provides a simplified performance comparison for the tanks considered.

Table 9.1 Design standards for common forms of above ground tank construction

Tank construction	British Standard	Nominal capacity range
Cylindrical tanks as used in agriculture, founded at ground level on concrete base: <ul style="list-style-type: none"> ■ lapped and bolted vitreous enamelled steel sheets ■ precast concrete panel ('staves') held together by external hoops ■ corrugated galvanised steel panels ■ section precast concrete. (Section 9.2.2)	BS 5502-50 to BS 5502-22:2003+A1:2013 Class 1 standards (static head only)	Max circa 4000 m ³
Pressed steel sectional rectangular tanks, founded at ground level or on higher level support structure, static head. Recommended maximum depth 4.8 m (Section 9.2.3)	BS 1564:1975 Type 1	Modular tank system can be constructed to virtually any size
Site built, vertical cylindrical, flat bottomed, above ground, welded steel tanks (Section 9.2.4)	BS EN 14015:2004	Fabricated tanks that can be constructed to a wide range of sizes
Rectangular and cylindrical, horizontal and vertical carbon steel above ground oil storage tanks (Section 9.2.5)	BS 799-5:2010	Up to 150 m ³
Glass reinforced plastic tanks and vessels for above ground use (Section 9.2.6)	BS EN 13121-3:2008+A1:2010	The practical size of prefabricated tanks is limited by transportation issues to approximately 100 m ³ , however, modular GRP tanks are available with capacities up to 2000 m ³
<i>In situ</i> reinforced concrete liquid retaining and containing structures (Section 9.2.7)	BS EN 1992-3:2006	Not restricted

9.2.2 Buildings and structures for agriculture – storage tanks and reception pits

BS 5502-22:2003+A1:2013 provides a classification scheme for agricultural buildings/structures based on among other things the distance to a highway or habitable building and minimum design life. Class 1 is the most onerous of the four classes in terms of design requirements with a design life of 50 years.

BS 5502-50:1993+A2:2010 provides recommendations for the design and use of agricultural storage tanks and reception pits for liquid waste (slurry). Tanks constructed to this code used to provide secondary containment should be designed to BS EN 1504-5:2013 class 1 (as defined in that standard) and are restricted to class 1 secondary containment as defined in Chapter 2 of this guidance.

The four most common forms of construction for cylindrical tanks to BS 5502-50:1993+A2:2010.

- 1 Lapped and bolted vitreous enamelled steel sheets.
- 2 Corrugated galvanised steel panels.
- 3 Sectional precast concrete.
- 4 Precast concrete panels ('staves') held together by external steel hoops.

The walls are usually manufactured components of steel or concrete which are then site assembled on an *in situ* reinforced base which forms the tank floor. Walls are designed primarily to withstand circumferential hoop stresses, with no fixity at the base. Containment integrity is therefore dependent on the wall to floor joint and on the permeability of the *in situ* concrete floor. The tank base should be designed and constructed to EN 1992-3:2006.

Further design guidance on these types of tanks is contained in Mason (1992), which provides information on good practice for design, manufacture, installation, operation and maintenance. A revision is being prepared to reflect changes in the SSAFO Regulations expected in 2015.

9.2.3 Pressed steel sectional rectangular tanks

Pressed steel rectangular tanks are generally assembled on site from prefabricated sectional components. The elements are easily transported making the system particularly suited for confined sites and sites with poor access. It is possible to design tanks for future increases in volume and, depending on specifications, the tanks may be used to store a variety of liquids. Specifications should comply with BS 1564:1975 Type One tanks and their use limited to above ground installations.



Figure 9.2 A pressed steel sectional rectangular tank (courtesy of Braithwaite Engineers Limited)

Tank plates are designed with plate thicknesses depending on the density of the liquid and the height of the tank wall. The specification of the sectional plates should take account of the aggressive nature of the stored liquid and it may be necessary to provide a protective coating to the plates and joining material.

Bases may be configured with internally flanged plates allowing even contact with the foundation (sand/bitumen beds are recommended in such cases, but steel grillage can also be used). This allows leakage monitoring by observation of the base/foundation interface and a leakage test should be completed, using water, prior to commissioning the tank.

9.2.4 Site built, vertical cylindrical, flat bottomed, above ground, welded steel tanks

BS EN 14015:2004 covers all aspects relevant to the design of atmospheric storage tanks including:

- design pressure
- materials specification – steel and weld materials
- design loads
- design of tanks components (bottoms, shells, stiffening rings and wind girders, roofs, floating roof seals, attachments etc).



Figure 9.3 A vertically cylindrical welded-steel tank (courtesy M.C. Integ Ltd)

Corrosion protection methods include paints, epoxy coatings, glass liners and rubber liners, which can be specified in accordance with the nature of the stored product and required durability.

Tanks should be tested by filling with water before commissioning under controlled conditions. The performance of the tank and foundations can be monitored during the test.

Foundations of large diameter tanks should be designed to accommodate differential settlement as they are susceptible to damage as a result of foundation settlement.

Foundations can comprise a compacted granular fill sub-base or rigid concrete foundations over which bitumen/sand mix layer is provided to retard corrosion and provide a clean working surface for welding the bottom plates.

Pipes set around the perimeter extending into the granular fill sub-base/concrete foundation and protruding through the bitumen/ sand formation are commonly used to detect bottom plate leakage.

9.2.5 Oil storage tanks to BS 799-5:2010

Subject to durability criteria, tanks constructed to BS 799-5:2010 may be suitable for initial containment

prior to transfer to a larger facility, or at sites requiring only minimal containment capacity. The Standard includes design and fabrication specifications for all types of tank configuration.

9.2.6 Glass reinforced plastic (GRP) tanks and vessels for above ground

GRP tanks are made from glass fibre resin laminates manufactured under carefully controlled conditions using resins specified according to the intended use. The choice of resin affects chemical resistance properties and heat distortion temperature and is therefore an important consideration if reinforced plastic tanks are to be used to provide containment. The chemical resistance requirements are specified in BS EN 13121-2:2003 and the design, fabrication, inspection, testing and verification of GRP tanks in BS EN 13121-3:2008+A1:2010.

Due to the difficulty in achieving proper quality controls, site fabrication is not standard practice and therefore the capacity of a single tank is limited by transportation considerations. In practice, this limits individual tanks to a capacity of 100 m³ maximum although a number of tanks can be linked together.

Proprietary systems have been developed using tanks formed from composites of rectangular glass reinforced plastic (GRP) panels and steel frames and also vertical cylindrical GRP multi-straked tanks. These are similar in concept to the pressed steel rectangular tanks discussed in Section 9.2.3.

A number of thermoplastics lining systems can be specified to increase resistance to aggressive chemicals. Although GRP tanks may be manufactured to tolerate highly aggressive chemicals and effluents, when used above ground they are more susceptible to fire damage than steel or concrete tanks.

9.2.7 *In situ* reinforced concrete tanks

Above and below ground containment tanks can also be constructed using *in situ* reinforced concrete. The design of reinforced concrete structures to retain liquids is discussed in Chapter 7.

9.2.8 Precast concrete tanks

Precast or prestressed reinforced concrete wall panels can be used to form containment tanks. The wall panels can be cantilevered wall sections on suitable foundation or restrained with an external hoop (post-tensioned) and are sometimes referred to as multi-straked tanks. This is a common form of construction used to create slurry stores and filter beds at wastewater treatment works.



Figure 9.4 A precast concrete segmental tank construction (vertically multi-straked tank) (courtesy A-Consult Ltd)

An important consideration in specifying this type of tank is to ensure the joint between panels and between the panels and the base is both liquid tight and the sealant compatible with the inventory (and fire resistant where the inventory is flammable). Alternatively the tank could be lined, or the joints plated (see Figure 12.3).

9.2.9 Reinforced masonry tanks

Above and below ground containment tanks can also be constructed using reinforced masonry. The design of reinforced masonry structures to retain liquids is discussed in Chapter 7.

Table 9.2 Performance comparison for tanks constructed above ground

Tank construction	Suitability for			Volume	Ease of construction	Susceptibility to damage
	Class 1	Class 2	Class 3			
Buildings and structures for agriculture – storage tanks and reception pits (Section 9.2.2)	✓✓✓	×	×	✓✓	✓✓	✓✓
Pressed steel rectangular tanks (Section 9.2.3)	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓✓
Site built, vertical cylindrical, flat bottomed, above ground, welded steel tanks (Section 9.2.4)	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓	✓✓✓
Oil storage tanks to BS 799-5:2010 (Section 9.2.5)	✓✓✓	✓✓✓	✓✓✓	✓	✓✓✓	✓✓✓
Glass reinforced plastic (GRP) tanks and vessels for above ground (Section 9.2.6)	✓✓✓	✓✓✓	✓✓✓	✓	✓✓✓	✓
<i>In situ</i> reinforced concrete tanks (Section 9.2.7)	✓✓✓	✓✓✓	✓✓✓	✓✓✓	✓	✓✓✓
Precast concrete tanks (Section 9.2.8).	✓✓✓	✓✓	✓✓	✓✓	✓	✓✓✓
Reinforced masonry tank (Section 9.2.9)	✓✓✓	×	×	✓✓✓	✓	✓✓✓

Key
 ✓✓✓ = Good
 ✓✓ = Moderate
 ✓ = Poor
 × = Not suitable

9.3 TANKS CONSTRUCTED BELOW GROUND LEVEL

9.3.1 Introduction

The design of below ground structures will need to take account of topography, the nature of the ground (geology), the water table and any other factor that may influence the integrity of the construction such as the aggressiveness of the soils. A detailed site investigation will often be an essential pre-require when considering the design of a below-ground structure.

The design of any below ground structure should be to BS EN 1997-1:2004 and BS EN 1997-2:2007:

- BS EN 1997-1:2004 covers the general basis for the geotechnical aspects of the design of buildings and civil engineering works, assessment of geotechnical data, use of ground improvement, ground reinforcement, dewatering and fill. Geotechnical design of spread foundations, piles, retaining structures, embankments and slopes. Calculation rules for actions originating from the ground, eg earth and groundwater pressures.
- BS EN 1997-2:2007 covers requirements for the execution, interpretation and use of results of laboratory tests to assist in the geotechnical design of structures.

For the design of a below-ground tank, it is of particular importance that a ground investigation establishes the following:

- 1 Groundwater level and any significant seasonal fluctuation to ensure the tank will not float (tanks, especially those in class 2 and class 3 should not generally be constructed in or immediately above the groundwater table).

- 2 A high groundwater level will impose a hydrostatic force on the tank when empty that should be considered in its design.
- 3 Bearing capacity of the formation.
- 4 Presence of contaminated soils.
- 5 Properties of the soils to establish design loadings.

BS EN 1997-1:2004 requires that the site investigation and geotechnical and structural design of a below-ground structure should be completed by appropriately qualified and experienced personnel.

9.3.2 Tank systems for use below ground

Many above ground tank systems may be designed and adapted for below-ground installation (manufacturers' specification should be checked to ensure suitability for below-ground use). Small capacity, welded steel and GRP cylindrical tanks are commonly used for below-ground storage of chemicals, fuel, oil and sewage effluent. Common types of structure for large capacity below-ground tanks are *in situ* reinforced concrete, sheet piled walls and deep shaft construction.

9.3.3 *In situ* reinforced concrete below-ground tanks

In situ concrete may be used to provide structural support for tanks made from other materials such as small capacity welded steel or GRP tanks installed below ground. In these circumstances it is not necessary for the concrete to be specified to BS EN 1992-3:2006.

This can serve a dual purpose by acting as additional containment, which will have particular relevance at a class 2 site. At particularly sensitive locations, a further containment system may be required in the form of, for example, a double geomembrane/geotextile incorporating a leakage detection facility that surrounds the enveloping concrete, giving an overall class 3 rating.

9.3.4 Deep shaft tanks

The 'bored shafts' technique describes the method of excavating and forming a vertical cylindrical shaft or tank, the circumference of which is usually concrete lined. After excavation the base of the tank is concreted to provide a watertight seal. Bored shafts are commonly up to five metres in diameter, although it is possible to go to nine metres (Figure 9.5).

Potential uses for bored shaft technique include containment tanks for a variety of substances, water and fire water reservoirs, abstraction well heads, sewage treatment, balancing tanks etc. The small plan area of the tanks gives a number of potential advantages, including minimal site area requirement and siting of full containment close to the source. The small effective diameter makes fire control easier within the tank. The system cannot be used in all ground conditions and the emptying costs are likely to be relatively greater than for a shallow below-ground containment tank.

9.3.5 Tanks formed with embedded walls of steel sheet piling

Continuous steel sheet piling for retaining wall construction can be used to form open storage reservoirs in impermeable soils. Advice on acceptable criteria for impermeable soils is provided in Chapter 8.

Where such a facility is to provide class 2 or class 3 secondary (or tertiary) containment, it should be lined and again advice on lining systems is provided in Chapter 8.

Advice on the design of sheet piled retaining walls is provided in Gaba *et al* (2003).



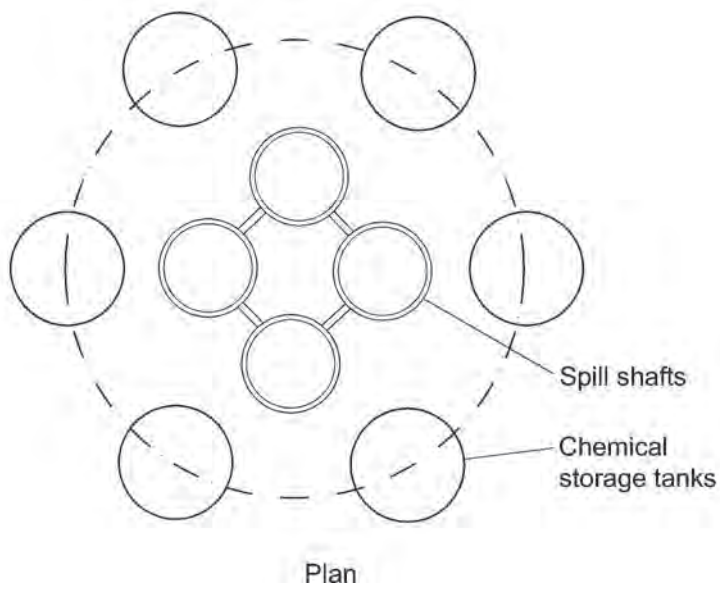
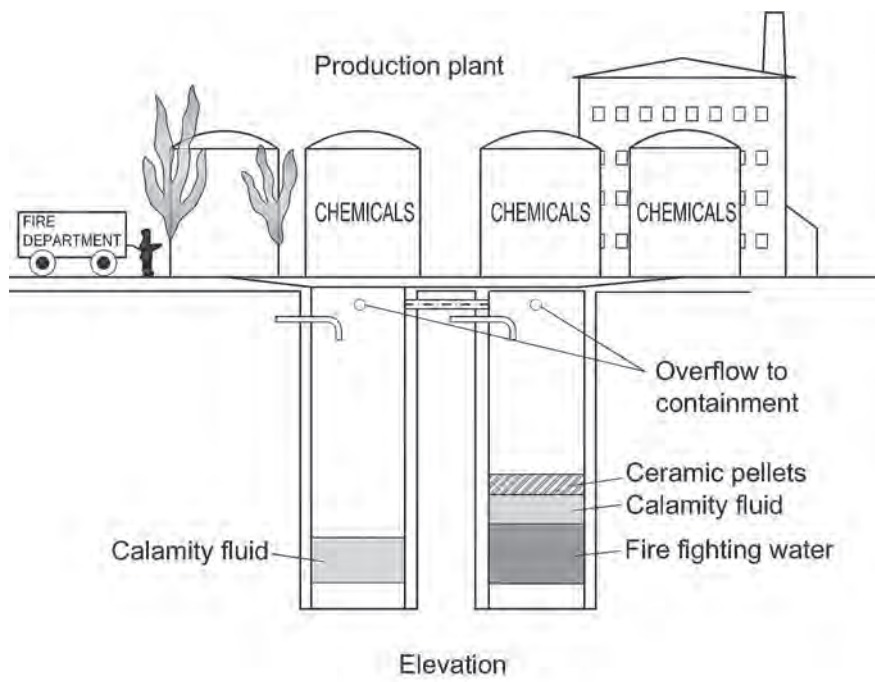


Figure 9.5 Use of multiple deep shaft tanks to provide containment adjacent to the source

10 Transfer systems

This chapter provides:

- A definition of transfer systems and the factors to consider in their design and specification (Section 10.1)
- Advice on the categorisation of catchment areas (Section 10.2)
- A review of gravity and pumped transfer systems (Section 10.3)
- A suggested classification system for transfer systems (Section 10.4)
- Advice on the design of the various elements of a transfer system (Sections 10.4 to 10.11)

10.1 INTRODUCTION

The term transfer system is used to describe the means for collecting and conveying spillage and contaminated water to the designated containment facility. This would include transfer to a remote secondary facility, or from a secondary to a tertiary facility.

Transfer systems comprise of **catchment areas** in the immediate vicinity of the primary storage vessel to control and channel any polluting materials ready for transfer, and **conveyance systems** to transfer the material from the catchment area to the containment:

- **Catchment areas** may be purpose designed and built with the sole function of intercepting polluting materials resulting from an incident. Alternatively, they may be areas such as roads, hardstandings and paved areas that double as catchment areas in addition to their primary purpose.
- **Conveyance systems** can comprise pipe networks, open channels or culverts. As with catchments, conveyance systems may be designed for the sole purpose of dealing with spillages and other incidents, or they may have a different primary purpose such as on-site roads.

Where 'dual-purpose' areas such as roads are to be used as part of the containment and/or transfer system, there should be a fail-safe mechanism to prevent inventory and firefighting water reaching the outfall of any associated the surface water drainage system.

The essential requirements of any transfer system are that it should be:

- leak proof
- sufficiently strong and durable to perform adequately for the duration of its design life with only routine maintenance
- resistant to fire
- resistant to attack from the materials that may be released from the primary containment
- of sufficient capacity to cope with the worst flow scenario without overflowing
- where the transfer system forms part of a road or access route, the design should not compromise emergency vehicular or pedestrian access and means of escape.

Material collected by the transfer system should be stored treated, where appropriate, and disposed of in a safe manner. Transfer systems should be designed to ensure that, as far as possible, incompatible materials do not come into contact with each other and cause secondary reactions or escalation of the incident. This may require larger sites to be segregated into catchment area zones (eg 'clean' and 'dirty', or 'acid' and alkali') so that the runoff from each may be dealt with separately. If clean water can remain segregated during an incident, the volume of contaminated water that would have to be treated can be minimised.

It should be noted that where an incident results from a catastrophic failure of the primary storage vessel, the principal concern may well be the capacity of the catchment area as it may be impractical to construct a transfer system with sufficient capacity to cater for this almost instantaneous 'surge' flow.

It should be noted that for local secondary containment systems comprising bunds, the transfer system is considered to be the bund floor (see Chapter 7 for concrete bund floors and Chapter 8 for earth or lined bund floors). This chapter is concerned primarily with transfer systems associated with remote and combined containment systems.

For disposal of contaminated materials following an incident, waste legislation is likely to apply. Accredited specialist contractors will have the necessary measures in place to deal with this.

10.2 CATEGORISING CATCHMENT AREAS

10.2.1 Categories of waste

Drainage on the majority of sites can be divided into three categories, commonly referred to as:

- stormwater drainage
- foul drainage
- trade effluent (the semi-solid or liquid by-product of commercial or business activities).

Stormwater drainage

This is designated essentially for clean water, ie surface water runoff generated by rainfall. Stormwater drainage that discharges to a watercourse or soakaway is normally subject to a discharge consent. Stormwater drainage discharging to the public sewer requires the consent of the undertaker, normally the local water utility. It should be noted that the discharge of trade effluent to the stormwater system is not permitted. With such outfalls it is essential that inlets to all stormwater drains are protected against ingress by sewerage and the effluent arising from an unplanned incidents (event effluent) comprising escaped inventory and/or rainwater and/or firefighting and cooling water.



On sites that are designated a moderate or high hazard risk rating, ie class 2 or class 3, all stormwater drainage should be designed to outfall initially to a holding facility (eg lagoon, reception tank or interceptor depending on the capacity required) so that any unplanned entry of polluting material into the system may be dealt with safely. Accumulated surface water runoff will only then be released following testing.

An alternative is to continuously monitor the surface water runoff and provide diversion arrangements to an appropriate containment system if:

- the monitors shows signs of contamination
- the instruments fail
- there is an emergency, in which case it should be possible to divert the flow manually or ideally remotely from the location where the emergency occurs.

Foul water drainage

This deals with sewage from site welfare facilities, canteens etc. and normally discharges to a water utility's wastewater treatment works (WwTW) via the public sewer network. It is important that trade effluent and/or event effluent is prevented from entering foul water drainage systems (unless it has been consented – see *Trade effluent*) as it may cause long-lasting damage to the treatment works process, which could in turn result in the discharge of untreated sewage.

In particular flammable material should be prevented from entering the foul water drainage due to the safety risks.

Trade effluent

Trade effluent is the semi-solid or liquid by-product of commercial or business activities. It may be consented to go to a water utility's WwTW (normally via the public foul sewer) or may have to go to a

dedicated industrial effluent treatment works. Where large volumes of effluent have to be dealt with, holding tanks may be required to buffer the impact on a treatment works.

This guide is not concerned with the management of trade effluent, but rather event effluent. As a general rule, operators should plan to retain the event effluent on site to allow it to be analysed before being sent to an off-site WwTW.

10.2.2 Site zoning

In planning a new transfer system, or assessing the adequacy of existing drainage systems for dealing with unplanned incidents, the site should be divided into catchment areas, each designated as either (clean) stormwater or event effluent or a combination of both. Catchment areas may be hardstandings, roadways, floors of buildings, roofs of buildings or any other areas that may be subject to runoff of rainwater or other material.

An assessment should be made of the amount of runoff likely to occur from any catchments designated as event effluent, or a combination of event effluent and stormwater. The approach described in Chapter 6 should be used to estimate the total event effluent likely to be released from a catchment area. The rate of release, which is the factor that affects the design of the transfer system, should be assessed by means of a detailed consideration of all of the events that could cause a release to each catchment area.

For a catchment area to be designated as solely stormwater there should be no possibility of the catchment becoming contaminated with event effluent during the course of an incident. In general, the higher the site's hazard rating, the more onerous will be the safeguards required to support the designation of a catchment as stormwater only.

Where a zone is designated as event effluent, it is important to identify the types of inventory likely to be released from it as the characteristics of the inventory, as well as its rate of release, will affect drainage design. Where more than one material is involved, consideration should be given to the characteristics of the 'cocktails' that could result. Important characteristics in terms of drainage design are:

- 1 Corrosive effects on materials used for constructing the drainage system.
- 2 Density (in particular whether lighter than water).
- 3 Flammability (liquid and/or vapour).
- 4 Flow characteristics (viscosity and changes in viscosity according to temperature and mixing with other substances or firefighting water).
- 5 Tumescence and possible solidification on burning.
- 6 Ability to segregate contaminated firewater from cleaner cooling water (increasing the chance of being able to recycle cooling water, reducing water use).
- 7 Ability to have staged handling of flammables, ie allowing gravity separation such that less contaminated liquid is transferred to the next stage/zone and reducing risk of incident spreading/escalating. However, there is a need to be mindful that foams inhibit gravity separation so any liquid leaving a separator is likely be contaminated (see Section 10.5.6).

This approach recognises that in some situations it may not be possible to design catchments or conveyance systems for all contingencies (for example, the very rapid release of materials stored in primary containment) but requires that any shortfall in, for example, conveyance capacity, is made explicit and that the consequences are understood and agreed with the regulator.

The output from the catchment assessment is used to design the conveyance system.

10.3 GRAVITY AND PUMPED TRANSFER SYSTEMS

Transfer systems can be designed to operate entirely by gravity, be pumped or a combination of both. The design of the system will depend on the layout of the plant and the topography of the site,

particularly the location of the primary storage areas in relation to the secondary containment. There are advantages and disadvantages associated with both types of system as outlined below:

10.3.1 Gravity systems

Advantages

- Simple and relatively inexpensive.
- Little to go wrong.
- Do not rely on operator intervention or automatic controls to activate.

Disadvantages

- Difficult to control flow rate.
- Pipework usually necessarily underground, making monitoring, inspection and maintenance more difficult.
- Requires human intervention to be available, diagnose and willing to operate.
- Constrained by site layout and topography.

It should be stressed that these notes refer only to transfer systems that are part of a remote or combined containment system. For systems where only local secondary containment is provided, gravity discharge arrangements should not be used.

10.3.2 Pumped systems

Advantages

- More flexibility.
- Pipework can be routed above ground.
- More control over transfer rates.

Disadvantages

- More complicated, so more can go wrong.
- Require reliable power supply and controls.
- Requires back-up system against mechanical and electrical failure.
- Even where there is a reliable power supply with a back-up system, the Fire and Rescue Service have been known to shut the power off for safety reasons.
- More maintenance required.

Many transfer systems are part gravity and part pumped. Ideally a transfer system would be gravity operated but with pipework supported above ground to enable effective monitoring and maintenance. In practice, the benefits of the inherent reliability of gravity systems have usually to be balanced against the convenience and accessibility of pumped systems.

10.4 TRANSFER SYSTEM CLASSIFICATION

Overall containment system classification is dealt with in Chapter 2. Table 10.1 summarises the performance requirements that components of a transfer system should meet to satisfy the overall system classification.

Table 10.1 Performance requirements for transfer system components

Main system component	Class 1	Class 2	Class 3
Catchments Table 10.2	Impermeable and resistant to the inventory and fire Designed to cater for flows arising from a credible scenario		Additional conveyance capacity such as bypass channels and identification of emergency flow paths
Pipes/channels Tables 10.3 and 10.4	Designed to cater for flows arising from a credible scenario		
	Pipes and channels and associated gullies, chambers and manholes to be liquid tight and resistant to inventory	As class 1 plus additional redundancies such as sleeved above ground pipework and alternative flow routes identified in the event of blockage	Pipework to be flexibly jointed (or sufficiently flexible) to cater for subsidence
		Surface water drainage system should not be used a part of the transfer system	
Pumps [†]	Where the transfer system is reliant on pumping, provision for a back-up pump should be made	Dual (duty and stand-by) pumps and controls plus facility to mobilise temporary or additional pump capacity	
Telemetry and monitoring			Telemetry, including flow metering of all pipe runs to detect leakage Regular CCTV inspections of below-ground installations Alarm systems Other technologies may include permanent CCTV surveillance of above ground pipe networks
Construction supervision	Construction works to be independently verified (Section 7.2.1)		
Maintenance	Transfer systems to be regularly inspected (Section 5.2)		

Note

* Where the systems is totally reliant on a working pump, the pump and its controls should be designed to minimise any risk of failure, be accessible for repair and have a back-up in place. This is particularly relevant where fire damage is a possibility. The pump and its controls may be sited away from the bund or sump so that it can be maintained at all times during an incident. Dual (or stand-by) pumps should be considered. Alternatively, or additionally, portable pumps (which should be selected to be suitably ignition protected where they may need to operate in a flammable atmosphere) of an appropriate area classification for the intended duty with a rating equivalent to the fixed pump should be available in the event of an exceptional emergency or failure of the main system.

10.5 CATCHMENT AREA DESIGN

In the absence of a bund, most primary containment areas require an impermeable catchment to intercept spills and other unintended discharges. The area beneath and surrounding the primary storage vessel should be impermeable and contoured, or kerbed, to collect the spillage prior to its transfer by gravity or pumping to the remote secondary containment. Catchments may be constructed using earth (if sufficiently impermeable), or tarmac areas, but more usually they are constructed in concrete.

The effectiveness of a catchment area relies heavily on the ability of the downstream drainage system to transfer the spillage away from the catchment area at a sufficient rate to prevent overflow to surrounding areas that may not be impermeable. The catchment therefore may also have to attenuate the flow of event effluent by providing a degree of containment at the inlet to the transfer system, and effectively local secondary containment.

Catchment areas sometimes serve a dual purpose, eg to provide an impermeable hardstanding (such as a car park) or stable working area. The catchment function may be secondary to the main function, as in the case of roads, which may double as catchment areas. With roads, additional contouring and kerbing is likely to be required to ensure that spillages do not overflow.

For these reasons, where kerbing is to be used to collect spillage, or to direct it to a remote secondary (or tertiary) containment area, a high containment kerb system should be used. These are normally 400 mm high rather than the normal pavement kerbs adjacent to highways. Low points along the crest of the kerb should be avoided as this would reduce the capacity of the transfer system.

Areas of hardstanding and roads are normally drained and in many cases surface water runoff pass through an oil separators prior to discharge to a public sewer, watercourse or soakaway. However, oil separators cannot be relied upon to retain hazardous substances that might enter the surface water drainage system during an incident. For instance light oils might not be retained and firefighting foam can emulsify oil and cause pollutants to carry through gravity separators. It is also the case that unless it has been specifically designed for the particular incident scenario, the potentially high rate of flow through an interceptor may render it ineffective.

For this reason, dual purpose catchment areas such as roads should not be used for high hazard or risk situations unless stormwater is routinely collected in holding tanks for sampling prior to treatment (if necessary) and discharge or otherwise appropriately managed.

An alternative may be to provide a pollution control valve on the outfall of the site's drainage system. These valves can be remotely closed in response to the triggering of an alarm, or the detection of pollutants in the surface water runoff. However, reliance on such a system to retain event effluent during an incident should be subject to a risk assessment and discussed with the regulator. Such an arrangement is described in Case study 10.1.

Case study 10.1

Example of the use of a pollution control valve, Shropshire, UK (courtesy Hydro Consultancy)

Ricoh operate a site in Telford, Shropshire that manufactures toners for their copying equipment. The existing site surface water drainage system was identified as a direct pathway for accidental spillages of potentially harmful constituent components to reach sensitive downstream receptors.

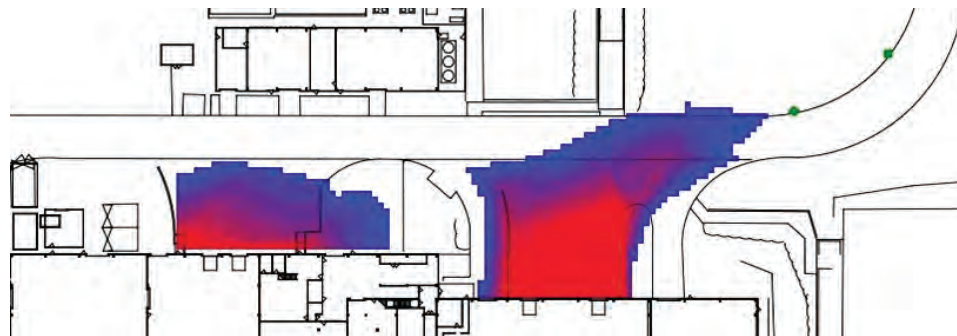


To address this potential risk, in a scheme promoted by the Shropshire Wildlife Trust, a remotely activated lock-down valve and an underground off-line containment tank were retrofitted to the drainage system to provide a rapid-response system to spillages. When activated, the system rapidly closes part of the surface water drainage system with the spillage and any runoff diverted to a containment tank to be subsequently removed by tanker.

Analysis confirmed that containment of 100 per cent of the spillage and of any rainfall runoff occurring during an accident would be prohibitively expensive due to the significant storage volumes involved, particularly when considering the more extreme rainfall events and the time taken to deploy tankers.

The volume of the containment tank was optimised using hydraulic modelling by considering a range of response times to provide 100 per cent containment for 99 per cent of rainfall events based on a two hour response time, reducing to 80% of rainfall events for a 24-hour response time.

Further hydraulic analysis using a two dimensional modelling programme considered the fate of overland flows during an event when the containment tank capacity had been exceeded. This indicated that these excess flows could be contained on site within dock loading area.



Forms of catchment construction are summarised in Table 10.2.

Table 10.2 Summary of common forms of catchment area construction

Form of construction	Design issues	Classification
Catchments with an earth base	See Chapter 8	Minimum depth of 1 m of impermeable soils is suitable for class 1 For a greater depth, or if a liner is provided, suitable for class 2 or class 3
Modular paving units and non-reinforced concrete	Modular units generally hand laid on a compacted granular sub-base. An underlying impermeable membrane, which should be able to accommodate deformation and be unaffected by deleterious materials, may be specified As the sub-base is likely to be relatively permeable, the joints of modular units should be sealed, or the units laid over a suitable impermeable liner	Classes 1, 2 or 3 if laid on a suitable impermeable liner and over soils
Reinforced concrete	See Chapter 7. Detailing for pavements should follow the DMRB (DfT, 1999a)	Class 1, 2 or 3
Flexible and rigid pavements	Flexible pavements tend to deform under concentrated loads and extreme temperatures although composite construction provides a superior performance for industrial use. Asphalt and DBM surfaces are susceptible to damage by many solvents and by fire	Class 1

One of the most common and reliable forms of construction for catchment areas is an impermeable *in situ* reinforced concrete base surrounded by a reinforced concrete upstand forming a shallow retaining kerb. Guidance on the design and construction of *in situ* reinforced concrete bund floors is provided in Chapter 7.

10.6 DESIGN FLOW

10.6.1 Failure of the primary storage vessel

The worst scenario is represented by the simultaneous occurrence of the following events:

- 1 The flow arising from the catastrophic failure of the primary storage vessel or any other credible scenario agreed with the regulator (allowing for any attenuation provided by the catchment area or local containment).
- 2 The maximum flow resulting from a one hour duration 10 per cent AEP rainfall event over the **whole** of the catchment drained by the transfer system (this is consistent with the rainfall event used to estimate containment capacity discussed at Chapter 4).
- 3 The maximum rate of application of firefighting water (see Section 4.3.4). Note that this requirement may be relaxed where non-flammable substances are involved.
- 4 Any potentially aggravating occurrences, eg drain blockage.

Point 4 should be considered as part of a HAZOP or similar assessment. When carrying out such an assessment it should be recognised that aggravating occurrences such as blocked drains may not be independent from points 1 and 3 since the released materials, or fire, may themselves encourage drain blockage.

While these scenarios represent the worst case and should be the start point for design consideration, a risk assessment, combined with location specific rainfall data (short- and medium-term) may demonstrate that the risk of a combined occurrence of fire (complete loss of containment with firewater) and worst case rainfall might be sufficiently low to be tolerable. However, this would depend on the scenario, eg if fire was caused by a storm then it could occur at same time as the worst case rainfall assumed.

Normal catchment and drainage design techniques can be used to calculate the design requirements for points 2 and 3.

Although it may often be impracticable to design a transfer system to cope with the highest possible flow rate that could occur on a site, it is important at least to recognise those scenarios where the design flows may be exceeded, particularly on sites with a high hazard or risk rating.

10.6.2 Tanker offloading and loading facilities

As risk assessment should be completed to consider the likely volume and flow rate of inventory that could be spilled during loading and unloading operations.

This should consider the:

- compartment volume(s) of the road or rail tanker
- maximum loading and/or unloading rate
- rate of application of firewater spray from any fire suppression systems installed
- rainfall rate over the catchment area of the unloading facility (the rainfall associated with 10 per cent AEP rainfall event should be allowed for).

Similar storage provision should be made for rail tanker unloading areas.

Ventilated below-ground impermeable sumps or tanks may be used to increase the capacity of the local catchment area if required. Collection tank alarms and automatic shut-off valves at loading and unloading points are desirable on installations with a high hazard or risk rating.

10.6.3 Attenuation

It is unlikely to be practical or economic to construct a transfer system with sufficient capacity to cater for the almost instantaneous 'surge' flow resulting from a catastrophic failure of the primary storage vessel. So, some local secondary containment is likely to be required.

Even if the transfer system has the capacity to cater for the design peak flow, local secondary containment may be required due to head losses at the entry to the system. This can be provided by:

- raised kerbing
- low bund walls
- site levels (dished impermeable surface)
- channel drains
- sumps.

An alternative is to provide a detention tank. In addition to attenuating peak flows, they may also be used for dosing or neutralising harmful substances, for example by pH adjustment, prior to transfer to the remote containment. However, in these circumstances the tank would require either a valved or pumped outlet to retain the event effluent and facilities for dosing and agitation to ensure adequate mixing.



Detention tanks should be designed and constructed to a standard appropriate to the class of containment they are serving (see Chapters 7, 8 and 9).

10.7 OPEN CHANNEL DESIGN

Open channels are used to drain large areas, or for dealing with large flows. On many sites the channels may be formed by contouring and kerbing suitable catchment areas such as roads. The kerb height and width and slope of the catchment determine the flow capacity.

Where there is a risk of blockage, inlets to culverted and piped sections of the transfer system from the open channel should be protected with screens or grills.

Where unlined drainage channels are excavated, flow velocities should be limited to 0.5 to 0.8 ms⁻¹ to prevent scour of fine materials. However, the scour resistance of earth channels can be enhanced by planting with grass. Advice on grass lined channels can be found in Hewlett *et al* (1997).

Manning's formula (Chow *et al* (1988)) is the most commonly used method for determining open channel flow. The flow capacity Q of a channel (in the context of this guide the channel takes the form of a kerbed road) is given by the expression:

$$Q = (A/n)m^{0.67}I^{0.5}$$

Q = discharge (m³)

A = wetted perimeter (m)

m = hydraulic mean depth

I = slope (mm/metre)

n = Mannings coefficient (ranges from 0.0156 for smooth concrete to 0.12 for an earth channel overgrown with weeds, with an average value of 0.030 for a channel lined with short grass).

Manning's formula takes no account of head losses at bends and changes in section, so it is recommended that the hydraulic design of transfer systems should be completed by competent personnel.

10.8 PIPEWORK FOR TRANSFER SYSTEMS

The hydraulic design of pipework for transfer system should be in accordance with BS EN 752:2008.

A number of software packages are available to assist in drainage design, many of which include designs for detention and catchment storage. Further information on the design of piped drainage systems is given in Appendix A9.

Gravity transfer systems should be designed such that the peak design flow (see Section 10.6) can be passed without surcharging and should take account of any flame traps, siphons, restricting valves and meters included in the system.

Allowance should also be made for any change in state of the inventory during an event (see Section 10.2.2). For example, water applied to some flammable substances considerably increases their viscosity.

Pipework materials can suffer attack from:

- discharge of effluent from industrial processes (eg electroplating works)
- discharge of effluent from chemical laboratories
- discharge of sewage, where due to long retention periods septicity occurs
- aggressive groundwaters (eg in contaminated ground)
- less aggressive groundwaters, where there is a convenient drainage path that allows groundwaters to be continually replenished
- deformation of plastic pipes and liners due to hot liquors and aggressive materials.

Table 10.3 summarises the materials and properties of commonly used effluent pipes and Table 10.4 indicates the resistance of a range of pipe and jointing materials to trade effluents.

Pipes and joints in materials referred to in Table 10.4 are generally suitable for use in sewers and drains conveying surface water, foul sewage and trade effluent that can legally be discharged to public sewers. The ground conditions in which the sewer is to be laid can be corrosive to certain pipe and/or jointing materials and this can affect the choice of materials. Where a drain or sewer is liable to carry untreated and corrosive trade effluents, further consideration should be given to possible protective measures. Liquids at elevated temperatures are likely to be significantly more aggressive than those at ambient UK temperatures.

Table 10.5 provides a performance comparison for pipe materials used in transfer systems.

Table 10.3 *Pipework materials, properties and application*

Component material	Description and design references	Characteristics properties	Suggested classification
Clayware	<p>Manufactured diameters up to 1.2 m. Various classes of pipe are defined in BS EN 295-1:2013 depending on crushing strength. Bedding classes are provided in BS EN 1610:1998 and design data including design loads, imposed traffic loads and construction of trench bedding is given in Bedding construction and flow capacity of vitrified pipes (Bland, 1995).</p>	<p>Suitable for non-pressure application and use below-ground. Good internal and external resistance to aggressive chemicals. Buried clayware pipes prone to damage, which is not readily detected below ground. Ground movement may affect joint integrity.</p>	<p>Buried clayware pipes to BS EN 295-1:2013. Disadvantages, including potential loss of joint integrity, brittleness etc, limit recommendation to class 1 only.</p>
Plastic	<p>Two main categories:</p> <ol style="list-style-type: none"> 1 Thermosetting resins. 2 Thermoplastics. <p>Reinforced thermosetting resin pipes included glass reinforced plastics (GRP) and unreinforced sand and resin (RPM). GRP pipes available in diameters up to 4 m and for high pressure use.</p> <p>Polyolefin's: polyethylene (PE), polypropylene (PP), polybutylene (PB). Vinyl's: polyvinylchloride (PVC) acrylonitrile butadiene styrene (ABS). Extruded (PE) pipes made in diameters up to 3 m in welded form. Made in different densities, eg MDPE, HDPE, suitable for pressures up to 12-bar. ABS limited to about 300 mm maximum diameter. PP pipes made in diameters up to about 1.2 m PB pipes available in diameters up to about 600 mm.</p> <p>Detail design and specification data available from pipe manufacturers.</p>	<p>Strength reduces, temperature increases (thermoplastics show significant loss). PP and PB better high performance temperature than PE. Normal maximum operating temperature of most plastics about 200 °C. Categories (1) and (2) have good chemical resistance, which may reduce under stress or strain. Polyolefins can be heat welded. UPVC to BS EN 1452-1:1999 widely used for utility pipelines. UPVC pipes suitable for low pressure installations, careful design is critical for high pressure pipelines. Vinyl's may be solvent welded.</p>	<p>Depending on the nature of the effluent and site conditions, plastic pipes suitable for many above- and below-ground applications, and for some pressurised pipelines. Consideration should be given to potential effects of fire. Depending on various factors, plastic pipes may be considered for class 1 and class 2. Class 3 use depends on redundancies and other precautionary measures, eg dual pipes, sleeves, pipe bunds, and monitoring controls.</p>
Metallic	<p>Non-ferrous metals not commonly used for effluent pipelines.</p> <p>Welded steel and stainless steel pipes used throughout industry for conveying fuels, oil, foodstuffs and many chemicals. With adequate protection may be used from some harmful effluents. Steel pipes are fabricated in all diameters and welded steel is commonly used to form double-skinned pipes and independent sleeves for all types of pipe. Ductile iron is most commonly used metal for effluent pipes. Pipes available up to 1.8 m diameter, with standard bends and fittings to ISO 2531:2009 up to 1 m diameter. Pipe lengths from 6 m to 8 m. Ductile iron pipes for effluents should be specified to BS EN 598:2007+A1:12009. Detail design data provided by manufactures.</p>	<p>Suitability of steel for welding, and high tensile stress, allows fabrication of continuous above- and below-ground pipelines capable for withstanding high pressures.</p> <p>Typical specification for ductile iron pipe for materials with pH in range 4 to 12 would consist of a pipe to BS EN 598:1995 with an external coating of 200g/m² zinc to ISO 8179-1:2004, overlaid with a 250 micron epoxy seal coat. An additional outer skin of polyethylene would help combat aggressive soil conditions. Tape wrapping provides further protection. Internally, pipes typically coated with epoxy and lined with high alumina cement. Exposed end surfaces coated with epoxy. Pipes may be protected internally with polyurethane lining for materials with pH4. High alumina cement liners offer good abrasion resistance at flow rates up to 7 m/sec. Various proprietary joining systems available; specified according to use. Ductile iron pipes may be used above or below ground and for gravity or pressurised pipelines.</p>	<p>Subject to design, specification and construction standards, ferrous pipes should be used for class 2. This applies to above-and-below-ground installation and to gravity and pressurised networks. Class 3 installations require redundancies such as system duplication, together with full monitoring and control of leakage. In class 3 situations, pipes should be above ground level and within sleeves or ducts. Alternatively they should be within concrete ducts to BS EN 1992-3:2006, where located below ground level. Sleeves and ducts to conform to class 3. These provisions allow for easier inspection and maintenance.</p>

Table 10.3 Pipework materials, properties and application (contd)

Cement	Concrete effluent pipes may be unreinforced, steel or fibre reinforced, or prestressed. Principal design performance standards are BS 5911-1:2002+A2:2010 and BS EN 642:1995. Unreinforced pipes, made up to 1.4 m diameter, suited only to gravity flows. Reinforced pipes are up to 3 m diameter and used in some low pressure systems. Pressurised pipes also made in large diameters and used in pressurised systems. Number of proprietary pipe systems manufactured from composites of concrete and reinforced plastic. CPSA (2011) provides guidance on installation of concrete pipes.	Concrete is robust but prone to attack from sulphates in groundwater, acid effluents, sugars and bacteria. Expensive measures needed for protection and these tend to offset initial cost advantages of concrete. Pipe abrasion and erosion governed by material flow and nature. Pipe linings usually applied after manufacture; epoxy or polymer resins commonly used. Linings cannot be prestressed.	Unreinforced concrete pipes should be used for class 1 only. Reinforced and prestressed pipes should be used for class 2. Specifications and site installation controls should be high to warrant class 2. This recommendation applies to pipe components. Additional safeguards will be essential for class 3.
Joint materials	Many joints systems are proprietary or have been developed over the years by various bodies such as WRc. A number of jointing methods are also described in the British Standard for pipes such as BS 5911-1:2002+A2:2010, BS EN 295-1:2013 and BS EN 598:2007+A1:2009.	Most flexible joints rely on a form of spigot and socket. Other methods include double collared joints, sleeved joints and flanged joinings. Welding is used for thermoplastics, steel and some non-ferrous metals. Flexible joints rely on an elastomeric sealing ring or gasket. Ethylene-propylene rubber and styrene butadiene rubber used in preference to natural rubber for normal sewage effluent, since natural rubber subject to biodegradation in sewage. Some aggressive materials may require use of other synthetic polymers.	Since many jointing systems are proprietary, necessary to confirm the classification and agree the specification details with the manufacturer.

Table 10.4 Chemical resistance of pipework materials (from BS EN 752:2008)

Relevant standards	Material or product	Notes
BS EN 206-1	Concrete	Specification, performance production and conformity
BS 8500		Complementary standard to BS EN 206
BS 8110		Specifies structural use of concrete
BS EN 197	Cement	
BS EN 12620	Aggregates for concrete	BS 8500-2 specifies requirements for recycle aggregates
BS EN 13242, PD 6682-6:2003, BS EN 13055-2		WIS 4-08-02(41) and the <i>Specification for highway works</i> (42) give guidance on selection of pipe bedding materials
BS EN 295, BS 65	Clay pipes, fittings and joints, perforated pipes, manholes, jacking pipes, gullies and extra chemically resistant pipes	
BS EN 1916, BS EN 1917, BS 5911	Precast concrete pipes, inspection chambers, manholes and gullies	
BS 437, BS EN 877, BS 416	Grey iron pipes and gullies	
BS EN 598	Ductile iron sewer pipes and fittings	
BS EN 1852	PP pipes	
BS EN 12666	PE pipes	
BS EN 14364	GRP (UP) pipes	
BS EN 14758	Mineral modified PP pipes	
BS EN 13476	Thermoplastics structures wall pipes	
BS 4660	Ancillary underground drainage thermoplastics products	
BS 7158	Manholes and inspection chambers (plastic	
BS EN 124	Manhole covers and frames and gully gratings for roads	
BS EN 1433	Linear drainage channels	
BS 7099		BS 7097 is the complementary standard to BS EN 124
BS EN 13101	Manhole steps	
BS EN 14396	Manhole ladders	

Table 10.5 Performance comparison for pipework materials

Pipe material		Suitability for			Chemical resistance	Pressure pipeline	Above ground
		Class 1	Class 2	Class 3			
Clayware		✓✓✓	x	x	✓ ¹	x	x
Plastic		✓✓✓	✓✓✓	✓	✓✓✓	✓✓	✓✓✓
Metallic		✓✓✓	✓✓✓	✓	✓ ²	✓✓	✓✓✓
Cements	Unreinforced	✓✓✓	x	x	✓ ²	x	x
	Reinforced and pre-stressed	✓✓✓	✓✓	✓	✓ ²	x	x

Key

- ✓✓✓ = Good
- ✓✓ = Moderate
- ✓ = Poor
- x = Not suitable

Notes

- 1 Joints susceptible to chemical attack.
- 2 Requires internal coating to achieve chemical resistance.

10.9 FLAME ARRESTORS

Where there is a risk of flammable liquids and/or gasses being conveyed by the transfer system, consideration should be given to installing traps in gullies, inspection chambers and tanks etc to prevent the spread of fire.

10.10 SYSTEM TESTING

BS EN 1610:1998 describes procedures for air and water testing of drains and ancillary works for gravity pipe networks. All below-ground pipelines should be tested before and after backfilling.

Testing of pressure pipes should be completed in accordance with BS EN 805:2000.

11 Sacrificial areas and temporary containment

This chapter provides:

- An introduction to sacrificial areas and temporary containment (Section 11.1)
- Examples of sacrificial areas (Section 11.2)
- Advice on the preparation of emergency plans where sacrificial area or temporary containment forms part of the planned response to an incident (Section 11.3)
- Advice on emergency and temporary containment measures (Section 11.4)

11.1 INTRODUCTION

This section illustrates examples of sacrificial and temporary methods of containment that may be used as part of a planned range of measures to manage an incident. These methods should be seen as means of mitigating the failure of secondary containment, rather than a replacement for it.

Sacrificial areas ‘sacrifice’ the soil or other media within which the event effluent is contained whereas temporary containment includes a range of measures where event effluent is contained by the planned installation of temporary measures such as portable barriers and booms.

Where sacrificial areas form part of an emergency plan, the sacrificial soil or media used to retain the pollutant should be contained within a barrier as the release of contaminants would be an offence (see Section 1.5.3).

11.2 EXAMPLES OF SACRIFICIAL AREAS

11.2.1 Car parks, sports fields and other landscaped areas

The method relies on interception of spills and conveying the event effluent to an area designated as a sacrificial site area. Sites that may be designated for this purpose include suitably ‘engineered’ car parks, landscaped areas, sports fields etc.

The sacrificial area contains the spill within a depth of permeable soil or porous media (the sacrificial media), which should have sufficient infiltration capacity to cater for the inflow rate of the event effluent. The event effluent must be prevented from dispersing into other strata or groundwater by an impermeable barrier of clay, or by some other impermeable lining system.

The sacrificial area should be designed to allow infiltration into the sacrificial media to prevent runoff. This requires that the area is provided with adequate under-drainage to cope with percolation of rainfall and that the drainage outfall is capable of being shut off quickly and effectively during an incident.

After the incident, the sacrificial media should be excavated and disposed to a licensed disposal site as soon as possible after the incident. Alternatively the sacrificial media can be treated on site provided the activity is permitted by the regulator.

Areas drained by sustainable drainage systems that rely on infiltration devices such as soakaways and infiltration trenches and sites with a high water table are not suitable as sacrificial areas.

Figure 11.1 illustrates an example of a landscaped area used as a sacrificial area. The source is surrounded by an impermeable catchment for directing spills and rainwater towards the sacrificial area.

The sacrificial media allows infiltration to the percolation drains. In this example, a concrete lined open channel is used to intercept the outlets of the drainage pipes. A sluice is used to close off the outlet of the channel during emergencies. An impermeable liner and leakage detection system is set below the sacrificial media of granular fill.

Effective design of the system will require a site investigation to confirm the requirement for the sacrificial area to be lined and testing of the media to determine if it is suitable and to establish an appropriate size and spacing for any drainage pipes that may be required.

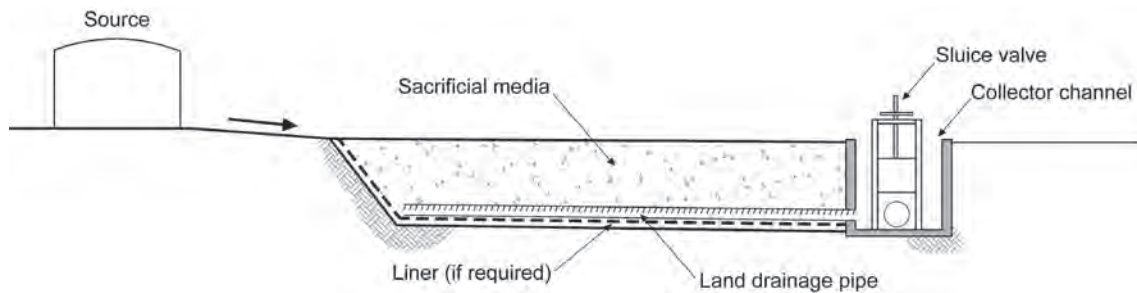


Figure 11.1 Section through a typical surface area using sacrificial media for containment

11.2.2 Areas surrounded by vertical cut-off walls

The most common method for constructing a vertical barrier wall is by excavating a trench under bentonite/cementitious slurry down to impermeable strata. The slurry hardens to form a low permeability, typically 1×10^{-8} to $1 \times 10^{-10} \text{ ms}^{-1}$, barrier with the strength of a stiff clay. Added integrity can be provided by installing HDPE or similar geomembranes vertically within the slurry. An example is shown by Figure 11.2.

Other methods involve excavation under a bentonite slurry followed by injection with a bentonite/cementitious grout.

The design of the cut-off wall should be informed by detailed site investigation to confirm presence and depth of an impermeable strata (aquiclude), any variation in the level of the aquiclude across the site and also the presence of any geological faults, fissures or discontinuities. The investigation should also determine the hydrogeology setting of the site and any physiochemical characteristics that may adversely affect the performance of the barrier wall.

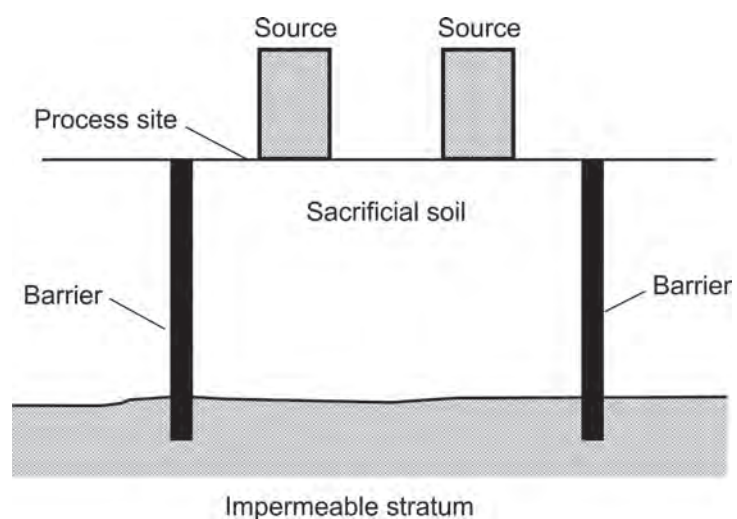


Figure 11.2 Section through barrier wall containment system

Vertical barrier walls may be used to enclose the entire circumference of a site rather than just a specific sacrificial area.

In the absence of an aquiclude, a low permeability horizontal layer can be created by grout injection, however, ensuring the integrity of such a system can be problematic.

As is the case for sacrificial areas, following an incident, the contaminated material within the cut-off wall will have to be either treated *in situ*, or removed to a licenced landfill.

11.3 EMERGENCY PLANS FOR SACRIFICIAL AREAS

The regulator should be consulted on the use of sacrificial areas for dealing with major spills. Sacrificial areas should not be located where they might endanger life or property in the event of an incident.

Where dual purpose areas are used for containment and these areas are provided with clean stormwater drainage facilities, it is essential that all operatives, the Fire and Rescue Service and any other emergency service, are made aware of the correct procedures for using the areas, including the diversion or closure of drains.

Where such areas are to be used for temporary containment, they should be clearly marked and fitted with audible alarms to warn operatives of the potential hazard when brought into use.

11.4 EMERGENCY AND TEMPORARY CONTAINMENT MEASURES

11.4.1 Introduction

Permanent containment facilities such as those described in Chapters 7, 8 and 9 will be provided at most sites as part of emergency planning for controlling hazardous substances. The plan should include incident response strategies and preventative measures for dealing with exceptional events that cannot be dealt with by the permanent facility, or the permanent facilities fail.

The provision of emergency and temporary containment measures should be determined on a case specific basis, depending on risk and the existence of other control measures, in accordance with the pollution prevention hierarchy. Guidance on this can be found within EA, NIEA, SEPA (2011b) and discussed with the regulator.

Where it is proposed to use booms, sand bags, cut-off trenches etc as part of the planned response to an incident, details of the planned response should be determined as far as is practical as part of the contingency planning, rather than trying to plan it during an incident, noting that it takes time for these containment measure to be deployed. Therefore, if they are to be relied upon, the scenario planning should demonstrate that there is adequate time, equipment and competent people available for their deployment at all times. A hierarchical task analysis is a means to demonstrate that this is achievable.

For example, where using booms across a river the following issues should be considered:

- the location of the boom in different event scenarios
- the amount of boom required in each situation
- ensuring that there are anchor points available to secure the boom
- the time needed to get the boom to the required location compared to the time it would take for the event effluent to reach the river
- the availability of resources to deploy the boom in an emergency situation, ie are they available 24/7/52
- ensuring that the personnel who are to install the boom have visited the site and are familiar with the location
- would access be compromised by the incident.

Similarly, if the contingency is for materials to be tankered off site for disposal to reduce volume of containment required on site, then the operator should consider:

- how many tankers are required
- can they reach the site before overtopping occurs
- would access be compromised by the incident

- will they be available 24/7/52
- can the drawdown rate match the rate required to prevent overtopping
- how long is haulage to disposal point/return journey
- how does this affect driving time and rest periods for drivers.

Advice on preparing an emergency plan can be found in PPG 21 (EA, NIEA, SEPA, 2009) and on managing a spill in PPG 22 (EA, NIEA, SEPA, 2011b). Further advice on responding to an incident can be found in Section 3.2 of DCLG (2008).

11.4.2 Temporary containment measures and emergency materials and equipment

Examples of temporary containment measures and emergency materials and equipment are below, and include:

- temporary bunding of car parking areas and other hard standings
- drain pipe seals
- interception/detention pits and trenches
- portable tanks and tankers
- absorbents
- booms.

Temporary bunding of car parking areas and other hard standings

Impermeable yards, roads and parking areas can be converted to temporary lagoons using sandbags, suitable excavated soils or sand from emergency spoil heaps to form perimeter bunds. This is shown schematically in Figure 11.3.

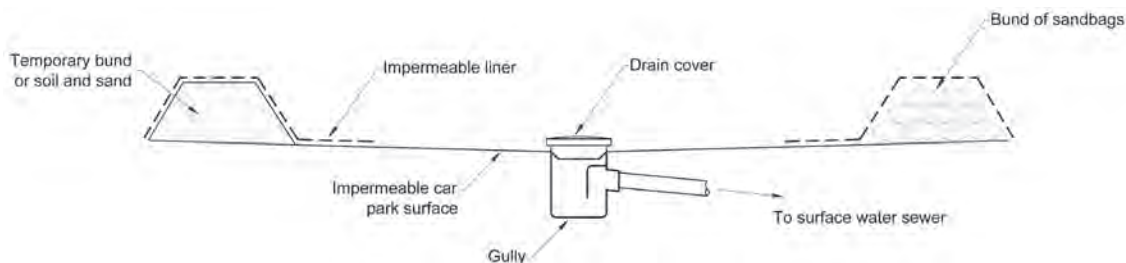


Figure 11.3 Sacrificial car park area showing temporary bunds and drain seals

Liners may be used to help protect the bunding material from contamination and to help improve the permeability of the land surface. Where soil or sand used for bunding becomes contaminated it should be properly disposed of as sacrificial material. Pits can be excavated and lined to form temporary sumps for collecting and pumping pollutants.

An alternative means of creating a temporary bund is the use of a 'barrier boom'. These are part inflatable and part water-filled booms designed to contain liquids on a hard surface and are similar in concept to a floating boom used to contain oil spills on water. A number of Fire and Rescue Services are now equipped with these booms. If reliance is to be placed on a boom as part of incident response planning, it will be important to establish with the Fire and Rescue Service if they would make sufficient available as part of their first response. Alternatively, operators should consider providing their own equipment where deemed necessary by the incident response plan.

All drain inlets such as gullies and manhole covers within the containment area should be sealed to prevent the escape of pollutants. Proprietary equipment for this purpose such as drain mats is available from a number of manufacturers.

Drain pipe seals

Pipe seals can be used within a drainage system to prevent the escape of spillages from the temporary containment area, which can have the added advantage of using the pipe-full storage capacity of the pipe network.

However, before relying on pipe network storage, the layout and condition of the system should be established (see Chapter 5) to prevent inadvertently creating additional pathways.

Seals should be kept in a readily accessible location close to vulnerable drainage runs. Care should be taken in their installation to avoid exposure to hazardous conditions within the drainage system and to ensure that the contained liquid does not overflow into other gullies or drainage systems. Special arrangements will be necessary to empty the system after use.

It is good practice that a record of where and when pipes have been sealed temporarily is maintained and also when they are removed.

It is also good practice that emergency equipment is stored securely, its condition checked periodically and that there are clear protocols for accessing this equipment in an emergency.

Interception/detention pits and trenches

Interception trenches should be used only where other methods have failed and where it is essential to protect life, or where the risk of damage to the environment, or property, outweighs the threat of ground or groundwater contamination. Where the natural ground is relatively impermeable, contamination will be minimised by removing the pollutant as soon as possible after the incident. Liners can be used as temporary barriers to improve impermeability although these cannot be used in fires or for deleterious substances. After the event, contaminated earth should be removed to a disposal site. Pits and trenches may help prevent the spread of burning substances.

Portable tanks and tankers

Portable tanks made from materials resistant to the spilt material can be used to contain small spills and might include IBCs, ISO tanks and stainless steel tanks. In most cases a sump or pit is needed to collect and pump the pollutant into the tank. Although care should be taken when pumping potentially flammable materials that the pump does not provide an ignition source.

Vacuum or similar mobile tankers may also be used for collecting and containing small spills. Where tanks and tankers are part of an emergency plan, these should be in a readily accessible location and maintained in a serviceable condition. However, vacuum tankers when handling anything flammable can exhaust flammable vapour, which if adjacent to unprotected electrical or non-electrical equipment, would constitute an ignition hazard.

Diesel truck engines (or diesel pumps) should be suitably protected to avoid ingesting such flammable vapours. Conventional 'gully suckers' should not be used for such work.

Where tanks and tankers are part of an emergency plan, these should be maintained in a serviceable condition and the time it would take to get them from their storage location factored into the emergency plan as should access under the scenarios considered.

Absorbents

Proprietary absorbents, as well as materials such as sand and sawdust may be used to soak up small spillages provided they will not react with the substance. Stocks of suitable absorbents should be available adjacent to potential spillage sites. The regulator is able to advise on suitable absorbents, including proprietary absorbents.

Contaminated absorbent should be disposed of appropriately under the producer's normal duty of care.

Booms

Floating booms are used to contain spills of oil and similar substances that float on water, to prevent migration and to facilitate clearing operations. As with barrier booms, a number of Fire and Rescue Services are now equipped with these floating booms. If reliance is to be placed on a floating boom as part of incident response planning, it will be important to establish with the Fire and Rescue Service if they would make sufficient available as part of their first response. Alternatively, operators should consider providing their own equipment where deemed necessary by the incident response plan.

Unless mechanically deployed, it is unlikely that a boom could be deployed directly around flammable materials due to the risk to personnel. In such circumstances a boom may have to be placed a safe distance from the spill and the spill allowed to spread to this safe limit. Note that it may simply be unsafe to deploy a boom at all.

12 Repair and upgrading of existing containment facilities

This chapter provides:

- An brief introduction to the upgrading of existing containment facilities explaining the links with other sections of this guidance (Section 12.1)
- Advice on the maintenance and repair of concrete bund walls (Section 12.2)
- Advice on the modification of earth bund (Section 12.3)
- Advice on the modification to existing bund walls (Section 12.4)
- Advice the repair and upgrading of drainage and transfer systems (Section 12.5)
- Advice the repair and upgrading of joints and pipe penetrations (Sections 12.6 and 12.7)
- Advice on upgrading warehouses (Section 12.8)

12.1 INTRODUCTION

This chapter provides advice on the repair and upgrading of existing containment facilities with reference to other chapters in Part 3 as appropriate. Upgrading of an existing containment facility may be required following an assessment described in Section 5.3.

12.2 GENERAL MAINTENANCE AND REPAIR OF CONCRETE BUND WALLS

This section describes the main problems that are likely to affect concrete bund walls and the repair techniques that are available. Concrete is an inherently durable construction material, suitable for a wide range of applications, but it still requires maintenance. Defects can develop when in service due to natural movements such as thermal expansion, or chemical attack or physical damage. Regular inspection by an experienced person familiar with the common deterioration mechanisms is necessary to ensure the asset continues to perform properly in service.

12.2.1 Defects

Defects may be categorised broadly as cracks, local surface deterioration, and general surface deterioration.

Cracks can be caused by stresses:

- at the time of construction (plastic cracking)
- that develop during service due to either thermal or shrinkage movement
- due to overloading such as vehicle impact
- as a result of expansion and heat damage to the concrete and reinforcement following a fire.

In addition, cracking of bund floors may be the result of uneven or inadequate ground support, or heave of the sub-soils.

Cracks that penetrate the full thickness of a wall or slab can compromise the containment if they are of sufficient width and can also lead to corrosion of the reinforcement. For water-retaining reinforced concrete structures, any crack greater than 0.2 mm was traditionally considered to have the potential to seep water, with finer cracks undergoing a process of self-healing when wet, provided the crack has stabilised.

For containment structures there are particular issues that need to be considered:

- low viscosity oils or solvents may penetrate through fine cracks of less than 0.2 mm, which may not self-heal

- acidic water (<pH 5.5) passing through a narrow crack will widen it and increase the rate of leakage
- waters containing halides such as chloride salts will attack reinforcement crossing the crack and result in loss of section (covered later in this section).

Concrete Society (2010) gives useful advice on the causes and interpretation of cracking in concrete structures.

Local surface deterioration may be caused by:

- variability in quality of the laid concrete (eg poor compaction in a particular area, often called honeycombing, which can penetrate deep into the wall or slab)
- local exposure to aggressive agents (eg small spills from a storage tank, sulphates in the ground)
- mechanical abrasion.

Variability in the quality of concrete is often easy to detect, as weaker concrete may remain damp for longer after rainfall and/or be a source of dampness or leakage through a wall or slab. Areas that are particularly prone to poor compaction are construction joints, with the kicker joint normally used to build the wall element off the slab or ground beam. Patches of dampness at the base of a wall just above the horizontal kicker joint may indicate honeycombing of the concrete.

Poorly compacted concrete or concrete that is poorly cured will be more prone to deterioration than well-compacted concrete. This includes increased risk of damage when exposed to freezing and thawing, reduced resistance to carbonation and chloride ion penetration and reduced resistance to acids or other chemicals.

Certain aggressive agents can attack the cement matrix itself (and where present, acid-soluble aggregate, eg limestone) leading to surface damage that, in its early stages, causes the aggregate to be exposed. Eventually the cement matrix may be weakened to the extent that the aggregate falls away, exposing a new surface, which is likely to be more porous and thereby accelerating the deterioration.

Concrete resists many aqueous liquids of pH 5.5 and above, but is primarily affected by sulfates and acids as well as some of the more unusual chemicals such as milk, which generates lactic acid (see Box 12.1). Further information on the resistance of concrete to a range of common chemicals is given in ACI (2013).

With low pH liquids, the reactions will be faster and damage can be severe and expansive, so additional protection is needed (see Section 12.2.3)

Sulphate attack of concrete is a chemical reaction that causes expansion and cracking in the concrete. Sulphates can originate from the soil or groundwater or from sulphates in chemical spillages and if the concrete is not designed to current standards for the level of exposure, severe sulphate expansion can weaken the element and affect the performance of the containment.

Table 12.1 Possible reasons for using surface protection on cementitious surfaces (after Concrete Society, 1997)

Description	Commentary	Action
A joint with a stainless steel waterstop and fire and product resistant sealants	This meets current good practice and no upgrade would be required. It is unlikely to have a significant rate of liquid egress from the joint during an incident, with or without fire.	None
A joint with a plastic waterstop and stainless steel cover plate designed to ensure product and fire resistance to BS 476	This meets current good practice and no upgrade would be required. It is unlikely to have a significant rate of liquid egress from joint although loss of integrity of the plastic waterstop may eventually occur after protracted heat exposure	None
A joint with no waterstop but with a stainless steel cover plate, with product and fire resistant sealants designed to ensure fire resistance to BS 476	This joint may be considered to be fire resistant and would be considered impermeable (liquid tight) whilst the product-resistant sealant remains in good condition. Leakage rate through movement of the joint would also be expected to increase with sealant ageing.	Frequent sealant inspection and replacement routines should be in place to ensure sealants remain in a good condition.
A joint with no waterstop, no cover plate but with product- and fire-resistant sealant	This joint only provides limited fire resistance and is impermeable only when the product resistant sealant remains in good condition. Leakage rate through movement of the joint would be expected to increase with sealant ageing.	As a minimum, this should be upgraded with a stainless steel cover plate and inspection and replacement routines shall be in place to ensure sealants remain in good condition
A joint with product-resistant sealant but no waterstop, no stainless steel cover plate and no fire-resistant sealants	This joint will be impermeable whilst the sealant remains in good condition but is not fire-resistant, and would be expected to leak rapidly following a fire. Leakage rates through movement of the joint would be expected to increase with sealant ageing.	As a minimum, this joint should be upgraded with a stainless steel cover plate and fire-resistant sealants. In addition, inspection and replacement routines shall be in place to ensure sealants remain in good condition.

Physical damage, such as mechanical abrasion, will not only appear unsightly, but the loss of thickness of concrete over the reinforcing bar can accelerate deterioration, leading to corrosion of the reinforcement. As necessary, an additional harder-wearing concrete layer or a surface protection system may need to be added.

General surface deterioration can be the result of:

- exposure to aggressive agents over a wider area
- inadequate specification and/or poor standard of construction
- inadequate curing
- exposure to freezing and thawing cycles
- mechanical abrasion.

Often, the cause of general surface deterioration can be attributed to issues with the original concrete design specification and/or the workmanship used, and is indicative of a general failure of the concrete to resist the prevailing environment. Codes and standards for the design of reinforced concrete have changed significantly over the past 20 years and current requirements have become onerous in terms of strength and composition.

Where unacceptable and widespread deterioration is taking place that could weaken the containment structure, general additional protection may be needed using a surface protection system, or replacement of the affected elements may be justified.

Corrosion of reinforcing bar in a wall or slab can be caused by a variety of different mechanisms. The most common causes are exposure to acidic gases (eg atmospheric carbon dioxide) or halides such as chloride ion from sea spray (eg coastal facilities, chloride-containing spillages).

Corrosion of bars is often first seen in the concrete surface in areas where the concrete quality is poor or the cover thickness is particularly low. Initiated by 'carbonation' of the concrete, or chloride salt penetration, the reinforcing bar begins to rust, resulting in expansion on the bar surface that cracks the concrete and eventually it spalls off. This is not only unsightly, but it will propagate, with the spalling and corrosion getting progressively worse. This will weaken the wall or slab and in severe cases could lead to structural weakening depending on the location (eg the base of walls by the kicker joints is a point of maximum stress under hydrostatic or surge loads).

Corrosion of reinforcement down cracks or at joints due to leakage can result in localised corrosion and loss of bar cross section, so affecting strength and dowel action. Leaking cracks that have either typical white staining from the dissolved salts leaching from of the concrete, or brown staining typical of rust, are warning signs of potential problems.

12.2.2 Repair techniques

Before an appropriate method of repair can be specified, the cause of the damage should be established and if possible, removed or otherwise mitigated. Guidance on the deterioration and repair of concrete structures is given in many publications and most recently in BS EN 1504-9:2008 (see also Grantham, 2011), Institution of Civil Engineers (2009) (which covers concrete mix design, properties, testing and repair) and Concrete Society (2009b).

BS EN 1504-9:2008 provides 11 principles and 43 methods of repair relating to degradation of the concrete matrix or corrosion of the reinforcement. In accordance with Regulation (EU) No 305/2011 (CPR), manufacturers apply to have their products tested and certified for compliance to one or more methods of repair, and have to achieve the minimum performance requirements for the relevant part of BS EN 1504-9:2008 dealing with the method or methods, for which the product receives a CE mark. In selecting an appropriate product, it is therefore important to establish the cause of the defect and choose materials certified to the correct method.

Figure 12.1 summarises the common deterioration processes that affect concrete and reinforced concrete structures, based on BS EN 1504-9:2008.

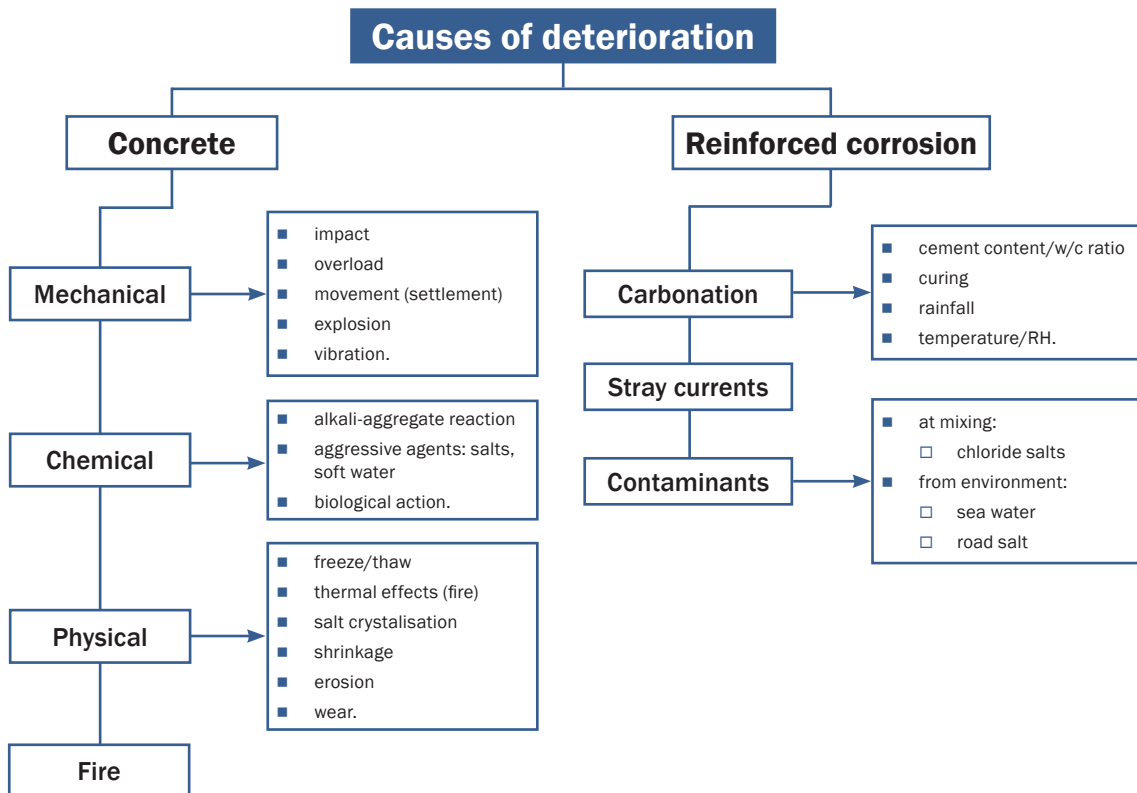


Figure 12.1 Common deterioration processes that affect concrete and reinforced concrete structures (after BS EN 1504-9:2008)

The common repairs that are needed for concrete containment structures, and where specific methods apply, include:

- crack repair
- chemical attack due to spillages
- filling holes/penetrations through walls
- addressing corrosion damage
- modifying walls (see Section 12.3)
- upgrading surface protection (see Section 12.2.3).

A general guide to repair techniques is provided in Appendix A10, which also contains a full listing of principles and methods for repair.

Cracks have a variety of causes and so proper investigation as to their cause is needed before they are treated. Moving cracks that respond to daily or seasonal temperature changes are 'live' and more difficult to address, compared with 'dead' or inactive cracks. Cracks through the full thickness of the wall or slab that leak, should be sealed to prevent leakage and protect the reinforcement using materials approved for BS EN 1504-9:2008 Method 1.5 (filling of cracks).

Where cracking is non-structural, due to thermal or shrinkage stresses, the crack width may be substantial (over 1 mm) if the design or construction was inappropriate. To be effective, the crack should be sealed by injecting a rigid material into the full thickness of the element, as this will protect the material from sunlight or the effects of heat if there were a fire. Surface treatments pointed into chases in the surface will be more prone to failure.

Where the crack is actively opening and closing in response to temperature, the materials used must be ductile as well as leak-resistant. Guidance on the performance of materials for sealing live and dead cracks is given in BS EN 1504-5:2013. If the movement is excessive and beyond the range of the injection materials, then the crack will need to be detailed as a proper joint that will accommodate movement yet remain leak-resistant (see Section 12.6).

Where wide cracks are forming and opening under applied loadings, eg at the foot of the walls of a bund during a hydrostatic or load test (see Chapter 5) to assist with assessing the structural integrity of the wall, this may indicate structural deficiency due to the design being inadequate for the intended loads. If so, it may be necessary to structurally strengthen the wall by injecting the cracks with a structural injection product and to:

- reduce future loadings (while the volume of primary inventory could be reduced, there is no guarantee that during an incident the bund could not be completely filled with firefighting and or cooling water. Therefore an overflow would have to be introduced to reduce the depth of liquid that could be retained)
- strengthen or prop the walls.

Alternatively, it may be necessary to reconstruct the wall.

If a bund floor is cracked, this may be the result of inadequate or uneven support and the subgrade will need to be treated and stabilised before the slab is repaired, otherwise the problem will recur. This may require breaking out the damaged slab, although there are techniques available to inject beneath slabs to strengthen and support them.

Chemical attack causing localised damage to a bund floor can be addressed by cutting out the affected material back to sound concrete and using a bonded thin-layer repair mortar or concrete to BS EN 1504-9:2008 Method 6.3 (adding mortar or concrete) that complies with BS EN 1504-3:2005 to restore the profile. Depending on the cause of the localised damage, the repair may need to use a resin rather than cementitious binder to combat particular chemicals. Alternatively, the bund may need application of a surface protection system to BS EN 1504-9:2008 Method 6.1 (see Section 12.2.3).

Filling holes/penetrations through walls or slabs is often required as a result of changes to pipe routings, identification of deficiencies (eg tie-bolt holes) or other causes. Repairs can be completed using materials complying with BS EN 1504-9:2008 Methods 3.1 and 3.2 that are suitable for the intended size of repair. In all cases, the hole should be cleaned and any lining material removed (eg plastic sleeve).

Tie-bolt holes in walls that are less than 50 mm diameter can best be plugged with a stiff, dry mortar forced into the full depth of the hole to form a complete seal.

Larger holes (eg core holes and pipe penetrations) require the sides to the inner face to be cut back and roughened to provide a tapering hole that will form a wedge against hydrostatic pressure, before they are filled with trowel-applied repair mortar or a flowing concrete (which for walls will need formwork fixed in place).

Large openings, typically where the smallest dimension (width or height) is greater than 0.5 m, particularly those located at the tops of walls that could be subjected to heat from a pool fire, should include reinforcement that is either lapped, welded or suitably anchored (BS EN 1504-9:2008 Method 4.2) to the existing wall to form a proper reinforced repair, preventing the 'plug' of concrete from detaching.

Corrosion damage to the wall can be repaired by one of many methods listed under Principles 7 to 11 in BS EN 1504-9:2008, but patch repair (BS EN 1504-9:2008 Method 7.2) is the most common. This method requires identification of the cause of corrosion (eg low cover, carbonation, chloride penetration) and then requires contaminated concrete to be removed, reinforcement cleaned and then new material added to restore the passive (non-corroding) state of the affected bars. If significant section loss has occurred to the reinforcement, then additional bar may need to be added to restore the structural capacity in critically loaded structural situations (eg base of walls).

A general guide to repair techniques is provided in Appendix A10.

12.2.3 Surface protection

Containment needs can change, particularly with changes in ownership, but concrete bunds remain a flexible and adaptable means of containment and can be upgraded to provide additional surface protection to the concrete.

As discussed earlier, various chemicals can attack the unprotected concrete surface. Concrete Society (1997) provides practical guidance on the selection, application and workmanship required for the successful application of surface protection systems to concrete. ACI (1985) gives a particularly detailed summary of the effect of chemicals on concrete.

Guidance on specification of products and systems for surface protection systems is given in BS EN 1504-2:2004. This gives performance requirements for products and systems to protect concrete against physical (BS EN 1504-9:2008 Method 5.1) and chemical (BS EN 1504-9:2008 Method 6.1) exposure. Requirements for the preparation of the concrete, application and quality control of the works are set out in BS EN 1504-10:2003

Careful consideration needs to be given to joint design to ensure enhanced surface protection is maintained across joints and any cracks in the concrete, which will often need to be specially reinforced to prevent reflective cracking through the paint film.

12.3 GENERAL MAINTENANCE AND REPAIR OF EARTH BANKED CONTAINMENT BASINS, EARTH BUNDS AND EARTH FLOORS

12.3.1 Defects

Defects to earthworks can occur for a number of reasons:

- Slumping or slope failure – the face or slope of the earth embankment becomes unstable (slips) due to changes in loading and/or moisture content.
- Settlement – weight of the embankment causing consolidation of the underlying soils.
- Subsidence – decrease in moisture content causing the underlying soils to shrink (this is generally confined to clayey soils).
- Heave – increase in moisture content causing the underlying soils to swell (this is generally confined to clayey soils and is most likely to affect earth-floored lagoons).
- Desiccation – soils dry out sufficiently to crack.
- Erosion.
- Animal burrows.

With the exception of erosion and animal burrows, these defects are generally symptomatic of flaws in the geotechnical design of the earthworks and the design of any remedial works should be completed by a competent person.

12.3.2 Repair techniques

Where an earth embankment has slumped, it should be reconstructed. If there are no apparent reasons why the embankment has failed, eg it has been subjected to greater loading than anticipated, the design should be reviewed before reconstruction (see Section 8.2).

If the crest of the embankment has settled over a relatively short period of time (several months) after construction and has then halted, then it is possible that no further consolidation will occur and the crest can simply be raised using the same soils and method of construction as for the original works. However, if the settlement is ongoing over a considerable period of time, it is likely that the embankment will have to be redesigned and replaced.

Subsidence and heave are fundamental properties of the underlying soils and if these occur, specialist geotechnical advice should be sought.

Where soils become desiccated, the only likely remedies are to prevent moisture loss by covering with a liner, or a suitable thickness of soils that are not prone to desiccation.

Erosion of soils by wind and rain can be minimised by ensuring that a good sward of grass cover is maintained. Where erosion is caused by vehicular or pedestrian movements, these movements should be prevented, or the embankment protected by providing a formally paved surface, or using a proprietary reinforcement product such as Grasscrete or similar products.

Burrowing animals should be deterred by protecting the faces of the embankment (see Section 8.8).

Where a section of embankment has to be replaced, it should be constructed using the same soils and method of construction as for the original works and tied into the existing bund as shown in Figure 12.2.

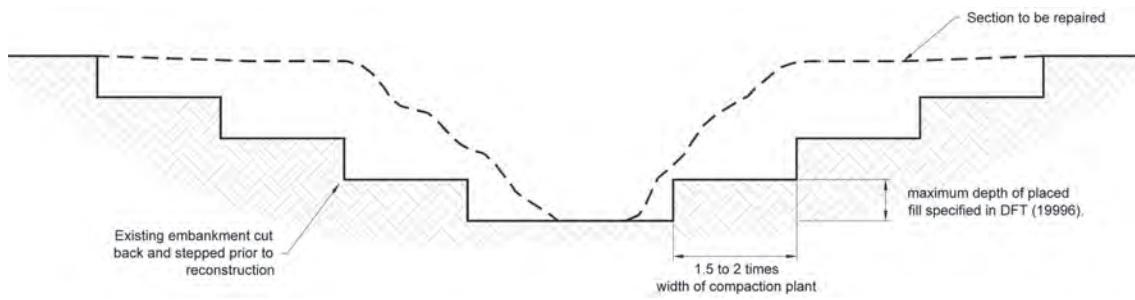


Figure 12.2 Tying into existing earthworks

12.4 MODIFICATIONS TO EXISTING BUND WALLS

Where a facility is to be extended, the construction of any new sections of bund wall that may be required should follow the guidance in Chapters 7 or 8 as appropriate.

Increasing the capacity of a containment facility can be achieved by raising the bund wall. However, for reinforced concrete and blockwork walls, the overall height should not exceed 1.5 m for the safety reasons set out in Section 6.3.1. Bund volume can also be increased by expanding bund area using a new section of bund. However, this can increase fire risk if it increases potential pool size, but the risk can be minimised by retaining a dividing wall between old and new bund areas. All such modifications must be designed to the same standards as the rest of the construction and built by an appropriately experienced contractor to ensure the works follow the guidance in this publication.

Before raising the crest of an existing reinforced concrete and blockwork wall, it should first be established that the wall has sufficient strength to cater for the additional loading that would be applied. For an earth embankment wall, slope stability issues should first be considered.

The additional height of wall should be tied into the existing reinforced concrete or blockwork wall by grouting in reinforcement 'starter' or 'dowel' bars at appropriate centres and anchorage depths. Anchoring resins should comply with BS EN 1504-6:2006 (BS EN 1504-9:2008 Method 4.2) and the crest of the existing walled should be scabbled and cleaned to facilitate a good bond. It may be appropriate to use a bonding agent specified in accordance with BS EN 1504-4:2004 (BS EN 1504-9:2008 Method 4.4).

12.5 DRAINAGE AND TRANSFER SYSTEMS

In situ repair techniques for pipelines can be found in WRc (2001):

- glassfibre concrete and glass reinforced plastic linings, which are bonded to the interior of existing pipes
- non-bonded lining systems such as PE pipes or thermosetting resin and other plastic liners inserted within the old pipe
- lightweight GRP or resin plastic liners used as annular formwork for injected grout.

It is important to note that these *in situ* repairs can reduce the capacity of the pipeline, however, the loss of capacity is often offset at least in part by the improved flow characteristics (reduced roughness) of the lining system.

Lining a pipe with a chemically resistant lining system can provide a means of upgrading the class of a transfer system.

The advice of a specialist contract should be sought on techniques appropriate to the nature of the site and the condition of the existing system.

12.6 JOINTS

Assuming that the bund wall has sufficient strength to cater for the design loading, it is likely to be the fire resistance of the joints, waterstops and penetrations that give rise to the greatest concern with respect to the performance of the containment system during an incident involving flammable inventory. The failure of the joints and issues with pipe penetrations were identified by HSE (2009a) as contributing factors to the loss of containment.

Waterstops should have been installed in all new walls built to CIRIA R164 and BS 8007:1987 standards. They should be installed in the centre of walls across movement joints, with rear-facing waterstops installed beneath slab joints, to provide the most effective way of minimising leakage from bund joints.

As set out in Section 5.6.1, where an existing facility is assessed and joints are shown not to comply with the guidance, then measures are needed to upgrade the performance of the joints. Even where a burning inventory is not a risk, successful containment of liquids will require waterstops across movement joints, as mastic sealants cannot be relied upon as a sole line of defence for the joint. Even if the sealant installation is to a high standard, the cyclic movement of the joint will lead to failure of the sealant over time, in itself demanding regular and careful inspection and replacement of sealants. Some form of flexible waterstop is required in addition to the sealant.

It is an easier task to provide a retrofitted flexible waterstop system across movement joints that will not be subject to fire. Flexible sheeting can be bonded to the concrete surface across the joint to provide a watertight and chemically-resistant seal. In areas subject to trafficking, the seal will need protection against damage.

Where there is a current or future risk of escape accompanied by fire, then where practicable, existing joints should be upgraded to provide fire resistant waterstops (normally metal) within the concrete and/or fireproof joints. However it is recognised that retrofitting waterstops to existing bund wall joints is not a simple task and may ultimately degrade the joint integrity.

Table 12.1 lists a range of possible existing bund wall joint arrangements and reviews product resistance, fire resistance and upgrade options for each arrangement drawn from HSE (2009a). This applies principally to the containment of potentially flammable inventory.

A typical detail of a plated joint is provided in Figure 12.3.

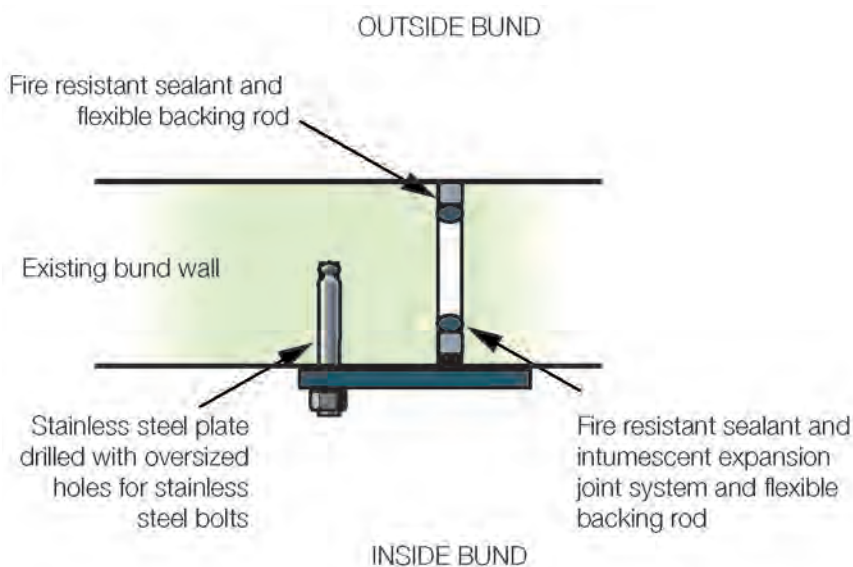


Figure 12.3 Wall plate joint detail (from HSE, 2009)

Table 12.1 Upgrade options for joints (from HSE, 2009)

Description	Commentary	Action
A joint with a stainless steel waterstop and fire and product resistant sealants	This meets current good practice and no upgrade would be required It is unlikely to have a significant rate of liquid egress from the joint during an incident, with or without fire	None
A joint with a plastic waterstop and stainless steel cover plate designed to ensure product and fire resistance to BS 476-10:2009	This meets current good practice and no upgrade would be required It is unlikely to have a significant rate of liquid egress from joint although loss of integrity of the plastic waterstop may eventually occur after protracted heat exposure	None
A joint with no waterstop but with a stainless steel cover plate, with product and fire resistant sealants designed to ensure fire resistance to BS 476-10:2009	This joint may be considered to be fire resistant and would be considered impermeable (liquid tight) while the product-resistant sealant remains in good condition Leakage rate through movement of the joint would also be expected to increase with sealant ageing	Frequent sealant inspection and replacement routines should be in place to ensure sealants remain in a good condition
A joint with no waterstop, no cover plate but with product- and fire-resistant sealant	This joint only provides limited fire resistance and is impermeable only when the product resistant sealant remains in good condition. Leakage rate through movement of the joint would be expected to increase with sealant ageing	As a minimum, this should be upgraded with a stainless steel cover plate and inspection and replacement routines shall be in place to ensure sealants remain in good condition
A joint with product-resistant sealant but no waterstop, no stainless steel cover plate and no fire resistant sealants	This joint will be impermeable while the sealant remains in good condition but is not fire resistant, and would be expected to leak rapidly following a fire Leakage rates through movement of the joint would be expected to increase with sealant ageing	As a minimum, this joint should be upgraded with a stainless steel cover plate and fire resistant sealants. In addition, inspection and replacement routines shall be in place to ensure sealants remain in good condition

12.7 PIPE PENETRATIONS

12.7.1 Introduction

Pipes should not penetrate through the slab and all such configurations should be re-routed over the bund walls and the holes through the slab sealed (see Section 12.2.2).

Typical penetrations at existing sites include a 'straight through', 'puddle flange' and 'sleeved' arrangement (see Figure 12.4).

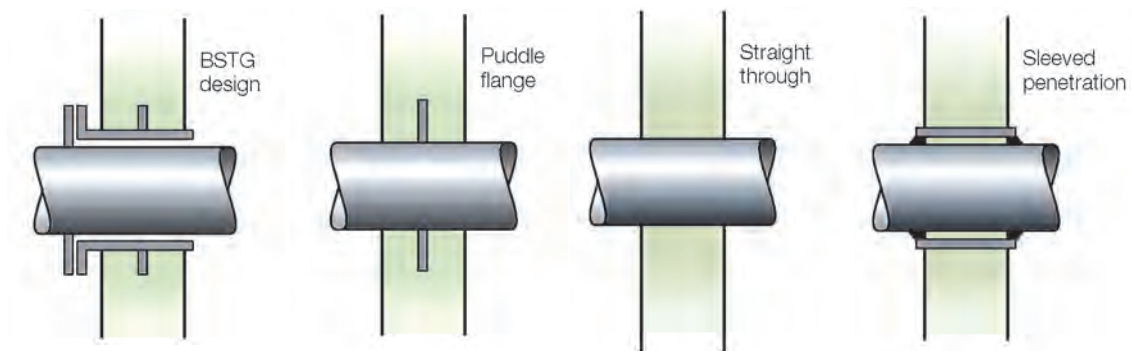


Figure 12.4 Typical bund penetrations (from HSE, 2009a)

The upgrading of existing pipe penetrations to provide a liquid tight, fire proof corrosion free joint is difficult to achieve. Any upgrade should be carefully reviewed to ensure that the upgraded penetration does not affect pipe flexibility and integrity, or that excessive forces are not exerted on the wall by

expanding pipework. Any proposal to upgrade an existing penetration should be assessed against the duty holder's obligation to reduce risk sufficiently to satisfy the law and in discussion with the regulator.

Where such an assessment considers the existing joints not to be fire resistant or leak tight, several upgrade options are provided in the following sections.

12.7.2 Straight through

Where existing pipes run through bund walls there is a possibility that corrosion crevices exist between the pipe and the wall.

One option is to bolt a steel fire protection plate (split for installation) sealed with fire/chemical resistant sealant. This is similar in principle to the steel plates for expansion joints covered in the next section. Split plates can be installed by cold methods without the need for removing the pipeline from service for modification and welding (see Figure 12.5).

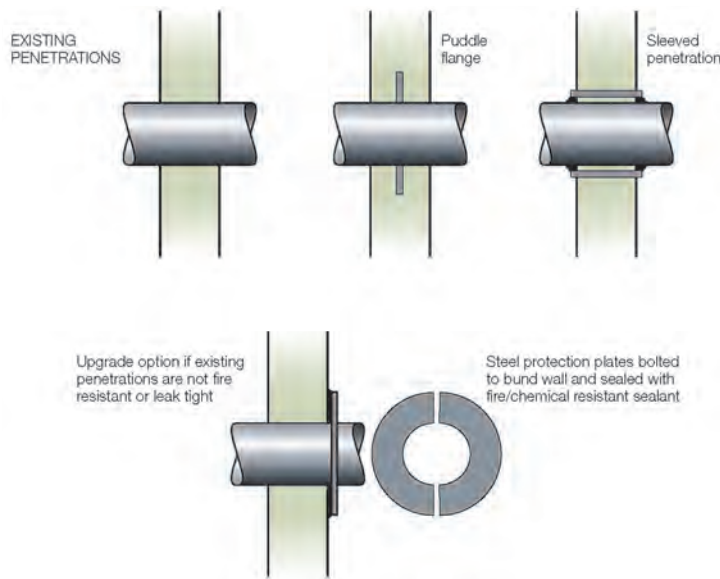


Figure 12.5 Steel split fire protection plate (from HSE, 2009a)

A second upgrade option is to reduce the pipe size (only local to the penetration) and use the existing pipe as a sleeve, which can then be sealed using a fire resistant sealant and protected on the inside face with a steel protection ring (see Figure 12.6).

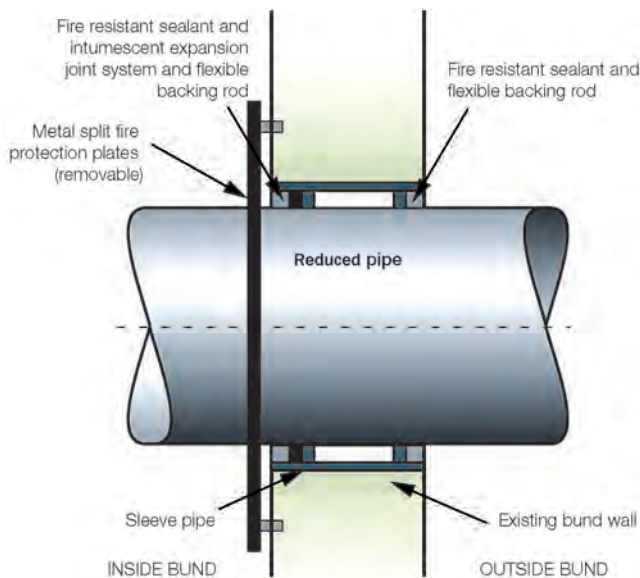


Figure 12.6 Sealed sleeve upgrade option (after HSE, 2009a)

Provided it was installed correctly, the puddle flange is inherently leak and fire proof. However, because it anchors the pipe to the wall, it can result in significant loads on the wall or tank during an incident, or buckling forces in pipes and joints, due to thermal expansion. Additional pipe block anchors may be needed to prevent long lengths of pipe generating high pressures.

12.7.3 Sleeved

Existing sleeved penetrations can be upgraded if required to include a fire resistant sealant and a split fire protection plate (see Figure 12.6).

12.8 WAREHOUSES

A significant proportion of pollution incidents involve fires in warehouses resulting in the release of inventory and/or contaminated firefighting water into the environment. This section provides advice on how the fabric of an existing warehouse can be modified to enhance containment.

In many cases the fabric of the building, ie the floor slab and the walls, has the potential to contain spillages of inventory. However, warehouse walls (if present) will be normally constructed from blockwork or brickwork and therefore would only be suitable for class 1 containment. Where class 2 or class 3 containment is required, bund walls, either internal, or external, to the warehouse will have to be constructed in accordance with Chapter 7.

Clearly, bunding the entire perimeter of a warehouse will potentially compromise access. Where the containment volume (see Chapter 4) is low enough, 'rollover' ramps (similar to speed humps may provide a solution. However, where this is not practical, bunds local to the stored inventory may be required. Internal bunds within a warehouse can also help limit the spread of spillages.

In addition to doorways, potential pathways should be identified and sealed. These might include:

- internal drainage (floor gullies, internal downpipes etc)
- defects in the floor slab
- service penetrations.

Where potentially corrosive inventory is stored, floor slabs might require protective coating. Where combustible inventory is required, floor joints may require upgrading (see Section 12.6).

Escape of inventory down the internal face of cladding from a jetting failure or similar of the primary containment can be prevented by installing splash guards/deflector plates to direct spillage to within the containment.

Where it is impractical to provide sufficient containment within the warehouse, it may be possible to provide remote secondary and/or tertiary containment by permanent or temporary bunding of external areas of hardstanding, eg car parks. The practicality of this option will depend on a number of issues including topography and availability of land (see Section 11.2).

Case study 12.1 is an example of how an existing warehouse was adapted to provide both secondary and tertiary containment.

Case study 12.1
Adaption of an existing warehouse, UK

Abbey Metal Finishing Company Ltd (Amfin) provides a metal surface finishing service to the aerospace and general industrials sectors. The 40 finishing operations include plating, anodizing treatments, painting, and plasma spraying involving a number of chemicals that are potentially hazardous to the environment. The site falls within the scope of COMAH 1999.

In April 2010, a large fire broke out at the premises. Fire crews attended and used a considerable amount of water to fight the fire. However, despite the best efforts of the Fire and Rescue Service using pollution prevention equipment (PPE), much of this firefighting water was contaminated with a cocktail of hazardous substances used in metal treatment that had entered the adjacent River Anker.

The incident resulted in approximately 27 000 fish deaths along a 6 km stretch of river and Amfin was subsequently charged for failing to take measures to prevent major accidents and limit their consequences to the environment. They had earlier pleaded guilty at Nuneaton Magistrates' Court. In particular, the emergency plan had failed as there were inadequate arrangements on site to contain the firewater, and no prior arrangements to access the sewerage system for emergency storage or tanker contaminated water off site.

Rather than rebuild the premise, a new site was sought that could be developed to provide a comprehensive containment strategy.

All chemical processing and undiluted process chemistry now used and stored within an internal secondary containment bund. The bund is epoxy coated to withstand chemical degradation, has no connection with foul of surface drainage and is permanently sealed. Quarterly preventative maintenance checks have been instigated on the site and repairs are carried out on the bund when issues are found. This bund has been designed to contain 125 per cent of the entire process chemistry within it and provides a secondary containment volume of 143 000 litres.



In addition, the external tertiary containment bunds have been constructed around the perimeter boundary to contain firefighting water and surface water runoff within the lower part of the sloping site. The external bund provides tertiary containment for 360 000 litres of firefighting water and has 538 000 litres of surface water runoff (based on the estimated depth of rainfall assuming a one per cent AEP event occurs during an incident). The total site containment available is some 981 000 litres.

Surface water runoff from the site, including the tertiary containment area, is drained to the Harrow Brook, which flows beyond the site boundary. During an incident, the tertiary containment is mobilised by the automatic activation of surface water shut-off valves triggered by a fire alarm, a power cut or by manual activation remote from the valve location. Foul sewer and surface water covers within the tertiary containment area are permanently sealed to prevent unauthorised release of firefighting water or stormwater into these systems.

In addition, an emergency contract has been taken out with Veolia Environmental that provides the attendance of tankers on site within an hour to pump out accumulated firefighting water and/or rainwater from within the secondary or tertiary containment bunds.

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- Pollution Prevention and Control Act 1999 (c. 24)
- Reservoirs Act 1975 (c. 23)
- Reservoirs (Scotland) Act 2011 (asp 9)

Directives

- Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive)
- Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (Seveso II)
- Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (codified version)
- Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance (Sevesco III)

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- Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC
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- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (No. 3242)
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- The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2010 (No. 1091)
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- Water Supply (Water Fixings) Regulations 1999 (No. 1148)

Standards

British

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- BS 8301:1985 *Code of practice for building drainage*
- BS 8007:1987 *Code of practice for design of concrete structures for retaining aqueous liquids*

BS 1377-5:1990 *Methods of test for soils for civil engineering purposes Compressibility, permeability and durability tests*

BS 5306-2:1990 *Fire extinguishing installations and equipment on premises Specification for sprinkler systems*

BS 6399-2:1997 *Loading for buildings. Code of practice for wind loads (withdrawn)*

BS 8110-1:1997 *Structural use of concrete. Code of practice for design and construction*

BS 5930:1999+A2:2010 *Code of practice for site investigations*

BS 6213:2000+A1:2010 *Selection of construction sealants. Guide*

BS 5911-1:2002+A2:2010 *Concrete pipes and ancillary concrete products Specification for unreinforced and reinforced concrete pipes (including jacking pipes) and fittings with flexible joints (complementary to BS EN 1916:2002)*

BS 8500-1:2006+A1:2012 *Concrete. Complementary British Standard to BS EN 206-1. Method of specifying and guidance for the specifier*

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BS 5502-22:2003+A1:2013 *Buildings and structures for agriculture Code of practice for design, construction and loading*

BS 6031:2009 *Code of practice for earthworks*

BS 476-10:2009 *Fire tests on building materials and structures Guide to the principles, selection, role and application of fire testing and their outputs*

BS 5502-50:1993+A2:2010 *Buildings and structures for agriculture. Code of practice for design, construction and use of storage tanks and reception pits for livestock slurry*

BS 799-5:2010 *Oil burning equipment. Carbon steel oil storage tanks. Specification*

BS 8550:2010 *Guide for the auditing of water quality sampling*

BS EN 295-1:2013 *Vitrified clay pipe systems for drains and sewers. Requirements for pipes, fittings and joints*

BS EN 598:2007+A1:2009 *Ductile iron pipes, fittings, accessories and their joints for sewerage applications – requirements and test methods*

BS EN 642:1995 *Prestressed concrete pressure pipes, cylinder and non-cylinder, including joints, fittings and specific requirement for prestressing steel for pipes*

BS EN 1610:1998 *Construction and testing of drains and sewers*

BS EN 1452-1:1999 *Plastics piping systems for water supply. Unplasticized poly (vinyl chloride) (PVC-U) General*

BS EN 805:2000 *Water supply. Requirements for systems and components outside buildings*

BS EN 206-1:2000 *Concrete specification, performance, production and conformity*

BS EN 13121-2:2003 *GRP tanks and vessels for use above ground composite materials. Chemical resistance*

BS EN 1504-10:2003 *Products and systems for the protection and repair of concrete structures. Definitions. Requirements. Quality control and evaluation of conformity. Site application of products and systems and quality control of the works*

BS EN 1504-2:2004 *Products and systems for the protection and repair of concrete structures. Definitions, requirements, quality control and evaluation of conformity. Surface protection systems for concrete*

BS EN 1992-1-1:2004 *Eurocode 2: Design of concrete structures. General rules and rules for buildings*

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BS EN 1997-1:2004 *Eurocode 7. Geotechnical design. General rules*

BS EN 1504-4:2004 *Products and systems for the protection and repair of concrete structures. Definitions, requirements, quality control and evaluation of conformity. Structural bonding*

BS EN 14015:2004 *Specification for the design and manufacture of site built, vertical, cylindrical, flat-bottomed, above ground, welded, steel tanks for the storage of liquids at ambient temperature and above*

BS EN 1504-3:2005 *Products and systems for the protection and repair of concrete structures. Definitions, requirements, quality control and evaluation of conformity. Structural and non-structural repair*

BS EN 1991-1-4:2005+A1:2020 *Eurocode 1. Actions on structures. General actions*

BS EN 1997-2:2007 *Eurocode 7. Geotechnical design. Ground investigation and testing*

BS EN 752:2008 *Drain and sewer systems outside buildings*

BS EN 1996-1-1:2005+A1:2012 *Eurocode 6: Design of masonry structures. General rules for reinforced and unreinforced masonry structures*

BS EN 1504-6:2006 *Products and systems for the protection and repair of concrete structures. Definitions, requirements, quality control and evaluation of conformity. Anchoring of reinforcing steel bar*

BS EN 1992-3:2006 *Design of concrete structures. Liquid retaining and containing structures*

NA to BS EN 1992-3:2006:2007 *UK National Annex to Eurocode 2. Design of concrete structures. Liquid retaining and containing structures*

BS EN 12845:2004+A2:2009 *Fixed firefighting systems. Automatic sprinkler systems. Design, installation and maintenance*

BS EN 598:2007+A1:2009 *Ductile iron pipes, fittings, accessories and their joints for sewerage applications. Requirements and test methods*

BS EN 1504-9:2008 *Products and systems for the protection and repair of concrete structures- Definitions, requirements, quality control and evaluation of conformity General principles for use of products and systems*

BS EN 13121-3:2008+A1:2010 *GRP tanks and vessels for use above ground. Design and workmanship*

BS EN 1504-5:2013 *Products and systems for the protection and repair of concrete structures. Definitions, requirements, quality control and evaluation of conformity Concrete injection*

BS EN ISO 9001:2008 *Quality management systems. Requirements*

BS EN ISO 11600:2003+A1:2011 *Building construction. Jointing products. Classification and requirements for sealants*

CP 110-1:1972 *Code of practice for the structural use of concrete Design, materials and workmanship* (superseded)

International

ISO/TR 26368:2012 *Environmental damage limitation from fire-fighting water runoff*

ISO 2531:2009 *Ductile iron pipes, fittings, accessories and their joints for water applications*

ISO 8179-1:2004 *Ductile iron pipes – external zinc-based coating. Part 1: Metallic zinc with finishing layer*

Useful websites

Environment and Countryside: <https://www.gov.uk/browse/environment-countryside>

European Centre for Toxicology and Ecotoxicology of Chemicals: www.ecetoc.org/publications

HSE 'ALARP' At a glance: www.hse.gov.uk/risk/theory/alarplance.htm

Appendices

A1 Summary of UK and European legislation and international guidance relevant to containment

It should be noted that the information presented in Tables A1.1 and A1.2 is not exhaustive. This high level summary presents the key regulations and guidance available at the time of publishing this guide and is intended to help the reader navigate to the most relevant regulatory instruments.

Table A1.1 UK and European legislation relevant to containment

Statutory Instrument	Detail	Description	Link
Council Directive 96/82/EC Directive 2003/105/EC (The Seveso II Directive)	Control of Major Accident and Hazards (COMAH) Regulations 1994 as amended	Places a duty on duty holders to ensure that major hazards have been addressed and all practicable steps have been taken to limit the probability and consequences of major accident hazards. Requires COMAH designated facilities to take all measures necessary with regard to the containment of hazardous liquids. * at the time of writing these Regulations are currently being updated to implement the Seveso III Directive (which will be implemented by 2015).	www.hse.gov.uk/comah/index.htm
Classification, labelling and packaging of substances and mixtures regulations	Regulation (EC) No 1272/2008	There are new scientific criteria used to assess the hazardous properties of chemicals including environmental hazards. This allows users to identify the environmental hazards specific to each material. * these Regulations will be fully enforced on 1 June 2015. This regulation is related to The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 and the European REACH Regulations 2007, which detail the requirements for material safety data sheets.	ec.europa.eu/enterprise/sectors/chemicals/classification/index_en.htm
The Environmental Permitting (England and Wales) Regulations 2010 The Pollution Prevention and Control (Scotland) Regulations 2012		This statutory instrument implements the IED Directive 2010/75/EU, which replaced a number of EU directives including Directive 2008/1/EC in January 2013. They are the principle regulations under which the process industry including power, oil refineries, iron and steel, metal finishing, chemical production, waste food and drink, farming, water abstraction and discharges etc are regulated. It covers all storage systems associated with these industries. It requires operations within its scope to obtain an Environmental Permit, under which the operation is regulated. One of the regulations requirements is that operators use BAT to prevent or minimise pollution from the operation of the installation, such that significant pollution will not be caused. The EU produces guidance on what represents BAT in a series of BREF notes, which are reviewed periodically. As well as sector BREF notes, there is a BREF note on emissions from storage commonly referred to as the Storage BREF Note (European Commission, 2006), which is currently scheduled to be reviewed in 2018.	www.environment-agency.gov.uk/business/topics/permitting/32320.aspx
Pollution Prevention Act Control Act 1999	Directive 2010/75/ EU (integrated pollution prevention and control)	The Pollution Prevention and Control Act 1999 is an enabling Act of Parliament under which regulations and Statutory Instruments controlling pollution can be made. The Environmental Permitting Regulations 2010 were made under this act.	www.environmentagency.gov.uk/business/regulation/109813.aspx
Pollution Prevention and Control (Scotland) (PPC) Regulations 2012		PPC 2012 permit and regulate many industrial activities that may pollute our environment. It came into force on 7 January 2013. These Regulations implement the requirements of Directive 2010/75/EU.	www.sepa.org.uk/air/process_industry_regulation/pollution_prevention__control.aspx
The Control of Pollution (Oil Storage) (England) Regulations 2001		These Regulations require anyone in England who stores more than 200 litres of oil, to provide more secure containment facilities for tanks, drums, intermediate bulk containers (IBCs) and mobile bowisers. This is to prevent oil escaping into the environment.	http://webarchive.nationalarchives.gov.uk/20140328084622/http://www.environment-agency.gov.uk/business/topics/oil/default.aspx

Table A1.1 UK and European legislation relevant to containment (contd)

<p>The Control of Pollution (Oil Storage) Regulations (Northern Ireland) 2010</p>		<p>The Regulations apply to above ground oil storage facilities on industrial, commercial and institutional residential sites. They also extend to companies who refine or distribute oil. The Regulations set minimum design standards for new and existing above ground oil storage facilities, codifying existing good practice to ensure that above ground oil storage facilities are adequately constructed. A key requirement of the Regulations is for the storage container to have a secondary containment system to ensure that any leaking or spilt oil is contained and does not enter the aquatic environment.</p>	<p>www.doeni.gov.uk/index/protect_the_environment/water/oil_storage.htm</p>
<p>The Water Environment (Oil Storage) (Scotland) Regulations 2006</p>		<p>The regulations apply to both new and existing oil storage tanks. The regulations set design standards for above-ground oil storage facilities: Where oil is stored in any portable container with a storage capacity of less than 200 litres, the container must be of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in its ordinary use. Where the container has a storage capacity of 200 litres or more, the regulations require provision of a secondary containment (a bund or drip-tray) to ensure that any leaking or spilt oil cannot enter the water environment.</p>	<p>www.sepa.org.uk/water/water_regulation/regimes/pollution_control/oil_storage.aspx</p>
<p>The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2010 (No. 1094)</p>		<p>These Regulations aim to prevent water pollution from stores of silage, slurry and agricultural fuel oil. They set out requirements for the design construction and maintenance of new, substantially reconstructed or substantially enlarged facilities for storing these substances. The regulations detailed the requirement that storage facilities should be sited at least 10 m from inland freshwater or coastal water and have a 20 year life expectancy. Guidance on how to comply with the Regulations is available from Defra (2010) and Welsh Assembly Government (2010).</p>	<p>www.environment-agency.gov.uk/business/sectors/118798.aspx</p>
<p>The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003</p>		<p>The regulations require that suitably sited, designed and constructed facilities are put in place to collect, store and manage manures and slurries. They also set minimum standards for new, substantially reconstructed, or enlarged structures, such as silos and slurry stores and the consideration of secondary containment measures.</p>	<p>www.sepa.org.uk/land/agriculture/agricultural_regulation.aspx</p>
<p>The Plant Protection Products (Sustainable Use) Regulations 2012</p>		<p>Set out the regulations in relation to the use of pesticides and insecticides that are plant protection products and includes guidance on use and storage of plant protection products.</p>	<p>www.plantprotection.info/UKPGOnline/Home.aspx</p>
<p>Waste Management Licencing (Northern Ireland) 2003</p>		<p>The waste regulation authorities issue licences for waste treatment, storage and disposal activities which generally include conditions on the storage of waste materials.</p>	<p>www.doeni.gov.uk/niea/waste-home/authorisation/license.htm</p>
<p>Contaminated Land (England) Regulations (2012)</p>		<p>The objectives of these Regulations are to provide an improved system for the identification and remediation of land where contamination is causing unacceptable risks to health or the environment. Such risks are to be assessed in the context of the current use and circumstances of the land in accordance with the Government's "suitable for use" approach. In the context of this document the regime is likely to focus on the assessment and remediation of sites where contamination may have entered soils as a result of containment failures.</p>	<p>www.defra.gov.uk/environment/quality/land</p>

Table A.1.1 UK and European legislation relevant to containment (contd)

<p>The Town & Country Planning Act (Assessment of Environmental Effects) Regulations 1999</p>	<p>(51/1988/1199)</p>	<p>These Regulations were developed in response to a European Directive requiring an assessment of the impact on the environment of projects likely to have significant effects. It applies to all planning applications for an EIA development as defined by the act. The act prohibits the granting of planning permission without first considering the status of the environmental information supplied. The EIA has become a vital tool used by local authorities to determine planning consent and permission. Note that for new installations or 'changes' to existing premises requires the assessment of materials on the environment and the identification whether control measures such as containment systems are required to minimise the potential impact on the environment.</p>	<p>www.legislation.gov.uk/uksi/2011/1824/introduction/made</p>
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Table A1.2 International guidance and publications relevant to containment

Author	Title	Description	Link
EA, SEPA, EHS (2013b)	How to comply with your environmental permit	Describes the standards and measures required to control the most common risks of pollution from various activities and how to comply with the conditions of environmental permits.	www.environment-agency.gov.uk/business/topics/permitting/32320.aspx
CA (2008a)	COMAH Competent Authority policy on containment of bulk hazardous liquids at COMAH establishments. The Control of Major Accident Hazards (COMAH) Regulations 1999	Primary regulatory policy statement on containment systems for COMAH sites	http://tinyurl.com/ncvclon
CA (2008b)	Supporting guidance for secondary and tertiary containment	Primary competent authority guidance. Establishes requirement for primary, secondary and tertiary containment.	http://tinyurl.com/perms60
CA (2008c)	Containment of bulk hazardous liquids at COMAH establishments. Containment policy. Supporting guidance for secondary and tertiary containment and implementation principles for regulators	Primary regulatory guidance on containment design for bulk storage at COMAH sites. Detailed guidance on the implementation for regulators.	http://tinyurl.com/p3eu4as
HSE, EA, SEPA (2010)	COMAH Competent Authority Workstream. Secondary and Tertiary Containment of Bulk Hazardous Liquids at COMAH Establishments	Guidance on secondary and tertiary containment for all Bunccefield 'in-scope' gasoline tanks, and tanks storing petroleum products.	www.hse.gov.uk/comah/guidance/bulk-hazardous-liquids.pdf
CA (in press)	"All measures necessary" – environmental aspects (guidance for competent authority inspectors and operators)	Guidance for CA inspectors and site operators on all measures necessary (AMN) relating to prevent and mitigation of environmental aspects of major accidents.	www.hse.gov.uk/comah
WS Atkins Consultants (2001)	Effects of secondary containment on source term modelling	Provides technical analysis on the effectiveness of secondary containment measures used within major hazard sites.	www.hse.gov.uk/research/crr_pdf/2001/crr01324.pdf
Wilkinson (1991)	Bund overtopping – the consequences following catastrophic failure of large volume liquid storage vessels	The emphasis of the study is on safety rather than pollution control. The findings indicate that pressures behind bund walls can peak at up to six times normal hydrostatic pressure in certain circumstances. Advice is given on bund size and geometry to minimise the risk of failure by spigot flow, 'sloshing' or overtopping.	
Cronin and Evans (2002)	A series of experiments to study the spreading of liquid pools with different bund arrangements	58 experiments were conducted to study the flow of water released from a slit at the base of a tank into a bund.	www.hse.gov.uk/research/crr_pdf/2002/crr02405.pdf
Atherton (2005)	An experimental investigation of bund wall overtopping and dynamic pressures on the bund wall following catastrophic failure of a storage vessel	Describes analysis for the surges that may occur following a catastrophic failure of a tank (and therefore overflow the bund).	www.hse.gov.uk/research/rpd/r333.pdf

Table A1.2 International guidance and publications relevant to containment (contd)

<p>HSE (2009)</p>	<p>Safety and environmental standards for fuel storage sites, Process Safety Leadership Group (PSLG), Final report</p>	<p>Specification of minimum standards of control which should be in place at all sites storing large volumes of gasoline.</p> <p>Document supersedes and replaces the following series of documents produced following the Buncefield incident:</p> <ul style="list-style-type: none"> ■ BSTG (2006) Initial Report to the Health and Safety Commission and the Environment Agency of the investigation into the explosions and fires at the Buncefield oil storage and transfer depot, Hemel Hempstead, on 11 December 2005 ■ BSTG (2007) Safety and environmental standards for fuel storage sites, Buncefield Standards Task Group (BSTG) Final Report ■ BSTG (2008a) The Buncefield Incident 11 December 2005: The final report of the Major Incident Investigation Board. Volume 1 ■ BSTG (2008b) The Buncefield Incident 11 December 2005: The final report of the Major Incident Investigation Board. Volume 2 ■ BSTG (2008c) Recommendations on the emergency preparedness for, response to and recovery from incident 	<p>www.buncefieldinvestigation.gov.uk/reports/index.htm</p>
<p>EI (2009)</p>	<p>Environmental risk assessment of bulk liquid storage facilities: a screening tool</p>	<p>Simple tool to assess the risk to the environment of an unplanned release of liquids from above ground storage tanks.</p>	<p>www.energypublishing.org</p>
<p>EA, NIEA, SEPA (2011a)</p>	<p>PPG2 Above ground oil storage tanks</p>	<p>General advice on the siting and maintenance of above ground tanks with particular reference to compliance with the Control of Pollution (Oil Storage Regulations) England, the Control of Pollution (Oil Storage Regulations (Northern Ireland), and the Water Environment (Oil Storage (Scotland) Regulations.</p>	<p>http://tinyurl.com/qgdrxo8</p>
<p>EA, NIEA, SEPA (2000)</p>	<p>PPG18 Managing fire water and major spillages</p>	<p>Identifies the equipment and techniques available to prevent damage to the water environment caused by fires and major spillages. The need for a risk assessment of the environmental hazards is emphasised and factors the types of containment discussed. The guidance also includes containment systems and methods that can be used for damage mitigation including:</p> <ul style="list-style-type: none"> ■ containment systems (primary, secondary and emergency) ■ emergency material and equipment ■ management and strategies. 	<p>http://tinyurl.com/nugbzip9</p>
<p>EA, NIEA, SEPA (2011b)</p>	<p>PPG22 Dealing with spills</p>	<p>Provides information to prevent and mitigate pollution for any environmentally hazardous materials that are stored and transported.</p>	<p>http://tinyurl.com/nnhx25c</p>

Table A1.2 International guidance and publications relevant to containment (contd)

EA, NIEA, SEPA (2007)	PPG28 Controlled burn	Instructions to help decide whether controlled burn should be used as part of a fire fighting strategy to prevent or reduce damage to the environment. Presents additional risk assessment options and consideration of containment.	http://tinyurl.com/nugpzp9
EI (2013)	Guidance on risk assessment and design of tertiary containment systems for bulk storage of petroleum, petroleum products, or other fuels	The guidance provides clarification on the requirements for tertiary containment systems and to enable operating companies to assess the need for, and conceptual design of, such systems, as part of the site's overall containment strategy. The document has sought to provide further guidance to that currently available from the EA, SEPA and HSE.	www.energyinst.org/home
EI (2012)	Model code of safe practice. Part 19: Fire precautions at petroleum refineries and bulk storage installations	Is concerned with fire precautions for bulk storage installations. It also contains guidance on the calculation of fire water quantities for design for fire event scenarios. It provides information on fire hazard management to meet the European Seveso III Directive.	www.energypublishing.org
EI (2013a)	Model code of safe practice. Part 2: Design, construction and operation of petroleum distribution installations	Provides recommendations on the layout and design of petroleum products installations and depots (including bunds).	www.energypublishing.org
EI (2007)	Environmental guidelines for petroleum distribution installations	Details updated good practice on the protection of land and groundwater, in particular emphasising risk assessment as the key tool in environmental management.	www.energypublishing.org
EI (2014b)	Guidance on conceptual design, selection and life cycle assurance of liners intended to improve integrity of bunds to above-ground storage tanks for bulk storage of petroleum, petroleum products or other fuels	Provides guidance on selection, installation and ongoing assurance of product options like under-tank liners and leak detection systems that are used to provide additional integrity underneath above-ground storage tanks. Includes guidance on evaluation of containment integrity performance (during both installation and operation).	www.energypublishing.org
Defra (2011)	Green Leaves III. Guidelines for environmental risk assessment and management	The document provides generic guidelines for the assessment and management of environmental risks.	http://tinyurl.com/q/33kp8t
Hanlon and McGlashan (2008)	Fire and Rescue Service Manual volume 2. Fire service operations – environmental protection	Describes operational practices used by the Fire and Rescue Service during an incident to mitigate environmental impacts.	http://tinyurl.com/qdfqnmk
Defra (1998)	Code of Practice for suppliers of pesticides to agriculture, horticulture and forestry (Yellow Code)	Guidance for those involved commercially in the sale, supply and storage for sale of pesticides approved for agricultural use.	http://tinyurl.com/kdjegq6
HSE (1998b)	The storage of flammable liquids in tanks	HSE good practice. Document supersedes both HSG50 and HSG52 (storage of flammable liquids in fixed tanks exceeding 10 000 m ³ total capacity).	www.hse.gov.uk/pubns/books/hsg176.htm
HSE (1999)	Emergency planning for major accidents	Practical guidance on the preparation of emergency response plans.	www.hse.gov.uk/pubns/priced/hsg191.pdf

Table A1.2 International guidance and publications relevant to containment (contd)

HSE (1996)	Safe use and handling of flammable liquids	Guidance for site operators using flammable liquids in general work activities. Emphasis on risks of fire and explosion.	www.hse.gov.uk/pubns/books/hsg140.htm
HSE (2009b)	Chemical warehousing, the storage of packaged dangerous substances	Recommends bunds are used as secondary containment.	www.hse.gov.uk/pubns/books/hsg71.htm
HSE (1998a)	The storage of flammable liquids in containers	The guidance is concerned with the size and layout of bunds rather than the detailed construction.	www.hse.gov.uk/pubns/books/hsg51.htm
CA (1999)	Guidance on the environmental risk assessment aspects of COMAH safety reports	Includes general guidance on environmental risk assessment relevant to major accident scenarios.	http://www.hse.gov.uk/comah/guidance/sram.pdf
HSE (2007a)	Technical Measures Document. Secondary containment	Describes the principles and types of secondary containment system available.	www.hse.gov.uk/comah/sragtech/techmeascontain.htm
HSE (2007b)	Technical Measures Document. Emergency response/spill control	Information on emergency response and spill control measures that can be adopted in plant operation to ensure safe operation.	www.hse.gov.uk/comah/sragtech/techmeasspill.htm
EPA (1995)	Fire-water retention facilities. (Draft) Guidance note to industry on the requirements for fire-water retention facilities	Provides guidance to operators of industrial activities on the requirements for, design and types of, firewater retention facilities.	www.epa.ie/pubs/advice/licence/Draft%20firewater%20retention.pdf
US EPA (2013)	Secondary containment and impracticability determinations	Presents general and specific provisions to address the potential for oil discharges from all parts of a facility.	http://tinyurl.com/kmeg2nh
Queensland Government (2007)	Narangba Industrial Estate: Multi-agency fire and firewater risk minimisation inspection program	Report written in relation to the Narangba Industrial Estate, within which are located 17 high impact industries, storing hazardous materials.	www.emergency.qld.gov.au/publications/pdf/inter_agency_report.pdf
WRC (2012)	Sewers for Adoption, seventh edition	Useful information for the design of small sewerage systems.	http://sfa.wrcplc.co.uk
European Centre for Toxicology and Ecotoxicology of Chemicals	Various guidance and publications	Provides environmental hazard assessments for substances on the basis of ecotoxicology and toxicology.	www.ecetoc.org/Publications/
Gangolli (1999)	Dictionary of Substances and their Effects (DOSE), second edition	A comprehensive reference manual providing physico-chemical and ecotoxicity data on some 6000 substances. The substances are selected from lists, including The EC Classification Packaging and Labelling Regulations, The EC 'Black' and 'Grey' substances, the UK DOE 'Red' list and the USA and Canada Priority Pollutants List	www.rsc.org/Publishing/CurrentAwareness/DOSE/index.asp

A2 List of hazardous substances

Lists of hazardous substances are available from many sources, including UK and EC legislation, international conventions, national priority pollutants from non-EC countries etc. The source documents generally aim to protect surface or groundwater, fish or shellfish, or water for human consumption.

Other legislation has generated lists of hazardous chemicals; for example, the CIMAH regulations or the classification, packaging and labelling regulations. Their prime aim may be health and safety, consumer protection, or transportation rather than environmental protection. It is beyond the scope of this report to comment upon them.

Although all substances which are hazardous in the aquatic environment must be fully considered in any risk assessment procedure, it is likely that the statutory authorities will be particularly interested in measures to reduce the likelihood of spills of the most dangerous materials. It is generally agreed that the most dangerous substances are those on the Water Framework Directive (WFD) Priority substances list. The WFD priority substances list is given in Box A2.1. Annex VIII of the WFD also gives an indicative list of the main pollutants, which is given in Box A2.2.

Box A2.1 WFD priority substances

- | | |
|--|--|
| ■ Alachlor. | ■ Lead and its compounds. |
| ■ Anthracene. | ■ Mercury and its compounds. |
| ■ Atrazine. | ■ Naphthalene. |
| ■ Benzene. | ■ Nickel and its compounds. |
| ■ Brominated diphenyletheriv. | ■ Nonylphenols. |
| ■ Pentabromodiphenylether (congener numbers 28, 47, 99, 100, 153 and 154). | ■ (4-nonylphenol). |
| ■ Cadmium and its compounds. | ■ Octylphenols. |
| ■ Chloroalkanes, C10-13 iv. | ■ (4-(1,1',3,3'-tetramethylbutyl)-phenol). |
| ■ Chlorfenvinphos. | ■ Pentachlorobenzene. |
| ■ Chlorpyrifos. | ■ Pentachlorophenol. |
| ■ (Chlorpyrifos-ethyl). | ■ Polyaromatic hydrocarbons. |
| ■ 1,2-Dichloroethane. | ■ (Benzo(a)pyrene). |
| ■ Dichloromethane. | ■ (Benzo(b)fluoranthene). |
| ■ Di(2-ethylhexyl)phthalate (DEHP). | ■ (Benzo(g,h,i)perylene). |
| ■ Diuron. | ■ (Benzo(k)fluoranthene). |
| ■ Endosulfan. | ■ (Indeno(1,2,3-cd)pyrene). |
| ■ Fluoranthenevi. | ■ Simazine. |
| ■ Hexachlorobenzene. | ■ Tributyltin compounds. |
| ■ Hexachlorobutadiene. | ■ (Tributyltin-cation). |
| ■ Hexachlorocyclohexane. | ■ Trichlorobenzenes. |
| ■ Isoproturon. | ■ Trichloromethane (chloroform). |
| | ■ Trifluralin. |

Box A2.2 *Indicative list of the main pollutants*

- | | |
|--|---|
| <ul style="list-style-type: none">■ Organohalogen compounds and substances that may form such compounds in the aquatic environment.■ Organophosphorous compounds.■ Organotin compounds.■ Substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment.■ Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances. | <ul style="list-style-type: none">■ cyanides.■ metals and their compounds.■ arsenic and its compounds.■ biocides and plant protection products.■ materials in suspension.■ substances which contribute to eutrophication (in particular, nitrates and phosphates).■ substances that have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD). |
|--|---|

Other lists of substances or generic groups of substances are contained in:

- List I (Black List) and List II (Grey List) of the EC Directive 76/464.
- List I and List II of the Oslo and Paris Conventions.
- List I and List II of the Groundwater Directive.
- EC priority candidate list.
- First priority candidate red list.
- North Sea Conference list of banned or restricted pesticides.
- North Sea Conference of priority hazardous substances.
- North Sea Conference reference list of substances.
- Schedule 5 of SI 1991 No 472 (prescribed substances to water).

Edwards (1992) contains lists of the specific substances from the above sources. IMO (2014) has published a list of maritime pollutants, and the German water hazard class system (WGK) is an equivalent listing (UBA, 1999), and as already mentioned, many other lists of dangerous chemicals have been produced for a variety of purposes.

Most of the substances in the lists in Box A2.1 and A2.2 were selected on the basis of specific selection criteria. The most commonly used criteria are:

- toxicity
- persistence
- bioaccumulation
- carcinogenicity (although mutagenicity and teratogenicity are also important).

Boxes A2.1 and A2.2 indicate those substances that have long-term widespread effects in water and target organisms including man, eg heavy metal and chlorinated hydrocarbons, or short-term acute effects, such as highly toxic and biologically active pesticides. They do not include the very wide range of materials, which are likely to have equally severe effects at least in the short-term and in the vicinity of the discharge point. An indication of the broad classes that these materials fall into is given in Box A2.3.

Box A2.3 *Broad classes of materials with the potential to pollute water*

- | | |
|---|--|
| <ul style="list-style-type: none">■ acids and alkalis■ oxidising and reducing agents■ corrosive materials■ inert solids■ other inorganic materials (ammonia, chlorine, sulphide, metal salts)■ dyes, colours, pigments | <ul style="list-style-type: none">■ detergents■ organic solvents■ oils, fuels, fats and waxes■ other organic compounds (including foodstuffs)■ microbial contamination (e.coli, faecal streptococci, coliforms). |
|---|--|

A3 Undertank leak detection systems

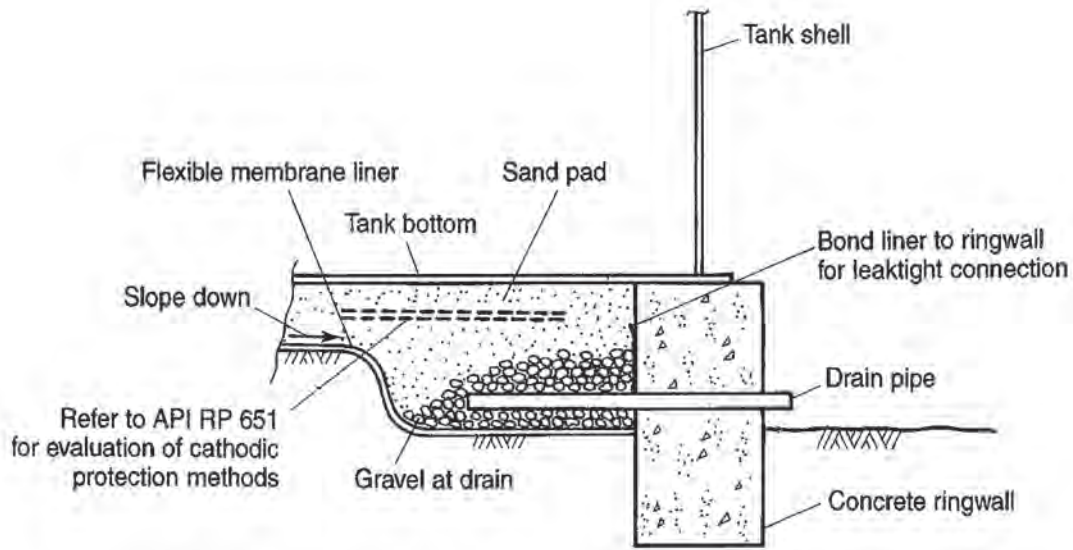


Figure A3.1 Concrete ringwall with undertank leak detection at the tank perimeter (from API, 2005)

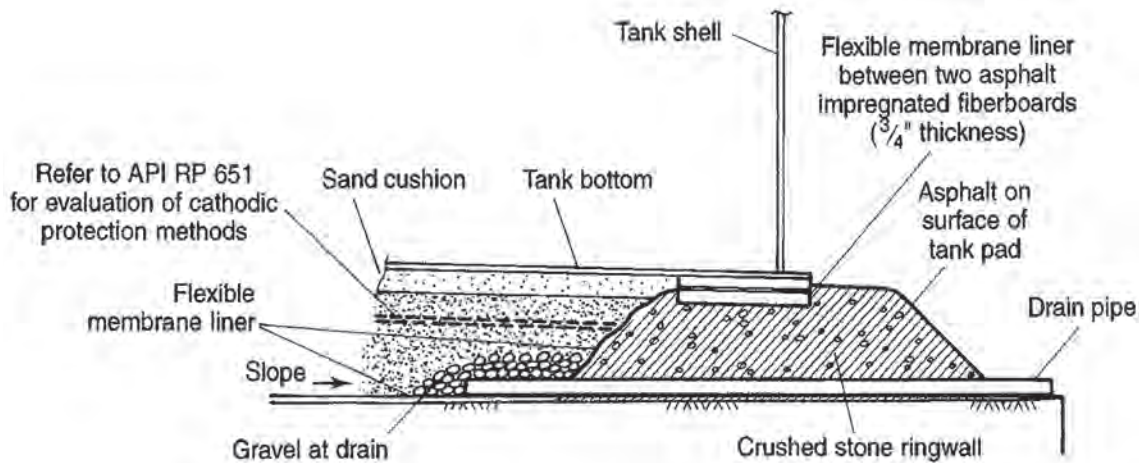


Figure A3.2 Crushed stone ringwall with undertank leak detection at the tank perimeter (from API, 2005)

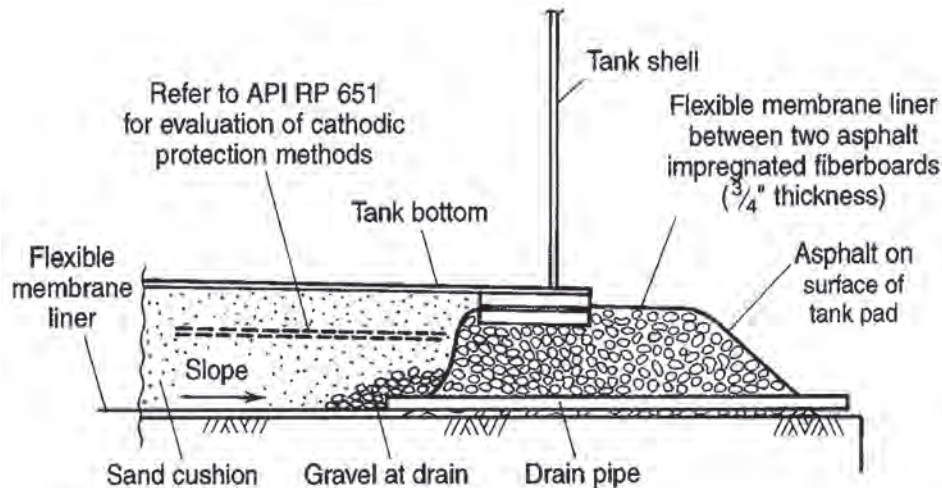


Figure A3.3 Earthen foundation with undertank leak detection at the tank perimeter (from API, 2005)

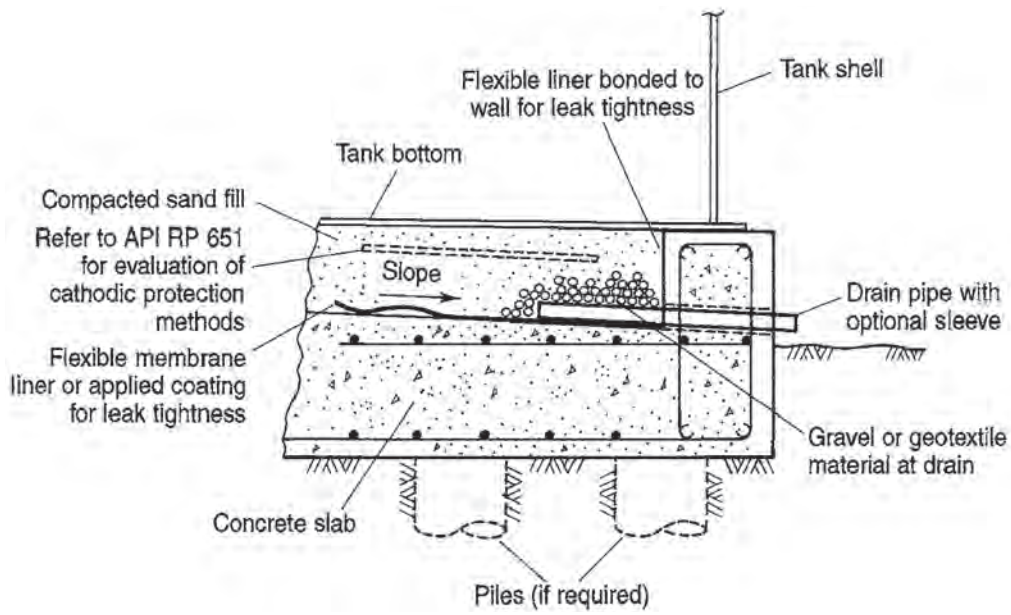


Figure A3.4 Reinforced concrete slab with undertank leak detection at the perimeter (from API, 2005)

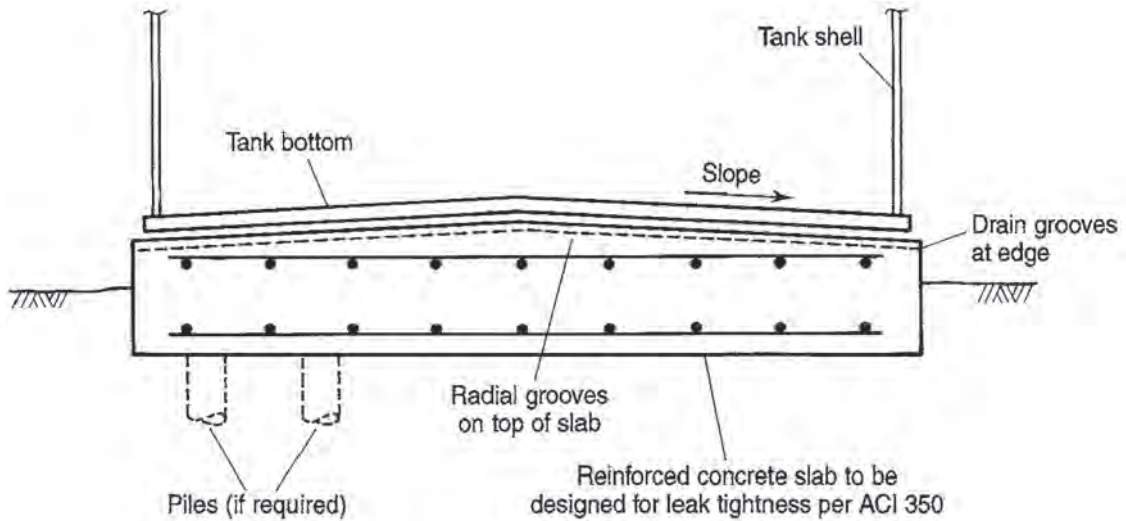


Figure A3.5 Reinforced concrete slab with radial grooves for leak detection (from API, 2005)

A4 Surface protection systems for concrete

Figure A4.1 and Table A4.1 are taken from BS EN 1504-9:2008.

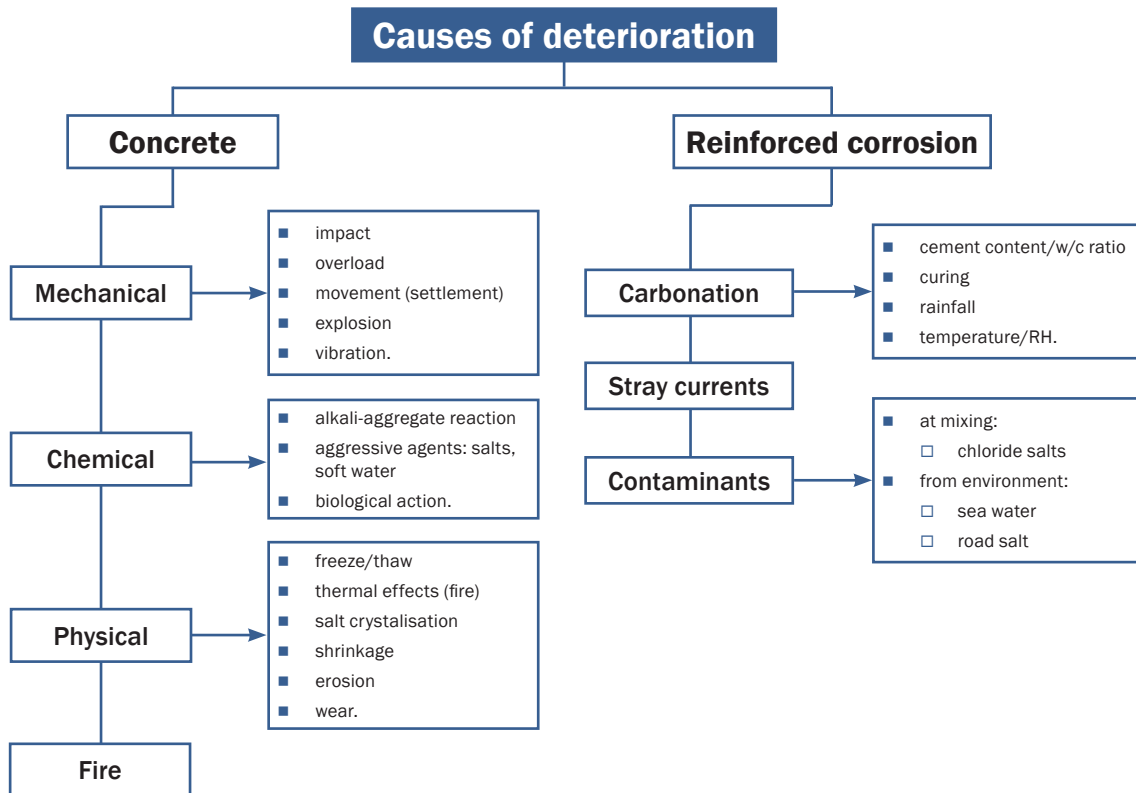


Figure A4.1 Common deterioration processes that affect concrete and reinforced concrete structures (after BS EN 1504-9:2008)

Table A4.1 Principles and methods for protection and repair of concrete structures

Principle	Examples of methods based on the principles	Relevant part of BS EN 1504 (where applicable)
<i>Principles and methods related to defects in concrete</i>		
1 Protection against ingress	1.1 Hydrophobic impregnation	2
	1.2 Impregnation	2
	1.3 Coating	2
	1.4 Surface bandaging of cracks	
	1.5 Filing of cracks	5
	1.6 Transferring cracks into joints	
	1.7 Erecting external panels*	
	1.8 Applying membranes*	

Table A4.1 Principles and methods for protection and repair of concrete structures (contd)

2 Moisture control	2.1 Hydrophobic impregnation	2
	2.2 Impregnation	2
	2.3 Coating	2
	2.4 Erecting external panels	
	2.5 Electrochemical treatment	
3 Concrete restoration	3.1 Hand applied mortar	3
	3.2 Recasting with concrete or mortar	3
	3.3 Spraying concrete or mortar	3
	3.4 Replacing elements	
4 Structural strengthening	4.1 Adding or replacing embedded or external reinforcing bars	
	4.2 Adding reinforcement anchored in pre-formed or drilled holes	6
	4.3 Bonding plate reinforcement	4
	4.4 Adding mortar or concrete	3, 4
	4.5 Injecting cracks, void or interstices	5
	4.6 Filling cracks, voids or interstices	5
	4.7 Prestressing (post tensioning)	
5 Increasing physical resistance	5.1 Coating	2
	5.2 Impregnation	2
	5.3 Adding mortar or concrete	3
6 Resistance to chemicals	6.1 Coating	2
	6.2 Impregnation	2
	6.3 Adding mortar or concrete	3
Principles and methods related to reinforcement corrosion		
7 Preserving or restoring passivity	7.1 Increasing cover with additional mortar or concrete	3
	7.2 Replacing contaminated or carbonated concrete	3
	7.3 Electrochemical realkalisation of carbonated concrete	
	7.4 Realkalisation of carbonated concrete by diffusion	
	7.5 Electrochemical chloride extraction	
8 Increasing resistivity	8.1 Hydrophobic impregnation	2
	8.2 Impregnation	2
	8.3 Coating	2
9 Cathodic control	9.1 Limiting oxygen content (at the cathode) by saturation or surface coating	
10 Cathodic protection	10.1 Applying an electrical potential	
11 Control of anodic areas	11.1 Active coating of the reinforcement	7
	11.2 Barrier coating of the reinforcement	7
	11.3 Applying corrosion inhibitors in or to the concrete	

Note

* These methods may also be applicable to other principles.

A5 Expansion and contraction joints

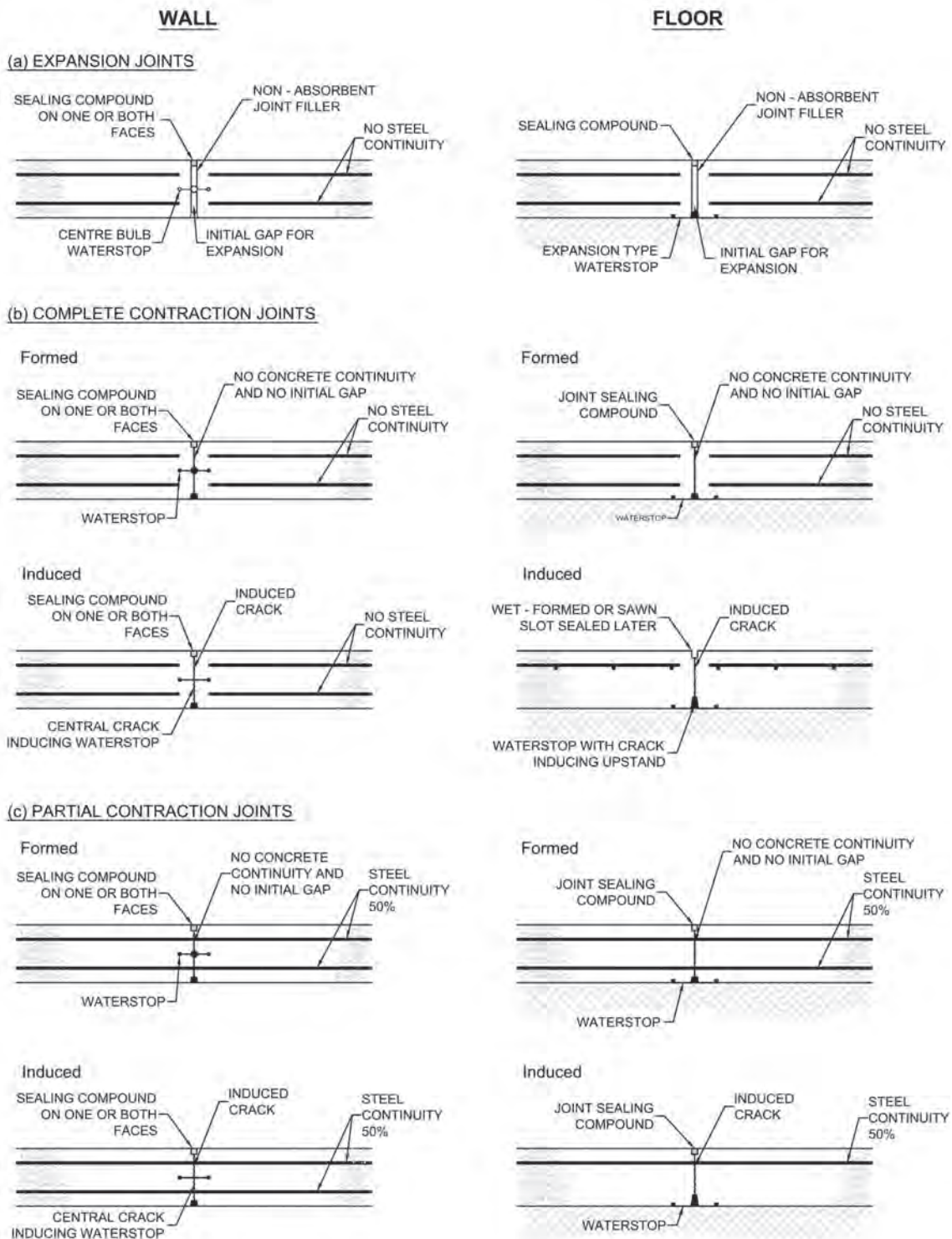


Figure A5.1 Typical details for expansion and contraction joints for the walls and bases of in situ reinforced concrete walls and bases (from BS 8007:1987)

A6 Typical details for an *in situ* reinforced concrete wall

For all but the smallest of *in situ* reinforced concrete bund, joints will be required between structural elements to facilitate construction and to allow movement (contraction and expansion of the walls and base). A typical arrangement of joints is shown by Figure A6.1.

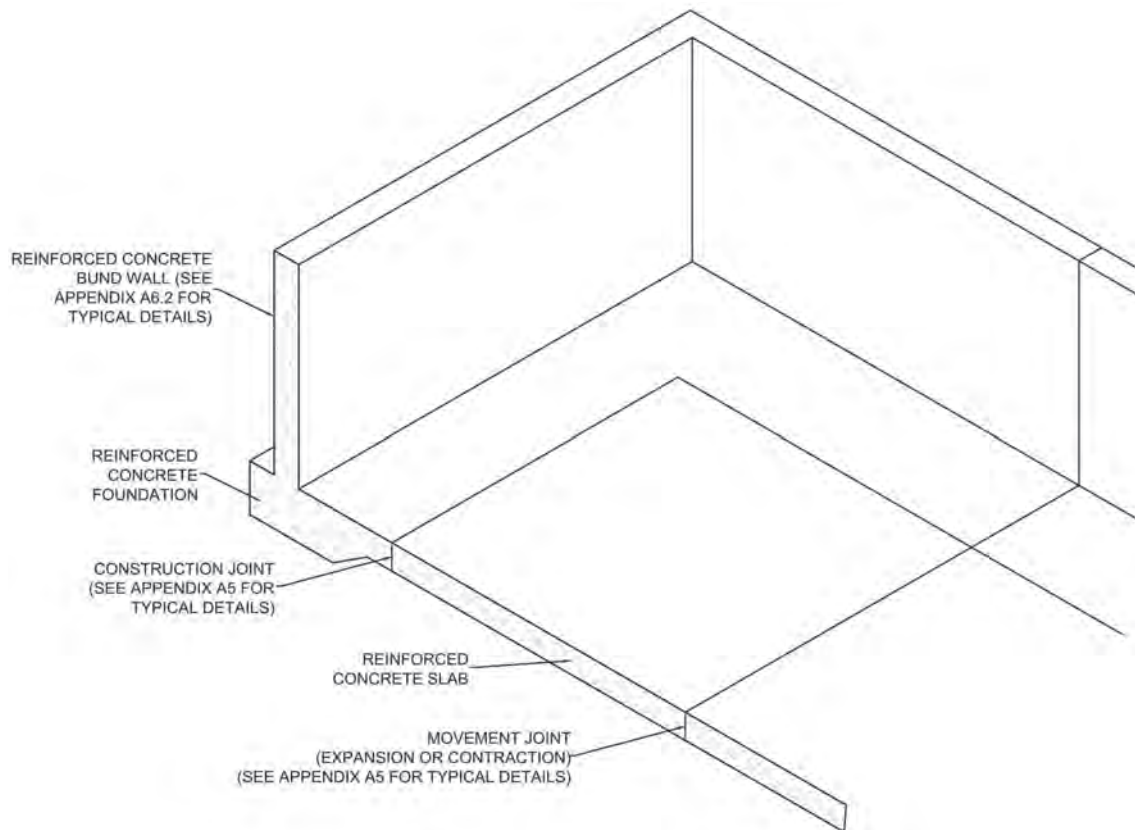


Figure A6.1 Typical arrangement of joints

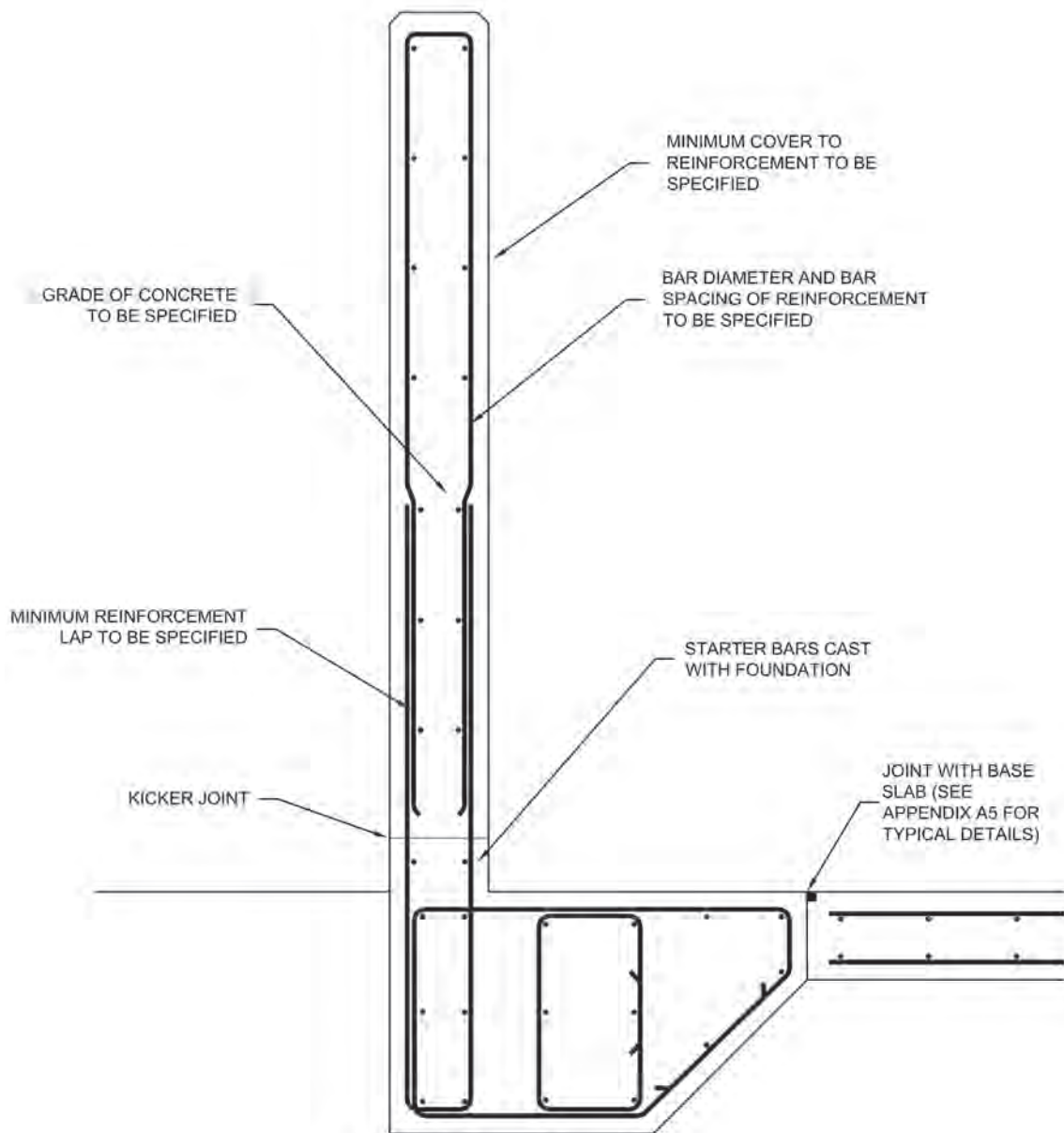


Figure A6.2 Typical in situ reinforced concrete wall detail

A7 Typical detail for a reinforced blockwork/brickwork wall

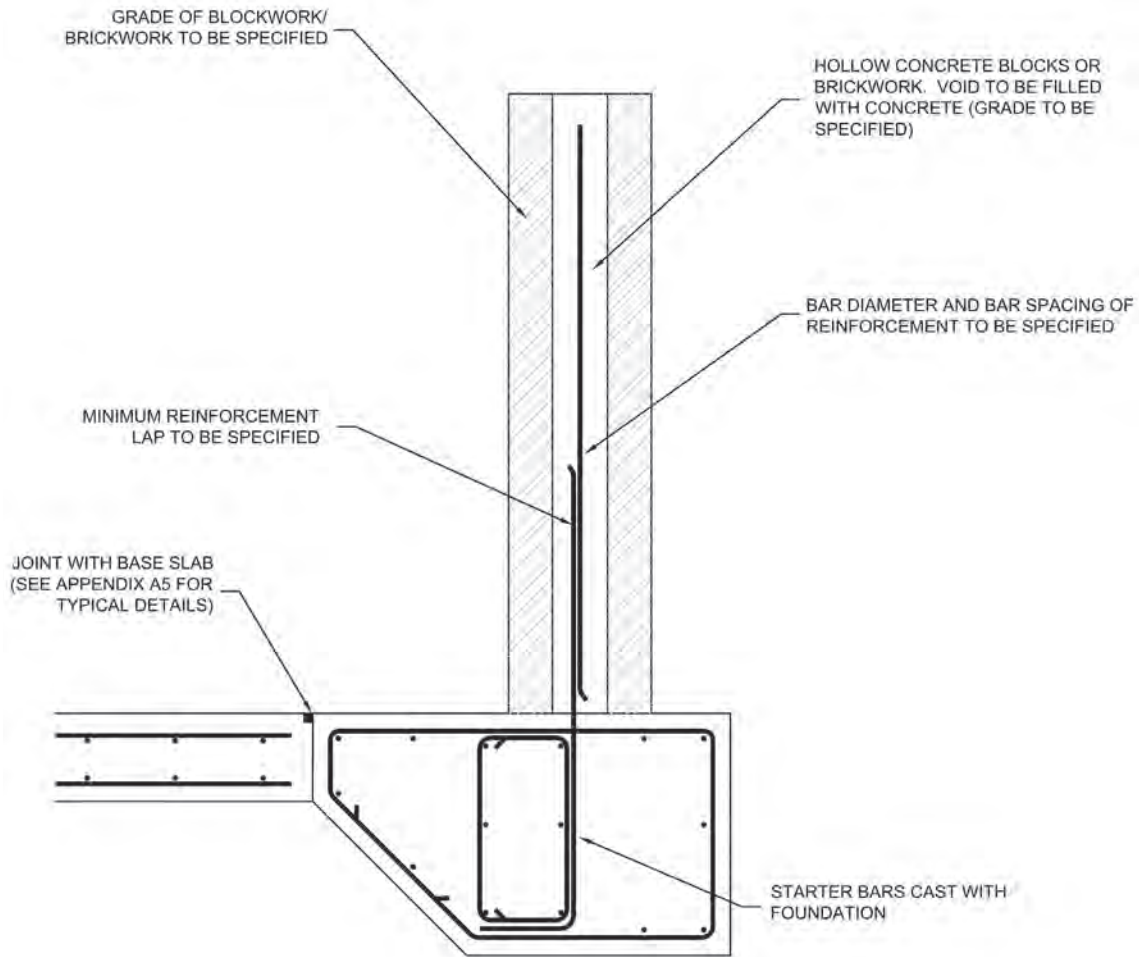


Figure A7.1 Typical detail for a reinforced blockwork/brickwork wall

A8 Typical details for earthwork lagoons and bunds

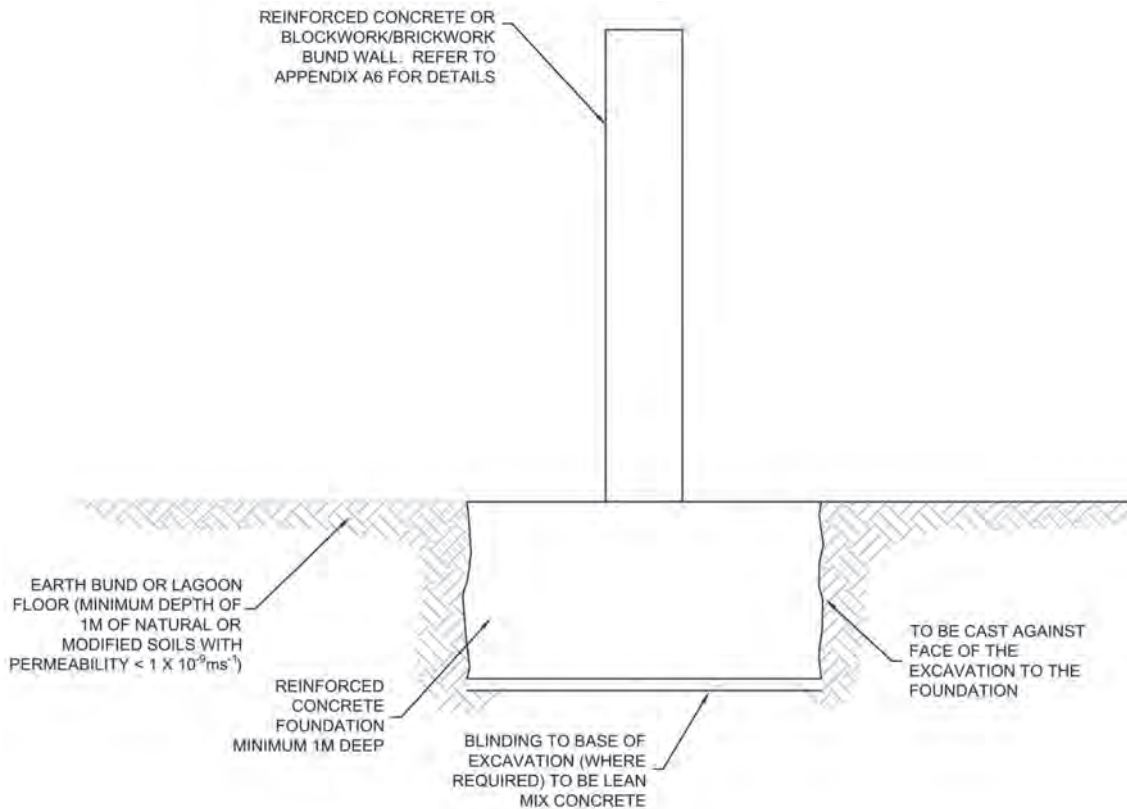


Figure A8.1 Foundation detail for in situ reinforced concrete or blockwork/brickwork bund wall with earth floor

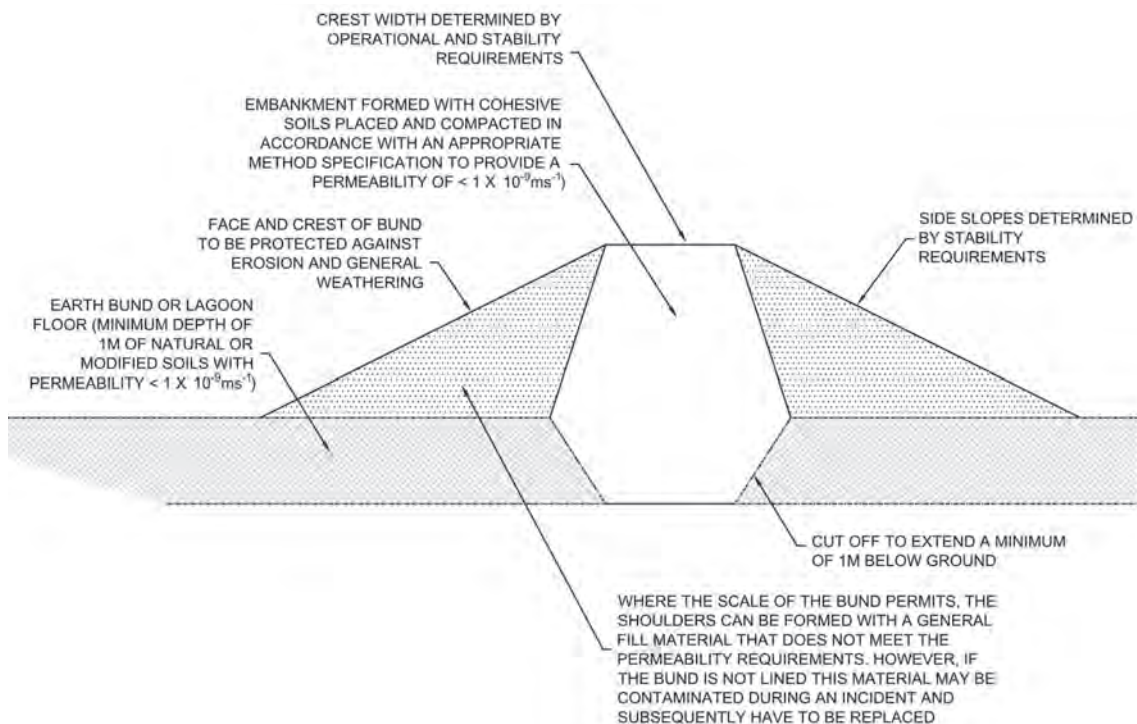


Figure A8.2 Typical earthwork or lagoon bund wall detail (see Section 8.10 for liner anchorage and protection details and pipe penetration details)

A9 Hydraulic pipe design

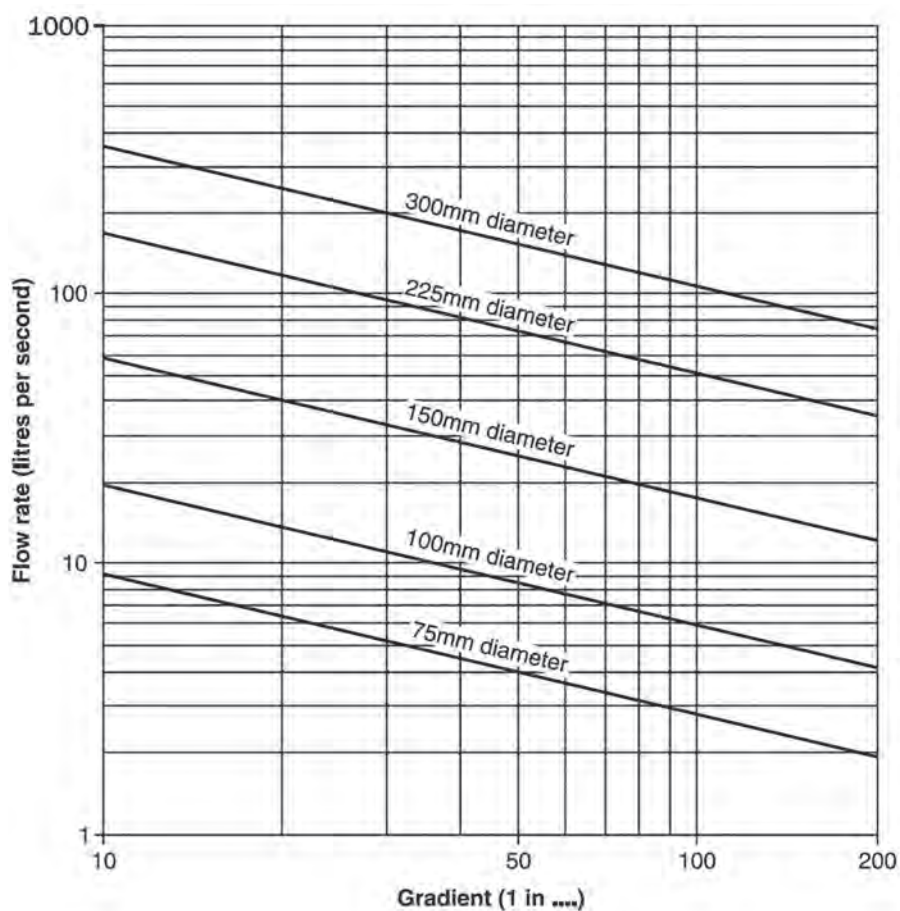


Figure A9.1 Discharge capacities of drains conveying water running full (from HM Government, 2010)

This chart is appropriate for clay or plastic pipework or a material with a similar roughness. Allowance has also to be made for head losses at bends, manholes and chambers.

Hydraulic design of drainage systems is commonly completed using a drainage analysis and design computer program. Available packages include WinDes® (MicroDrainage), xpswmm® (XP Solutions), and InfoWorks® (Innovyze).

A10 Concrete repair techniques

For more information readers should refer to BS EN 1504-9:2008.

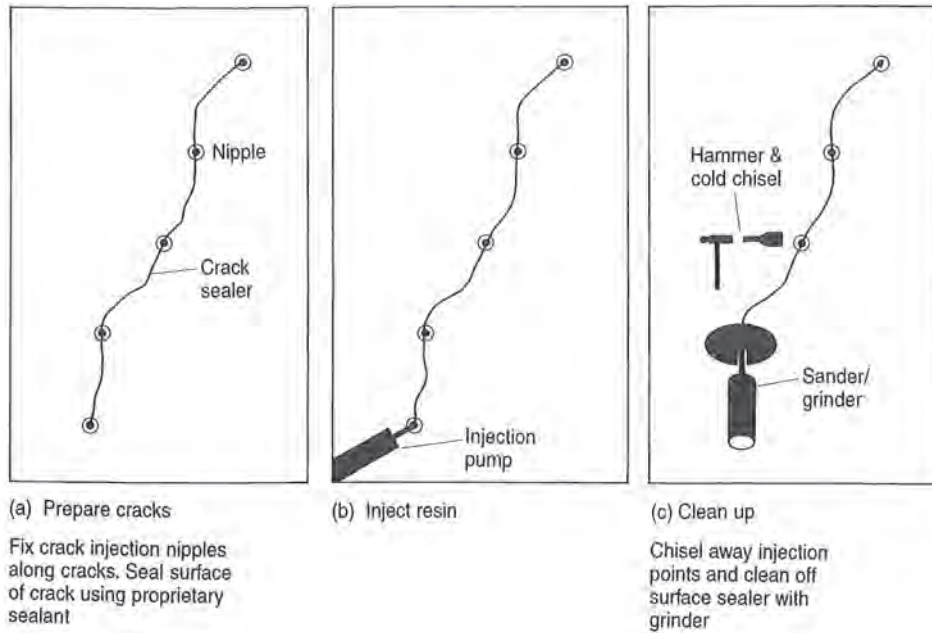


Figure A10.1 Concrete repair using resin injection (from Shaw, 1984)

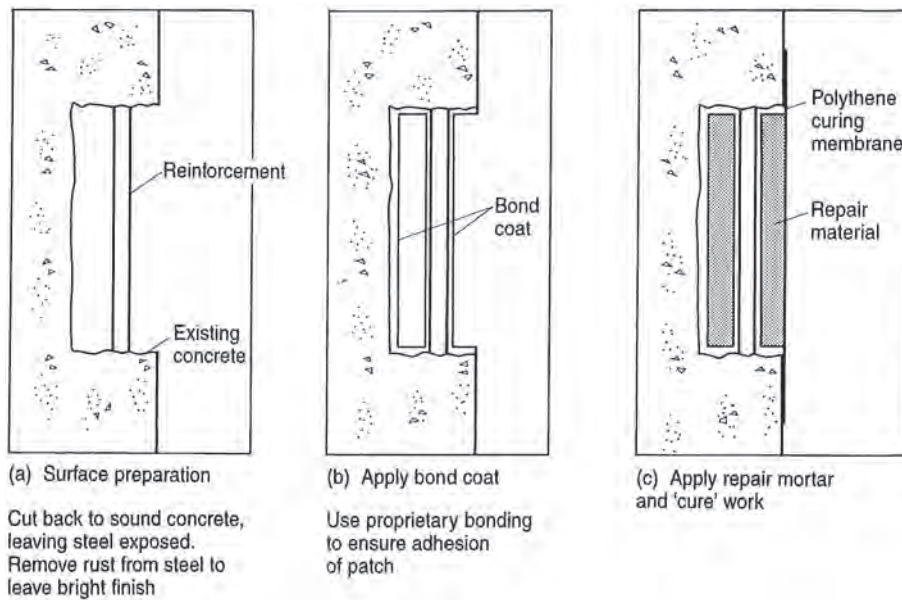
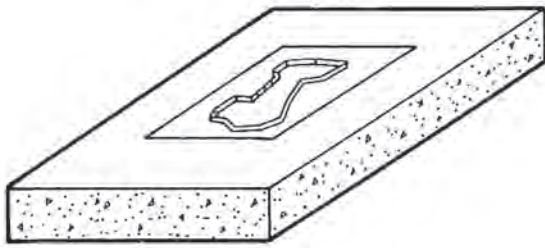


Figure A10.2 Patch repair to concrete (from Shaw, 1984)



(a) Mark out square or rectangular area around defect



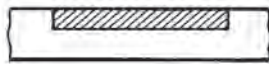
(b) Chase out delineating groove around perimeter of repair



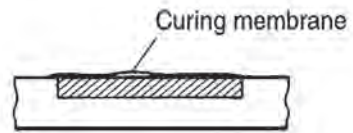
(c) Remove defective concrete from within repair area



(d) Thoroughly dampen area with water and/or apply primer as required



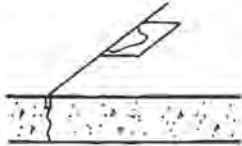
(e) Place and thoroughly compact repair material



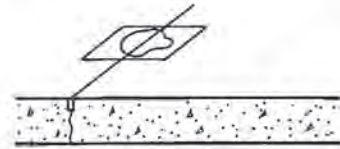
(f) Apply surface texture and cure immediately

Figure A10.3 Thin surface bonded repair to concrete (from Shaw, 1984)

Single-sided repair



Double-sided repair



Mark out affected area



Chase around affected area and saw locating groove



Remove all unsound concrete from within repair area and clean out



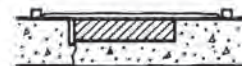
Securely fix joint former in locating groove to prevent bridging across crack.
Top 12 mm of former must be removable for application of joint sealer



Thoroughly dampen area with water and/or apply primer as required



Place and thoroughly compact repair material



Cure immediately

After 24 hours remove top 12 mm of former to provide groove for sealant.
When concrete is mature, apply joint sealant on top of a bond breaker.

Figure A10.4 Thin surface bonded repair to concrete (from Shaw, 1984)



Core and Associate members

AECOM Ltd	Ministry of Justice
Arup Group Ltd	Morgan Sindall (Infrastructure) Plc
Atkins Consultants Limited	Mott MacDonald Group Ltd
Balfour Beatty Civil Engineering Ltd	MWH
BAM Nuttall Ltd	Network Rail
Black & Veatch Ltd	Northumbrian Water Limited
Buro Happold Engineers Limited	Rail Safety and Standards Board
BWB Consulting Ltd	Royal HaskoningDHV
Cardiff University	RSK Group Ltd
Environment Agency	RWE Npower plc
Galliford Try plc	Sellafield Ltd
Gatwick Airport Ltd	Severn Trent Water
Geotechnical Consulting Group	Sir Robert McAlpine Ltd
Golder Associates (Europe) Ltd	SKM Enviros Consulting Ltd
Halcrow Group Limited	SLR Consulting Ltd
Health & Safety Executive	Temple Group Ltd
Heathrow Airport Holdings Ltd	Thames Water Utilities Ltd
High Speed Two (HS2)	United Utilities Plc
Highways Agency	University College London
Homes and Communities Agency	University of Bradford
HR Wallingford Ltd	University of Reading
Institution of Civil Engineers	University of Salford
Lafarge Tarmac	University of Southampton
London Underground Ltd	WYG Group (Nottingham Office)
Loughborough University	

June 2014

This guide has been developed to assist owners and operators of industrial and commercial facilities storing substances (inventories) that may be hazardous to the environment.

It provides guidance on identifying the hazards, assessing the risks and mitigating the potential consequences of a failure of the primary storage facility and/or the combustion of its contents. A three-tier risk assessment methodology is introduced with recommendations for different 'classes' of construction for each.

It is applicable to the containment of a wide range of inventories and to all sizes of site from small commercial premises with a single storage tank, through to large chemical or petrochemical sites. It also applies to warehouses storing hazardous inventories.

Information is provided on the design, and construction of new secondary containment systems and the also the inspection, maintenance, repair, extension and upgrading of existing installations.



Permitting Decisions – Bespoke Permit

Document recording our decision-making process following the requirement for waste and wastewater sewerage treatment activities permitted as an installation subject to Chapter II of the Industrial Emissions Directive under the Environmental Permitting (England & Wales) Regulations 2016 (as amended)

We have decided to grant the permit for Reading Sludge Treatment Centre operated by Thames Water Utilities Limited.

The permit number is EPR/MP3338LU/V004.

Purpose of this document

On 2 April 2019, the Environment Agency confirmed to the Water and Sewerage Companies (WaSCs) operating in England that their sewage sludge anaerobic digestion (AD) facilities needed to comply with the Industrial Emissions Directive (IED).

The IED entered into force on 6 January 2011 and was transposed into UK law on 20 February 2013. The IED recast the Directive on integrated pollution prevention and control (IPPC) and introduced a revised schedule of industrial activities falling within the scope of its permitting requirements. The schedule of waste management activities includes the recovery of non-hazardous waste with a capacity exceeding 75 tonnes per day involving biological treatment, but excludes activities covered by the Urban Waste Water Treatment Directive (UWWTD).

In July 2014 we deferred the need for the WaSCs to submit permit applications for these facilities to allow for further consideration of whether they were already covered under the UWWTD. All the UK environmental regulators subsequently concluded this was not the case, and therefore they come within the scope of the IED.

The IED seeks to achieve a high level of protection for the environment, taken as a whole, from the harmful effects of industrial activities. It does so by requiring each of the industrial installations to be operated under a permit with conditions based around the use of best available techniques (BAT).

The IED set a deadline of 7 January 2014 for existing installations to obtain an environmental permit. Therefore, the implementation of this aspect of the IED

had been delayed for over five years at the point of our confirmation to the WaSCs on 2 April 2019.

The BAT Conclusions for Waste Treatment was published on 17 August 2018 following a European Union wide review of BAT, implementing decision (EU) 2018/1147 of 10 August 2018. BAT applies to new waste sewage sludge treatment not covered by the UWWTD. The installation operations at Reading Sludge Treatment Centre are existing but will be brought under environmental regulation for the first time and are required to operate using BAT.

Given the delay in implementing the IED in England, we subsequently have sought to ensure that all sewage sludge AD facilities obtain and operate under an environmental permit in as short a timescale as can reasonably be achieved. We asked the WaSCs to provide a definitive list of all facilities used to carry out biological treatment of sewage sludge. A submission schedule was provided to the WaSCs, allowing applications for these facilities to be submitted to us in stages between 1 April 2021 and 1 October 2022. This application is part of this programme of work.

This application was due to be submitted on 1/7/2021 and was received on 30/06/2021, however this application could not be duly made and a new application was submitted on the 10/07/2022.

The application is for the consolidation of the existing combustion plant activities currently permitted and adds a Section 5.4 A(1) (b) (i) Recovery or a mix of recovery and disposal of non-hazardous waste with a capacity exceeding 75 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving biological treatment. The existing engines currently permitted are now directly associated activities (DAA) to the Section 5.4 anaerobic digestion activity. Other DAAs now part of the permit include;

- Raw materials storage
- Digestate storage and treatment
- Emergency flare operation
- Gas storage
- Physical treatment of waste (including screening, pressing, thickening, centrifugation / dewatering)
- Steam and electrical power generation utilising biogas produced on site.
- Uncontaminated surface water collection for reuse, and discharge
- Air collection and treatment prior to release to the atmosphere.

The application also requested the addition of a waste activity for the receipt of waste to the head of works.

We consider in reaching this decision that we have taken into account all relevant considerations and legal requirements and that the permit will ensure that the appropriate level of environmental protection is provided.

This decision document provides a record of the decision-making process. It:

- summarises the decision making process in the [decision considerations](#) section to show how the main relevant factors have been taken into account
- highlights [key issues](#) in the determination
- shows how we have considered the [consultation responses](#)

Unless the decision document specifies otherwise, we have accepted the operator's proposals.

This permitting decision should be read in conjunction with the environmental permit.

Key issues of the decision

Best Available Techniques (BAT)

Article 3(12) of the IED defines BAT conclusions as:

a document containing the parts of a BAT reference document [BREF] laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.

The *emission levels associated with the best available techniques* (BAT-AELs) in IED BAT conclusions are mandatory emission levels. These are generally numerical limits on point source emissions to water and air. We recognise that many sludge treatment facilities were constructed prior to the current permitting requirements and their design may not be readily compatible with the best available techniques as described in the BREF and BAT conclusions. Where this is the case, risk assessments and alternative proposals can be used to demonstrate that an equivalent level of environmental protection is being or can be achieved. Where an operator is not yet compliant with relevant BAT conclusions, we may accept an application where the operator describes how they will meet the required BAT conclusion within an acceptable timeframe. The Waste Treatment (2018) BREF provides a minimum standard of operation across the waste industrial sector. Alongside BAT-AELs, the BREF outlines general BAT conclusions, which apply to all waste sectors. It also contains BAT conclusions specifically for waste sectors which waste water treatment works operate within,

namely; the biological treatment of waste and the treatment of water-based liquid wastes.

Thames Water Utilities Limited (referred to in this document as the ‘operator’) provided supporting information with their application to demonstrate that their methods of operating are in accordance with the relevant BAT conclusions. We have assessed these documents. In this *Key issues* section, we provide a commentary of the following areas which helped determine how the operator will operate in accordance with the relevant BAT conclusions:

- Secondary containment (BAT conclusion 19)
- Inventory of waste waters (BAT conclusion 3)
- Point source emissions to water – indirect emissions (BAT conclusions 7 and 20)
- Odour management (BAT conclusion 12)

Where this document does not discuss a BAT conclusion in detail, we have accepted the operators supporting information and justifications that they are compliant with the respective BAT conclusion.

Bespoke permit conditions

The technical determination of this application identified key issues where the operator struggled to show how they would meet the relevant BAT conclusion requirements. These are standard pieces of information and evidence which would be expected upon receipt of a new bespoke permit application for a new anaerobic digestion installation facility. In this application, we identified that the operator was unable to provide detailed supporting evidence that key issues would achieve BAT conclusion requirements. These key issues were:

- Sufficient secondary containment measures (permit conditions 3.2.3 and 3.2.4).
- Preventing waste water emissions to the waste water treatment works during storm overflow (permit conditions 3.2.9 and 3.2.10).

We have performed an assessment of these aspects during the permit determination. A detailed account of these assessments is outlined in the sections below. Where we have not been able to fully assess the operator’s proposals to meet BAT conclusion requirements but have received commitments to implement BAT, we have set time sensitive improvement conditions alongside backstop bespoke permit conditions.

Improvement conditions alone would not contain sufficient legal certainty to require an operator to have BAT in place. However, we acknowledge that this application is for an existing activity which has been operating for several years

and we recognised that a pragmatic approach was needed to bring this unpermitted installation activity into environmental regulation.

To issue permits without agreeing that an activity fully meets BAT is in essence a permitted local enforcement position (LEP). LEPs are used by the Environment Agency for activities operating outside of a permit. This method will be implemented by setting prescriptive bespoke conditions in the permit for the outstanding BAT issue. These bespoke conditions include the definitive requirement plus a deadline for those techniques to be implemented – a backstop. We have also set improvement conditions for the timely submissions of detailed plans. Should an operator not comply with an improvement condition, a bespoke condition will be in place for the Environment Agency to enforce against.

For these improvement conditions, we have set a final deadline of 31 December 2024. It should be noted that the implementation date for operators to be compliant with the Waste Treatment BAT conclusions was 17 August 2022. Our deadline specified in the improvement condition provides a sufficient timeframe in which the operator can produce detailed plans to meet BAT and a timetable for their implementation. Where operators do not satisfy the requirements of the improvement condition by 31 December 2024, the Environment Agency may commence enforcement action against the WaSC. Failure of the WaSCs to achieve BAT or failure to take steps to implement BAT by the backstop will be at the operator's risk.

Secondary containment

Secondary containment is a fundamental principle of pollution prevention at industrial sites and waste management facilities. We assess secondary containment provision when determining permit applications. Secondary/tertiary containment is an appropriate protective measure and is a standard requirement of an environmental permit. The Waste Treatment BREF includes BAT conclusion 19 which identifies several relevant techniques *to prevent or, where that is not practicable, to reduce emissions to soil and water*.

WaSC anaerobic digestion facilities store and treat significant volumes of waste sludge and liquids that have the potential to cause pollution to land, air and water and to impact detrimentally on any nearby sensitive habitats or areas of human occupation (also known as sensitive receptors). These facilities are co-located with wastewater treatment works (WwTW) and, by the nature of these operations, are usually located near to watercourses. They have tended to have little in the way of secondary containment, such as impermeable surfacing or bunding, that would protect the environment in the event of a loss of containment.

The most common receptors we consider could be impacted by a loss of containment include groundwater (aquifers), water courses, designated conservation areas (such as Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites),

the adjacent WwTW and nearby human receptors such as residential and commercial premises.

Given the number, significance and complexity of the WaSC's sludge AD facilities, we have provided advice on what they should have regard to when assessing their facilities. We consider that this advice, and the timescales afforded to the WaSCs to submit information in support of their permit applications, is above and beyond that which would typically be given to permit operators.

We advised the WaSCs to provide two main components of assessment aimed at clearly identifying where a facility has sufficient measures in place to protect sensitive receptors, and where improvements may need to be implemented.

The two components were:

- Containment assessment against the recommendations of CIRIA C736 guidance - *Containment systems for the prevention of pollution: Secondary, tertiary and other measures for industrial and commercial premises* (2014).
- Completion of the ADBA tool to identify sources, pathways and receptors, and risks.

We also advised operators to submit spill modelling as supporting evidence to demonstrate the effectiveness of current containment measures and assess any identified necessary improvements.

We advised the WaSCs (including the operator) of the requirements of containment assessments on multiple occasions, including:

- At a workshop held by Water UK in February 2020 (Water UK members are UK water and wastewater service suppliers for England, Scotland, Wales and Northern Ireland, the operator is a member of Water UK) – Presentation Title: Permitting Overview – Including section on containment – Surfacing, bunding and capacity, presented by a Senior Permitting Officer of the Environment Agency National Permitting Service.
- Written advice sent in March 2021 by us including.
 - Sector specific pre-application advice note.
 - BAT gap analysis template tool.
- Presentation on 14 July 2021, delivered to Water UK, titled, *IED Permitting TaF + Spill Modelling*, which the operator attended, in which spill modelling was specifically discussed, along with a reiteration of application requirements. Spill modelling seminar presented by a Member of the Project Steering Group of CIRIA C736.

There are also various additional references to containment in guidance that is widely disseminated in the industry including:

- Waste Treatment BAT Conclusions.
- *Environmental permitting guidance on the control of emissions* (gov.uk).
- *How to comply with your environmental permit. Additional guidance for: Anaerobic Digestion* Reference LIT 8737 Report version 1.0 dated November 2013.
- *Appropriate measures for the biological treatment of waste* – consultation document and response comments.
- *Biological waste treatment: appropriate measures for permitted facilities - Guidance - GOV.UK* (www.gov.uk)
- *Emissions control - Non-hazardous and inert waste: appropriate measures for permitted facilities* - This is not directly applicable to biological treatment but will be replicated in the appropriate measures as mentioned in the above bullet point.
- *SR2021 No 10: anaerobic digestion of non-hazardous sludge at a waste water treatment works, including the use of the resultant biogas*. This specifically applies to sludge AD facilities.

CIRIA C736

CIRIA C736 is considered the industry containment assessment standard of choice and is based on the source-pathway-receptor approach to risk assessment. It provides a clear methodology for demonstrating BAT, appropriate measures and compliance with permit conditions.

It is applicable for identifying and managing the risk of storing substances which may be hazardous to the environment and applies to activities ranging from small commercial premises to large chemical facilities. It primarily considers the potential consequences of tank failure and provides a risk assessment methodology to support a classification system for containment, providing different levels of performance for different risks. The aim is to break the pathway between source and receptor.

The guidance provides containment options and examples of good practice, but it is not prescriptive and there may be circumstances where it could be appropriate to use other methods where at least an equivalent level of environmental protection is provided.

Due to the nature of sewage sludge, waste cake or waste liquors, it is clear that this would be considered to be both a short and long-term hazard to the environment if released. Given the locations of sites that deal with these materials generally, it is reasonable to conclude that any major tank failure at an individual site will have the potential to cause significant damage to sensitive receptors.

Where CIRIA C736 measures are not considered to be relevant or appropriate for a specific facility, an explanation should be provided using a risk-based approach. For existing facilities where measures cannot easily be achieved, we expect alternative measures to be proposed which achieve at least an equivalent standard to provide at least the same level of environmental protection. It should be recognised however that CIRIA C736 includes specific guidance for operators who need to implement secondary containment provisions at existing facilities.

Newly built facilities and assets should be designed and built to CIRIA C736 report recommendations or to at least an equivalent approved standard. Newly built facilities and assets not designed and built to CIRIA C736 report recommendations, or to at least an equivalent approved standard would not be considered to provide suitable primary and secondary containment, and as such would not comply with BAT. Existing facilities may be unlikely to be compliant with CIRIA C736 due to the viability of retrofitting to meet the recommendations. However, the same containment assessments are still required, and improvements should be proposed to demonstrate at least equivalent appropriate measures of environmental protection.

ADBA tool and guidance

The ADBA tool and guidance have been specifically designed as a guide for secondary containment for anaerobic digestion. The guide states “Both the guide and the classification tool draw upon the principles and methodologies within CIRIA C736. The principles within CIRIA C736 are generally accepted as good practice in the design and construction of containment systems. The principles of CIRIA C736 are distilled into this accessible guide, which attempts to draw out the parts relevant to the AD sector”.

The tool itself is clearly set out to provide an inventory of sources, pathways and receptors and aligns with the containment system class types in CIRIA C736. It provides risk ratings and allows mitigation measures to be considered.

Alternative assessment methods

Where our guidance refers to CIRIA C736 it also allows for other equivalent approved standards. This does provide operators with the option of using other approved standards, but they must offer at least the same level of environmental protection.

Where CIRIA C736 and ADBA tool assessments, or equivalent approved standards, are not provided, it is difficult or impossible to satisfactorily assess permit applications for compliance with BAT, appropriate measures or an environmental permit.

Assessment of this facility

The operator did submit an assessment which has given regard to CIRIA C736, including proposals for improvements.

- The operator did submit a completed ADBA tool.
- The operator did submit spill modelling.
- The operator provided initial secondary containment proposals in accordance with Environment Agency guidance, [Control and monitor emissions for your environmental permit](#).
- Detailed secondary containment design will be provided to the Environment Agency in response to improvement conditions IC9.

The containment options proposed by Reading Sludge Treatment Centre (STC) included the installation of bund walls, and impermeable surfacing at modelled locations in order to prevent a loss of containment beyond the Reading STC and adjacent WWTW. The spill model is based upon the failure of a primary digester, the largest process vessel by capacity. The proposed solution met the requirements of section 4.2.1 of CIRIA 736 that requires “Where two or more tanks are installed within the same bund, the recommended capacity of the bund is the greater of:

- 1) 110% of the capacity of the largest tank within the bund.
- 2) 25% of the total capacity of all the tanks within the bund, except where tanks are hydraulically linked in which case they should be treated as if they were a single tank.

The final containment volume provided 25% of the total capacity of all the tanks within the bund.

Reasons for accepting secondary containment proposals

The Environment Agency recognises that the operator’s proposals for secondary containment measures at the installation are not complete. Our established environmental permitting process outlines that where information is missing or insufficient, that information can be requested. Where information is unsatisfactory, we may proceed to return an application as not duly made or refuse a duly made application. Our processes state that we generally don’t set improvement conditions that require BAT to be demonstrated at some date after the permit application has been consulted on and determined. Generally, we should be satisfied whether operations will use BAT at the appropriate time, and we should make that assessment at the time we issue any permit or variation.

However, we recognise that this industrial activity is already existing and being undertaken and consider it appropriate, where possible, to bring these activities into environmental regulation as an installation. While the current operations are a pollution risk, the operator is not introducing new risks to the environment. It is important to note that any applications including new plant and bulk tanks would require a demonstration that secondary containment is designed in line with CIRIA C736 (or possible equivalent alternative) before a permit could be issued.

While detailed secondary containment infrastructure design was not supplied, the proposals describe what they plan to implement and follow the primary requirements for bund design (as outlined in our guidance [Control and monitor emissions for your environmental permit](#)). The operator has also confirmed that the secondary containment measures will be designed in compliance with CIRIA C736 by a qualified structural engineer. We have received an effective risk assessment which demonstrates the extent and impact of bulk tank failure on the receiving environment. This was via a spill modelling assessment Reading STC – Containment Options Report, dated May 2023 based on the failure of worst-case tanks. These risk assessments/spill models show that the proposed containment strategies would contain effluent/digestate on site.

The section, *Bespoke permit conditions* of this document, provides a general explanation why we have issued this permit without a full determination of various key issues with the application.

We have included an improvement condition in the permit for the operator to progress the proposals submitted within the application and to provide additional details as they are developed and implemented. We require that the proposals must be implemented by 31 December 2024.

Emissions to air – Combustion

Biogas generated through the anaerobic digestion of waste contains a high quantity of methane and is often used to provide energy to onsite operations. Biogas is commonly combusted within on-site combined heat and power engines (CHP) or boilers. CHP engines produce heat and electricity. Heat is used to provide energy in the form of steam or hot water and is directed to the anaerobic digestion plant processes, while electricity can be utilised to power other plant on site.

Combustion of biogas or other fuels such as natural gas produces waste gas emissions which are discharged to the atmosphere via a stack. The combustion of biogas releases the following products of combustion; oxides of nitrogen (expressed as NO₂), sulphur dioxide (SO₂), carbon monoxide (CO) and volatile organic compounds (VOC).

While the WaSC anaerobic digestion activity has not until now been regulated under the Environmental Permitting (England and Wales) Regulations 2016 (EPR) as an installation, across the sector, the combustion plant may have been permitted. Some combustion plant in this sector will already have permits as standalone medium combustion plant. If emissions have previously been assessed, our approach is not to undertake any additional assessment unless there is a site-specific reason to do so. If emissions had not been previously assessed, or there had been subsequent changes, we would require a WaSC to undertake a new quantitative air risk assessment during determination.

This installation uses combustion plant to provide power and heat to the plant and anaerobic digestion process. Reading STC is authorised to combust biogas from two combined heat and power (CHP) engines with a thermal input of 1.344 MWth each, and three dual fuel boilers with a thermal input of 0.837MWth each.

The CHP engines produce heat and electricity as a result of combustion. Heat is used to provide energy in the form of steam or hot water which is directed to the AD plant processes, while electricity can be utilised to power other plant on site or in some cases can be exported to the electricity grid. Reading STC utilises electricity produced on-site and can export offsite if required. The boilers provide additional heat support to the AD process when required.

The emissions from the combustion plant at Reading STC, has been previously assessed and we are not aware of any subsequent changes to plant. Therefore, we have not carried out any further assessments.

We have ensured that individual combustion plant is subject to the required emission limit value (ELV) as stated in the permit. This includes those required by the Medium Combustion Plant Directive (MCPD) which have a future effective date. See Table S3.1 in the permit.

We have included improvement condition IC12 in the permit which requires the Operator to assess methane slip resulting from the combustion of biogas via the CHP engines. Following an assessment of the data, the Environment Agency shall consider whether emission limits for volatile organic compounds are applicable for this installation.

Indirect emissions of waste water

AD installations produce a series of liquid wastes. These waste waters (also known as 'liquid digestate' or 'liquors') are discharged to the adjacent WwTW. As explained at the start of this document, WwTW are regulated under separate legislation, the Urban Waste Water Treatment Directive (UWWTD) and does not form part of this installation. The discharge of waste waters to the WwTW is therefore a point source emission and classed under the Waste Treatment BREF as an indirect emission to water. This AD has been in operation for several years but previously unpermitted as an installation as explained above. The activity at this facility was previously regulated as a waste operation.

The waste water discharged to the WwTW is not currently subject to monitoring or control. Waste waters, after discharge to the WwTW and treatment under UWWTD are discharged to surface waters (rivers, streams) or in some cases direct to the sea. Across the sewage sludge industry, a wide variety of incoming wastes, trade effluents and indigenous sewage sludges are treated via anaerobic digestion (combined they are subject to regulation under the EPR). Once discharged into the main WwTW, any pollutants within the discharge will be diluted with no control over the level of pollutants emitted to the works. This means that across the sewage sludge industry, there is no knowledge of the

extent of pollutants entering the main works for treatment. This lack of knowledge means that WaSCs do not know if their WwTW are capable of treating the waste waters produced at an AD installation.

Description of waste water discharge

Effluent is generated on site through the dewatering and thickening of indigenous and imported sludges prior to the anaerobic digestion process, the dewatering of digestate following the anaerobic digestion process, the production of biogas condensate and from Odour control liquor

The waste waters are discharged to the adjacent Reading WwTW. Any treatment of this effluent once it arrives at the WwTW is currently regulated under the UWWTD process, not under control of an environmental permit. However, the effluent being discharged from the WwTW is controlled by a permit. As the UWWTD waste water is discharged to a watercourse, we consider the effluent generated through the AD process, biogas condensate and OCU liquors, constitutes an indirect discharge to water.

As such operators of an installation must establish and maintain inventories, including information about the characteristics and composition of waste waters in accordance with BAT conclusion 3 of the Waste Treatment BREF. BAT conclusion 3 states:

In order to facilitate the reduction of emissions to water and air, BAT is to establish and to maintain an inventory of waste water and waste gas streams, as part of the environmental management system, that incorporates all of the following features which are identified for waste water as:

Information about the characteristics of the waste water streams, such as:

- *average values and variability of flow, pH, temperature, and conductivity;*
- *average concentration and load values of relevant substances and their variability (e.g. COD/TOC, nitrogen species, phosphorus, metals, priority substances / micropollutants);*
- *data on bioeliminability (e.g. BOD, BOD to COD ratio, Zahn-Wellens test, biological inhibition potential (e.g. inhibition of activated sludge))*

The operator did not have this data prior to submitting their application for a bespoke installation permit. The Environment Agency has found that across the waste water sector, WaSCs have not undertaken a comprehensive analysis of their emissions from the installation activities to the WwTW. In general, WaSC installations accept trade effluents (via consented discharges in the catchment), indigenous sludges and separate waste streams via road tanker. The waste materials treated via the AD plant are potentially diverse and the composition of the feedstock and treated digestates could contain significant variation in pollutants.

Operators of installations under the Waste Treatment BREF must establish an emissions inventory. The operator should be compliant with this BAT conclusion requirement at the point of submitting a permit application. The waste water emissions inventory informs treatment methodologies, environmental risk assessments and monitoring requirements. However, across the sector, this information is not available. The Environment Agency recognises that the operators emissions discharged to the WwTW have never been fully quantified, and therefore, accept that emissions to the WwTW have not been subject to a quantitative risk assessment. In addition, the operator also cannot demonstrate that they are compliant with BAT AELs for indirect discharges to water (as specified within BAT conclusion 20 of the Waste Treatment BREF).

The waste water discharged to the WwTW is treated via the requirements under the UWWTD. However, this approach may not effectively treat all the pollutants that could enter the WwTW after discharge from the installation. For example, characteristic treatment methods at WwTW do not typically treat and remove heavy metals or other specified pollutants from the waste water.

We understand and recognise that this industrial activity is already existing and consider it appropriate, where possible, to bring these activities into environmental regulation as an installation. While the operations are a pollution risk, the operator is not introducing new risks to the environment. It is important to note that any applications including a new emission to water would require a demonstration that emissions would not adversely impact any receiving waters, or breach relevant BAT AELs before a permit could be issued.

Our guidance, [Surface water pollution risk assessment for your environmental permit](#), indicates that establishing a representative composition of the waste water streams requires a number of samples over a long period (12 – 36 samples). The scope of pollutants to be identified in the waste water depends on what substances are likely to be within the waste water at the point it is discharged from the installation. To determine what is in the waste water, the operator will need to examine and have a good understanding of the inputs to the installation.

To establish a waste water inventory and to facilitate a quantitative risk assessment from this indirect emission point, we have set improvement conditions. Our processes state that we generally don't set improvement conditions that require BAT to be demonstrated at some date after the permit application has been consulted on and determined. Generally, we should be satisfied whether operations will be BAT at the appropriate time, and we should make that assessment at the time we issue any permit or variation. However, for the reasons set out above, this assessment is not possible due to the lack of data in this area across the WaSC sector. We consider setting improvement conditions as a pragmatic approach to identify what is in the waste water to then implement future improvements.

The permit includes improvement conditions IC11a, IC11b and IC11c. There are three stages to this improvement programme. The first (IC11a) requires the operator to submit and carry out a sampling and analysis program and gather the relevant data on the waste water. In accordance with the Waste Treatment BREF, the IC requires the operator to determine the composition of the pollutants which have BAT-AELs (these include heavy metals). Due to the variety of inputs to the waste treatment process and the unknown composition of the waste waters proposed for discharge to the WwTW, we cannot consider this effluent as straightforwardly a 'biodegradable waste'. Therefore, the IC also sets the requirement on the operator to establish an inventory of pollutants of 'all relevant substances'. The scope of pollutants the operator must identify depends on what substances are likely to be within the waste water at the point it is discharged from the installation. To determine what is in the waste water, the operator will need to examine and have a good understanding of the inputs to the installation. This installation accepts waste inputs from indigenous and imported sludges. Due to this variety of inputs and the requirements for a minimum of 12 samples, we have specified that this monitoring period be for at least a year to determine a representative understanding of the discharge.

The Environment Agency recognises that 12 months is a long period but establishing the composition of the waste water will facilitate long term improvements and ensure that all potential pollutants are able to be controlled.

On completion of IC11a, IC11b requires the operator to undertake a full assessment of the results providing a summary of the sample results, a completed H1 risk assessment(s) and detailed modelling (where necessary) with an assessment made against the parameters specified in the relevant environmental standards as specified within our guidance. We also require the operator to submit proposals and/or additional measures required to prevent or minimise any significant emissions from the installation along with timescales for implementation. IC11c requires the implementation of any relevant improvements identified.

The operator has provided written confirmation that it will initiate a sampling programme to determine the composition of the waste water.

The overarching aim of the improvement programme is to establish comprehensively what the operators of AD installations discharge to WwTW and to drive long term improvements. The lack of existing data across the industry means that the Environment Agency, rather than refusing environmental permit applications, facilitates a process for WaSC operators to achieve BAT and to meet environmental standards for long term environmental protection.

Odour management

The Waste Treatment BREF outlines techniques for minimising the impact from odour pollution from operations which are likely to cause odour. Anaerobic digestion and the handling/storage of various waste sludges and organic wastes can be highly odorous. The Waste Treatment BREF includes general BAT conclusions which operators must implement (BAT 10 and 12 where odour nuisance at sensitive receptors is expected and/or has been substantiated). These include:

- BAT 10 – Monitoring of odour emissions
- BAT 12 – Odour management plan
- BAT 13 – Techniques to reduce odour emissions
- BAT 14 – Reduce diffuse emissions to air

Odour and BAT

BAT requires that processing and treatment of odorous wastes be carried out in a sealed system. This means that tank(s)/vessel or area(s) must be connected to an odour abatement system. Odorous gas streams are to be directed to the abatement plant to be treated prior to release to the atmosphere via emission stack(s).

BAT-associated emission levels (BAT-AELs) for the treatment of water based liquid wastes (the dewatering and thickening activity identified as a directly associated activity of the AD process) are identified as Hydrogen chloride (HCl), Ammonia (NH₃), and Total volatile organic compounds (TVOC), however the monitoring only applies when the substance concerned is identified as relevant in the waste gas stream based on the inventory mentioned in BAT 3. As the operator has not provided evidence to demonstrate that these substances are not present in the emission, we have specified these limits in the permit as, not more than 5mg/m³ for HCl, not more than 20mg/m³ for TVOC and no more than 20 mg/Nm³ for NH₃.

For the biological treatment of waste relating to the AD process we require that odour concentrations are limited to less than 1,000 ou_E/Nm³ at the point of release or, in the case of an ammonia release, no more than 20 mg/Nm³. The upper BAT-AEL limit for ammonia is specified in the permit.

The odour abatement technology at Reading consist of a single stage wet scrubber and single stage stand-by carbon filter. The stand-by carbon filter is in parallel to the wet scrubber. With 1 stack from the Odour control unit. The odour control unit serving the acceptance and dewatering process prior to anaerobic digestion, and the dewatering process post AD.

This odour control technology meets the requirement of BAT 34 and 53 which identifies relevant appropriate techniques for the reduction of odour as Wet scrubbing and adsorption.

Odour management plan

The site is required to have an odour management plan in place that details the measures and procedures to prevent or otherwise minimise, odour releases from the site. The plan forms part of the permit.

To verify the effectiveness of the odour management systems in place at Reading STC, we have requested that the operator carry out a review of the abatement plant on site, to determine whether the measures have been effective and adequate to prevent and where not possible minimise emissions released to air including; but not limited to odour, NH₃, TVOC and HCl. The required review is included in the permit in the form of an improvement condition which is part of the improvement programme detailed in table S1.3.

Odour conclusions

Based upon the information in the application we are satisfied that the appropriate measures will be in place to prevent or where that is not practicable to minimise odour and to prevent pollution from odour.

Bioaerosols

Site-specific bioaerosols risk assessments (SSBRA) are required where:

- The operational area (including abatement plant) is located within 250 metres of sensitive receptors: or
- Where area or point source emissions may pose a risk to the nearest sensitive receptor's location.

SSBRAs demonstrate that the process and/or abatement measures adequately prevent, or where this is not possible, significantly reduce the risk of bioaerosols release, and that the resulting activity will be unlikely to expose the nearest sensitive receptor to elevated concentrations of bioaerosols.

There are external site operational processes within 250 metres of a sensitive receptor.

We consider it appropriate to insert the bioaerosols monitoring requirements in the permit in accordance with our guidance TGN M9 Environmental monitoring of bioaerosols at regulated facilities (version 2, July 2018). The operator is required to comply with the new monitoring requirements from the date of permit issue.

Improvement conditions

Primary tank/vessel condition

We recognise that many sludge storage and treatment vessels were constructed prior to the current permitting requirements and their design may not be compatible with BAT as described in the relevant BREF documents. The operator provided an inventory of their tanks and described the condition of those assets.

Comprehensive evidence was not provided to assess the condition of the tanks and determine whether they are suitable for containing potentially polluting wastes and waste waters. However, as these tanks are already existing and perform an ongoing industrial operation, we have set an improvement condition in the permit to address any potential deficiencies in the existing site's primary containment.

IC10 requires the operator to review (undertaken by an appropriately qualified engineer) the physical condition of the primary containment and establish a program of works to implement any necessary individual measures to ensure that the primary containment is fit for purpose. The Environment Agency will review these submissions with regard to the guidance, *CIRIA C736 Containment systems for the prevention of pollution*.

Methane slip and Leak detection and repair (LDAR)

We have included improvement condition IC12 in the permit which requires the operator to assess methane slip resulting from the combustion of biogas via the CHP engines. Following an assessment of the data, the Environment Agency shall consider whether emission limits for volatile organic compounds are applicable for this installation.

Effectiveness of abatement systems

The installation includes industrial processes which produce waste gas and odour emissions that are discharged to air via vents or stacks. BAT conclusion 14 of the Waste Treatment BREF states that emissions from diffuse sources should use techniques like, *collecting and directing the emissions to an appropriate abatement system via an air extraction system and/or air suction systems close to the emission sources*. This installation includes the storage and treatment of wastes in tanks and vessels. To prevent diffuse emissions of pollutants such as odour, ammonia and VOCs, emissions are extracted and treated by an air abatement system. The abatement technology used at Reading STF is a wet scrubber with adsorption. The treated air stream is then discharged to atmosphere via a stack. This meets the requirements of BAT 34 and BAT 53.

Additionally, to verify whether existing measures have been effective and adequate to prevent and/or minimise emissions released to air, we have set an improvement condition IC13. Where further improvements are identified, the operator is required to implement these measures. The improvement condition requires the operator to demonstrate via determining the composition of waste gas emissions, monitoring and additional risk assessment that the existing abatement system effectively treats the emissions to air.

Head of works

This permit also allows a further bespoke waste operation relating to the import of industrial sludge and liquid waste to the *head of works* (HoW). HoW means the discharge location where separately imported wastes are discharged into the WwTW. The waste operations associated with the head of works is either via the direct discharge of tankered waste into the WwTW or the temporary storage (and blending) of waste in a storage tank before discharge of the waste liquids into the WwTW. Once the discharged wastes enter the WwTW, this emission leaves regulatory control of The Environmental Permitting (England & Wales) Regulations 2016. The discharged waste is mixed with liquids in the WwTW and is regulated separately under the requirements of the Urban Waste Water Treatment Directive. The HoW activity undertaken at Reading STF involves the acceptance of tankered waste at the import point and direct discharge into the WwTW. The discharge from the HoW is therefore classed as an indirect emission to water. This activity is not related to the on-site anaerobic digestion installation.

The operator applied for this as an additional regulated activity as part of the IED permitting process. This variation ensures that the activity reflects up-to-date permit conditions.

Across the waste water treatment sector, existing HoW permits allow for the reception and discharge of waste into the WwTW without the appropriate controls for a point source emission to sewer. The imported wastes discharged to the WwTW is treated via the requirements under the UWWTD. However, this approach may not effectively treat all the pollutants that could enter the WwTW after discharge from HoW activity.

We understand and recognise that this industrial activity is already existing and consider it appropriate, where possible, to bring these activities into up-to-date environmental regulation. While the operations are a pollution risk, this permit does not introduce new risks to the environment. The operator submitted a list of waste codes for discharge to sewer as part of the HoW activity. We requested that the operator indicate which wastes are currently accepted and those codes which would be newly requested as part of the HoW activity. To ensure that this HoW is not introducing new environmental risks we have restricted the waste codes accepted to the HoW activity to those already accepted. A quantitative environmental risk assessment was not submitted to determine the impact from the discharge of the new codes to the River after passing through the WwTW. As the operator provided no evidence of the environmental impact from the new codes, we are not able to approve this aspect of their application. A list of the rejected codes can be found in the *Decision considerations* section of this document.

It is important to note that any applications adding new waste codes would change the emission to sewer and would require a demonstration that emissions would not adversely impact any receiving waters, or breach relevant environmental standards before a permit could be issued.

This variation ensures that the HoW activity and associated discharge are permitted to modern standards by implementing the following:

- Included the HoW activity as a bespoke waste operation within the new IED permit.
- Added an emission point for the discharge of HoW waste to the main wastewater treatment works (WwTW). This will facilitate sampling and monitoring of the discharge. This discharge is classed as an indirect emission to water.
- Included all the HoW waste codes applied for where already accepted.
- Added improvement conditions requiring the operator to determine the composition¹ of the wastewater stream discharged into the WwTW (monitoring over 12 months). It will also require the operator to perform a quantitative risk assessment of the impact of this wastewater downstream at the main river and implement improvements to prevent pollution to the watercourse.

As similarly outlined in the Key issues section, *Indirect emissions to waste water*, this application does not include a demonstration that the existing indirect discharge via the HoW to the River Kennet is not causing pollution. Across the WaSC sector, there is little or no data available to determine the impacts from HoW activities. Therefore, to establish a waste water inventory and to facilitate a quantitative risk assessment from this indirect emission point we have set improvement conditions. Our processes state that we generally should perform risk assessments at the time we issue any permit or variation. However, for the reasons set out above, we consider setting improvement conditions as a pragmatic approach to identify what pollutants are present in the HoW discharge to then implement future improvements.

The permit includes improvement conditions IC13a, IC13b and IC13c. There are three stages to this improvement programme. The first (IC13a) requires the operator to submit and carry out a sampling and analysis program and gather the relevant data on the waste water discharge. In accordance with our guidance, Non-hazardous and inert waste: appropriate measures for permitted facilities - Guidance - GOV.UK (www.gov.uk), the IC requires the operator to determine the composition of the discharge. The scope of pollutants the operator must identify depends on what substances are likely to be within the incoming waste at the HoW. Due to the variety of industrial wastes accepted and the requirements for a

¹ 'Composition' means:

- Average values and variability of flow, pH, temperature and conductivity.
- Average concentration and load values of all relevant substances and their variability.
- Data on bioeliminability.

minimum of 12 samples, we have specified that this monitoring period be for at least a year to determine a representative understanding of the discharge.

The Environment Agency recognises that 12 months is a long period but establishing the composition of the discharge from the HoW will facilitate long term improvements and ensure that all potential pollutants are able to be controlled.

On completion of IC13a, IC13b requires the operator to undertake a full assessment of the results providing a summary of the sample results, a completed H1 risk assessment(s) and detailed modelling (where necessary) with an assessment made against the parameters specified in the relevant environmental standards as specified within our guidance. We also require the operator to submit proposals and/or additional measures required to prevent or minimise any significant emissions from the installation along with timescales for implementation. IC13c requires the implementation of any relevant improvements identified and may require the operator to limit wastes accepted at the HoW.

The operator has provided written confirmation that it will initiate a sampling programme to determine the composition of the waste water. The lack of existing data across the industry means that the Environment Agency, rather than refusing an environmental permit application, facilitates a process for WaSC operators to understand their emissions and to meet environmental standards for long term environmental protection. This process will enable the Environment Agency to set environmental limits on the discharge for substances of concern. In addition, implementing permit conditions and establishing that the movement of waste from the HoW to the WwTW is a point source emission, corrects historic irregular permitting arrangements.

Decision considerations

Confidential information

A claim for commercial or industrial confidentiality has not been made.

The decision was taken in accordance with our guidance on confidentiality.

Identifying confidential information

We have not identified information provided as part of the application that we consider to be confidential.

The decision was taken in accordance with our guidance on confidentiality.

Consultation

The consultation requirements were identified in accordance with the Environmental Permitting (England and Wales) Regulations (2016) and our public participation statement.

The application was publicised on the GOV.UK website.

We consulted the following organisations:

- Local authority Environmental Protection Department – No response received
- Food standards agency – No response received
- Health and Safety Executive – No response received
- UK Health Security Agency (Previously Public Health England) and the relevant Director of Public Health – See consultation responses section.

The comments and our responses are summarised in the [consultation responses](#) section.

Operator

We are satisfied that the operator (now the operator) is the person who will have control over the operation of the facility after the grant of the permit. The decision was taken in accordance with our guidance on legal operator for environmental permits.

The regulated facility

We considered the extent and nature of the facility at the site in accordance with RGN2 'Understanding the meaning of regulated facility', Appendix 2 of

RGN2 'Defining the scope of the installation', Appendix 1 of RGN 2 'Interpretation of Schedule 1', guidance on waste recovery plans and permits.

The extent of the facility is defined in the site plan and in the permit. The activities are defined in table S1.1 of the permit.

The site

The operator has provided a plans which we consider to be satisfactory.

The plans show the location of the part of the installation to which this permit applies on that site.

The plan is included in the permit.

Site condition report

The operator has provided a description of the condition of the site, which we consider is satisfactory. The decision was taken in accordance with our guidance on site condition reports and baseline reporting under the Industrial Emissions Directive.

Nature conservation, landscape, heritage and protected species and habitat designations

We have checked the location of the application to assess if it is within the screening distances we consider relevant for impacts on nature conservation, landscape, heritage and protected species and habitat designations. The application is within our screening distances for these designations.

We have assessed the application and its potential to affect sites of nature conservation, landscape, heritage and protected species and habitat designations identified in the nature conservation screening report as part of the permitting process.

We consider that the application will not affect any site of nature conservation, landscape and heritage, and/or protected species or habitats identified.

We provided an assessment of the habitats which we provided to Natural England for information only.

The decision was taken in accordance with our guidance.

Environmental risk

We have reviewed the operator's assessment of the environmental risk from the facility.

The operator's risk assessment is unsatisfactory and required additional Environment Agency assessment.

The operators risk assessment was unsatisfactory and required additional Environment Agency assessment. Please see the key issues for more information. We were unable to fully assess all elements of the operators' risk assessment during determination of the variation. The facility is, however, already existing and has not been regulated as an installation prior to this application. We have included conditions in the permit that require the operator to provide additional information as part of an improvement programme. The improvement programme requires that the operator provide updated risk assessments including but not limited to the following elements:

- Secondary containment – The improvement programme requires the operator to submit a finalised containment solution in compliance with CIRIA C736, fully worked up and signed off by competent individuals. The improvement programme requires the submission of timeframes for the implementation of any additional containment measures identified as being necessary as part of the risk assessment. This requirement is to ensure that the site meets the requirements of BAT conclusions for containment namely BATc 19 of the Waste Treatment BREF.
- Discharge of process wastewater to a WwTW – Effluent is produced at different stages of the sludge treatment operations at Reading STF. At the time of application, an analysis of the effluent streams had not been undertaken or submitted. To ensure that the wastewater streams are fully characterised and an analysis of any pollutants of concern is carried out, we have included improvement conditions (IC11a, b and c) requiring a sampling programme, analysis, and proposals for any additional measures required to prevent or minimise any significant emissions from the installation along with timescales for implementation, for Environment Agency approval, with measures to be implemented as approved. The BAT associated emission levels (BAT-AEL) have been applied to the emission points S1, S2 and S3 on the permit. The limits only apply if a pollutant of concern is identified in the waste water characterisation. The emission limits can be found in table S3.3
- Discharge of waste to the HoW – Waste is currently accepted and discharged to the HoW. At the time of application, an analysis of the impact of acceptance of these wastes had not been undertaken or submitted. To ensure that the fate of the impact on receiving water bodies is assessed, we have included improvement conditions requiring a sampling programme, analysis, and proposals for any additional measures required to prevent or minimise any significant emissions from the receipt of waste to the HoW along with timescales for implementation, for Environment Agency approval, with measures to be implemented as approved.

General operating techniques

We have reviewed the techniques used by the operator and compared these with the relevant guidance notes and we consider them to represent appropriate techniques for the facility.

Where there are measures approaching BAT, we have where appropriate implemented an improvement programme. The improvements set out in table S1.3 must be completed by the times stipulated in that table or the backstop conditions identified in the permit.

We have reviewed the techniques against the Best Available Techniques (BAT) Reference Document for Waste Treatment (BAT conclusions), Biological waste treatment: appropriate measures for permitted facilities - 1. When appropriate measures apply - Guidance - GOV.UK (www.gov.uk) and Non-hazardous and inert waste: appropriate measures for permitted facilities.

The operating techniques that the operator must use are specified in table S1.2 in the environmental permit.

Operating techniques for emissions that do not screen out as insignificant

The combustion plant at this facility remains unchanged from the existing permit EPR/ FB3809MM /V002. The engines and boilers will not change as a result of this permit variation.

We consider that the emission limits included in the installation permit reflect the BAT for the sector.

National Air Pollution Control Programme

We have considered the National Air Pollution Control Programme as required by the National Emissions Ceilings Regulations 2018. By setting emission limit values in line with technical guidance we are minimising emissions to air. This will aid the delivery of national air quality targets. We do not consider that we need to include any additional conditions in this permit.

Odour management

We have reviewed the odour management plan in accordance with our guidance on odour management.

We consider that the odour management plan is satisfactory and we approve this plan.

We have approved the odour management plan as we consider it to be appropriate measures based on information available to us at the current time. The operator should not take our approval of this plan to mean that the measures in the plan are considered to cover every circumstance throughout the life of the permit.

The operator should keep the plans under constant review and revise them annually or if necessary sooner if there have been complaints arising from operations on site or if circumstances change. This is in accordance with our guidance 'Control and monitor emissions for your environmental permit'.

While we consider that the plan is satisfactory, we have included an improvement condition (IC13) to review the effectiveness of the abatement system. The improvement condition is included in order to determine whether existing measures have been effective and adequate to prevent and/or minimise emissions released to air. Where further improvements are identified, the operator is required to implement these measures in accordance with Environment Agency approval.

Use of conditions other than those from the template

Based on the information in the application, we consider that we need to include conditions other than those in our permit template. See the Key issues section for more details on the bespoke permit conditions we have set in this permit.

Raw materials

We have specified limits and controls on the use of raw materials and fuels.

Waste types

We have specified the permitted waste types, descriptions and quantities, which can be accepted at the regulated facility.

We are satisfied that the operator can accept these wastes for the following reasons:

- they are suitable for the proposed activities
- the proposed infrastructure is appropriate; and
- the environmental risk assessment is acceptable.

We have excluded the following wastes for the following reasons:

A quantitative environmental risk assessment was not submitted to determine the impact from the discharge of the new codes to the River Aire after passing through the WwTW. As the operator provided no evidence of the environmental

impact from the new codes, we are not able to approve this aspect of their application. A list of the rejected codes is provided below.

19	Wastes from waste management facilities, off-site waste water treatment plants and the preparation of water intended for human consumption and water for industrial use
19 09	wastes from the preparation of water intended for human consumption or water for industrial use
19 09 02	sludges from water clarification
19 13	wastes from soil and groundwater remediation
19 13 08	Aqueous liquid wastes and aqueous concentrates from groundwater remediation

Improvement programme

Based on the information on the application, we consider that we need to include an improvement programme. See the Key issues section for more details on the bespoke permit conditions we have set in this permit

Emission Limits

Emission Limit Values (ELVs) and equivalent parameters or technical measures based on Best Available Techniques (BAT) have been added for emissions to air and indirect discharges of waste water to surface waters.

Emission limit values are derived from:

- Waste Treatment BREF for BAT associated emission limits.
- Schedule 25A of the Environmental Permitting (England and Wales) (Amendment) Regulations 2016.

Emissions to air

Odour abatement system

There are discharges of emissions to air from odour control units (channelled emissions to air from abatement plant) and combustion appliances (combined heat and power plant and boilers). The odour control plant discharges emissions to the air via a stack. BAT requires that BAT-AELs of 20 mg/Nm³ for Ammonia (NH₃) be applied when biological treatment of waste is carried out. Anaerobic digestion is a biological process therefore the limit is included in the permit.

The Waste Treatment BREF provides examples of wastes that would be considered as water-based liquid wastes. These include wastes under the category '19 08 wastes from waste water treatment plants not otherwise

specified' as there are channelled emissions of odorous air from the treatment of these wastes, we have included BAT-AELs of 5 mg/Nm³ Hydrogen Chloride (HCL) and 20 mg/Nm³ of Total Volatile Organic Compounds (TVOC). It should be noted that the limits for HCL and TVOC only apply when the substances of concern are identified in the waste gas streams characterised in BAT conclusion 3. Improvement condition IC13 requires full investigation and characterisation of waste gas streams within 12 months of issue of the permit. A full characterisation of waste gas streams was not available at the time of submission of the application.

Combustion appliances

Biogas is produced as a result of the AD process. Combustion of the produced biogas takes place in two combined heat and power (CHP) engine and boilers. The engine produces heat and electricity that may be used to power on site processes while boilers provide additional heat to the AD processes. The boilers also utilise gas oil as a backup fuel. Combustion of biogas discharges pollutants to the air via stacks and exhausts. We have therefore applied emission limits to the following substances;

- Nitrogen oxides
- Sulphur dioxide
- Carbon monoxide

For further detail of emission limits, refer to table S3.1 of the permit.

Emissions to water

There are no emissions of waste waters direct to a receiving water body. The operator will discharge waste waters to the waste water treatment works prior to discharge to River Kennet. The Waste Treatment BREF specifies BAT AELs for indirect emissions to a water body. Where non-hazardous wastes are imported for storage, blending or treatment prior to discharge into the wastewater treatment works, the permitted waste operation ceases once the waste is mixed with the waste waters in the WwTW. BAT AELs or emission limits will be applied to the discharge into the wastewater treatment works for substances of concern.

The BAT AELs are appropriate for the activity defined under the BREF as 'Treatment of water-based liquid waste'. The BREF provides examples of wastes that would be considered as water-based liquid wastes. These include wastes under the category '19 08 wastes from waste water treatment plants not otherwise specified'. The treatment of this waste including dewatering, thickening treatment through AD and the subsequent discharge to the waste water treatment works will be subject to the BAT AELs specified within BAT conclusion 20 (Table 6.2 of the Waste Treatment BREF).

As outlined within the Key issues section, *Indirect emissions of waste water*, the operator did not provide a composition of the waste water (in line with BAT conclusion 3), therefore, all BAT AELs have been applied. We have set improvement condition (IC11a) for the operator to determine the composition of the waste in a waste inventory. The limits will only apply when the substance concerned is identified as relevant in the waste water inventory.

Until the operator has completed IC11a, the permit specifies limits for:

- Hydrocarbon oil index (HOI) (mg/l).
- Free cyanide (CN⁻) (mg/l).
- Adsorbable organically bound halogens (AOX) (mg/l).
- Metals and metalloids; arsenic (expressed as As), cadmium (expressed as Cd), chromium (expressed as Cr), hexavalent chromium (expressed as Cr(VI)), copper (expressed as Cu), lead (expressed as Pb), nickel (expressed as Ni), mercury (expressed as Hg), zinc (expressed as Zn) (µg/l).

Monitoring

We have decided that monitoring should be carried out for the parameters listed in the permit, using the methods detailed and to the frequencies specified.

We made these decisions in accordance with the waste treatment Best available techniques BAT conclusions.

Based on the information in the application we are satisfied that the operator's techniques, personnel and equipment have either MCERTS certification or MCERTS accreditation as appropriate.

Reporting

We have specified reporting requirements in the permit. We imposed these requirements in accordance with the Waste Treatment BAT conclusions.

Management System

We are not aware of any reason to consider that the operator will not have the management system to enable it to comply with the permit conditions.

The decision was taken in accordance with the guidance on operator competence and how to develop a management system for environmental permits.

A full review of the management system is undertaken during compliance checks.

Technical Competence

Technical competence is required for activities permitted.

The operator is a member of the CIWM/WAMITAB scheme

We are satisfied that the operator is technically competent.

Previous performance

We have assessed operator competence. There is no known reason to consider the operator will not comply with the permit conditions.

We have checked our systems to ensure that all relevant convictions have been declared.

Relevant convictions were found and declared in the application. We considered relevant convictions as part of the determination process.

Financial competence

There is no known reason to consider that the operator will not be financially able to comply with the permit conditions.

Growth duty

We have considered our duty to have regard to the desirability of promoting economic growth set out in section 108(1) of the Deregulation Act 2015 and the guidance issued under section 110 of that Act in deciding whether to grant this permit.

Paragraph 1.3 of the guidance says:

“The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.”

We have addressed the legislative requirements and environmental standards to be set for this operation in the body of the decision document above. The guidance is clear at paragraph 1.5 that the growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections.

We consider the requirements and standards we have set in this permit are reasonable and necessary to avoid a risk of an unacceptable level of pollution.

This also promotes growth amongst legitimate operators because the standards applied to the operator are consistent across businesses in this sector and have been set to achieve the required legislative standards.

Consultation Responses

The following summarises the responses to consultation with other organisations, and the way in which we have considered these in the determination process.

Responses from organisations listed in the consultation section:

Response received from UK Health Security Agency

Brief summary of issues raised:

The main emissions of potential concern are emissions of bioaerosols and odorous emissions. The application indicates that the installation has mitigation measures and management plans in place such that off-site risks are anticipated to be insignificant.

Based on the information contained in the application supplied to us, UKHSA has no significant concerns regarding the risk to the health of the local population from the installation.

This consultation response is based on the assumption that the permit holder shall take all appropriate measures to prevent or control pollution, in accordance with the relevant sector guidance and industry best practice

Summary of actions taken:

We have set limits for the emission of pollutants to air in accordance with BAT or have set limits that are appropriate for the biowaste treatment sector. Limits include; nitrogen oxides, sulphur dioxide for engines and boilers and ammonia limits for odour abatement plant discharging emissions to air. We have set action trigger limits and monitoring of bioaerosols to further control potential emissions of airborne pollutants from processes that may release them.

Response received from Reading Borough Council

Brief summary of issues raised:

Reading Borough Council has been trying to resolve odour issues emanating from Reading STW affecting residents at Kennet Island and Green Park Village. During our investigations it became clear that the odour control units in the inlet room and the sludge room were not operational as they had been allowed to deteriorate over a number of years without receiving the maintenance that the service records show was required. These issues are in the process of being

fixed now, but to date I have not received reassurance that anything has changed to stop the same happening again. I would like to see some conditions added to the permit requiring a reporting mechanism to be in place to ensure maintenance issues are raised and resolved within a set acceptable time frame.

Summary of actions taken:

We have set limits for the monitoring of odour control units on site in accordance with BAT. Limits include; Ammonia, Hydrogen Chloride and TVOC. Site will also provide results for hydrogen sulphide and odour. We have implemented IC13 to demonstrate the effectiveness of the odour control units implemented and have approved the sites odour management plan to ensure the effective maintenance and provision of odour control system. Odour conditions will be included in the permit should the activities give rise to odour beyond the site boundary. As a result, the operator would be required to submit for approval within a specified period, a revised odour management plan which would look to identify and minimise any risk of odour.

No other responses were received to our consultation exercise.

Secondary containment and credible scenarios

Thames text in black, EA response in blue

BAT 19 is the relevant BAT conclusion when considering the need for secondary containment.

BAT 19 requires operators to *prevent or, where that is not practicable, to reduce emissions to soil and water*. BAT 19d lists a number of techniques which can be used in combination to *“reduce the likelihood and impact of overflows and failures from tanks and vessels”*. These include impermeable surfacing, overflow detectors, and the location of tanks for liquids in *“a suitable secondary containment; the volume is normally sized to accommodate the loss of containment of the largest tank within the secondary containment”*. This aligns well with the already well established 110/25% rule which has been applied in other regulated facilities for over 30 years.

Page 38 Under Section 4.2.1 – The “110 per cent” and “25 per cent rules”, the guidance suggests that *“The basis for much industry practice in the past has been the 110 per cent and 25 per cent rule. Although not following the risk-based approach recommended in this guide, this practice has been in use for many years”*.

We interpreted this to suggest that the previous 110/25 percent rule was not recommended but was recognised as an historically accepted practice.

On the contrary the guide is simply recognising that the 110/25% rule, an established industry standard, doesn't follow the risk-based approach recommended in other sections of the guide. In other words the requirement for secondary containment is not dependent on a risk assessment; the requirement cannot be risk assessed away, nor can volumes be reduced. This is also made clear by figure 4.3.

Credible scenarios

Section 4.2.1 helpfully explains the assumptions behind the 110% and 25% rule. For the 25% rule the assumption is that not all the tanks within the secondary containment are expected to fail at the same time. However there could be credible scenarios where this assumption might not hold, such as an explosion damaging multiple tanks, implying that for some credible scenarios you may conclude that containment needs to be increased above the standard 25% of total tank volume. The guide does not anticipate an equivalent argument whereby the containment volume could be reduced. It is entirely credible to foresee a situation where human error results to the loss of the entire contents of a tank (there have been examples of this) and virtually impossible to eliminate that risk so the standard 110/25% is applied as a minimum.

Figure 4.3 reinforces this point. It shows credible scenarios to be relevant only if the contents of a tank are combustible, presumably because the loss of more than one tank is unlikely unless there is a fire or explosion. Again the implication is that credible scenarios can result in the required containment volume being increased but not decreased.

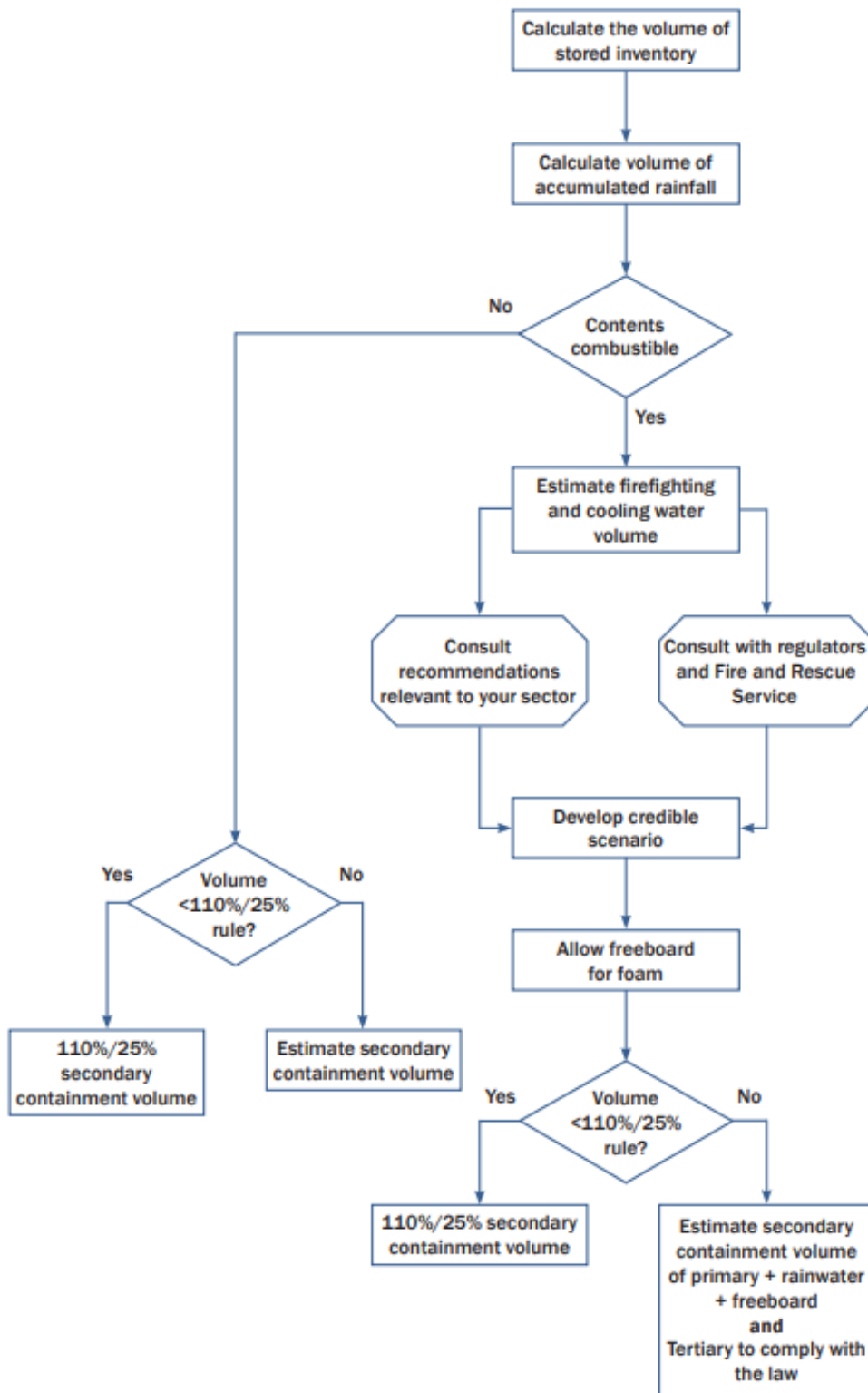


Figure 4.3 Process for estimating containment capacity

Page 43, Section 4.3 Method for Assessing Containment Capacity then refers to a recommended approach which references “...the containment should be capable of retaining:

- *The total volume of inventory that could be released during a credible incident*
- *The maximum rainfall that would be likely to accumulate within the containment before, during and and/or after an incident.....”*

“In determining containment requirements, the volume of substance should be based on the loss from a credible scenario.....”

As above the suggestion is that credible scenarios could result in some of the assumptions which form the basis of the 110/25% rule breaking down, such as an explosion damaging multiple tanks, in which case it would be necessary to increase the total containment volume above the standard 25%. This may be particularly pertinent for COMAH sites where there is a risk of fire or explosion.

Hopefully, this provides context as to the further point of clarification I raised at the end of the meeting. In some cases the consideration of a “credible scenario” could reduce the scale of secondary containment and align more to a risk-based approach. Given the CIRIA736 guidance document – we therefore wanted to explore whether the approach outlined in Section 4.3 was one that the EA would consider or whether we have previously misunderstood your references to the 110/25 percent rule.

Whilst we do not consider that the concept of ‘credible scenarios’ offers an opportunity to reduce secondary containment capacity we remain open to receiving proposals where it can be demonstrated that deviation from the 110/25% rule is possible without compromising the level of environmental protection.

Finan, Frank

From: Humphreys, Clive
Sent: 17 January 2024 19:20
To: Steve Spencer; Overton, Michael; Berman, Lucy; Tom Boichot (Guest); Molyneux, Steve; Hatch, Richard; Eugenia Vela (Guest); Shaw, Cameron; Gavin Yuill; Collins, Georgina; Debenham, Jory; O'Donovan, Christopher; Amzour, Amira; Cope, James
Cc: Jonathan1 Read; Angela Barugh; Jonathan Hagan; Tim Griffiths (Guest)
Subject: RE: IED/Defra Call Slides
Attachments: Comments on Assumptions in Slide 3.docx; Credible Scenarios Thames Water.docx

Hi Steve

Yes earlier this week I received feedback from colleagues and lawyers on credible scenarios as appears in CIRIA 736 – attached for information.

I was also tasked with commenting on the slides you presented at our earlier meeting and I've focused on slide 3 – see attached.

Thanks for the update I've made some notes in red below. You should also be receiving feedback from the Water UK IED Task and Finish Group which met earlier today where we worked through the remaining elements of the 46 technical queries received in September.

I have been speaking to Area colleagues about the ongoing discussion regarding extensions to improvement condition deadlines in the Reading permit. We should be able to agree an extension to the liquor sampling and analysis ICs as we've identified some technical challenges that need to be bottomed out. I'm visiting the ALS lab in Coventry next Tuesday to talk to the company. I'm less convinced by the case for an extension to the secondary containment IC and support the Area's decision to reject the proposal for deploying temporary defences in the event of a loss of containment.

I'm also concerned to learn that over 50% of the biogas produced at Didcot is being flared off rather than being used to generate power. Not only is this a waste of a valuable energy source it is not possible to issue a permit for the site unless an acceptable solution is proposed. Please can you update me on your plans for Didcot.

Regards

Clive Humphreys

Senior Advisor, Environment and Business

Environment Agency | Rivers House, Sturry Road, Canterbury, Kent, CT2 0AA

clive.humphreys@environment-agency.gov.uk

Mobile: 07920 207630

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From: Steve Spencer <steve.spencer@thameswater.co.uk>

Sent: Tuesday, January 16, 2024 2:03 PM

To: Humphreys, Clive <clive.humphreys@environment-agency.gov.uk>; Overton, Michael <Michael.Overton@defra.gov.uk>; Berman, Lucy <Lucy.Berman@defra.gov.uk>; Tom Boichot (Guest) <Tom.Boichot@ofwat.gov.uk>; Molyneux, Steve <steven.molyneux@environment-agency.gov.uk>; Hatch, Richard <richard.hatch@environment-agency.gov.uk>; Eugenia Vela (Guest) <Eugenia.Vela@ofwat.gov.uk>; Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Gavin Yuill <Gavin.Yuill@ofwat.gov.uk>; Collins, Georgina <Georgina.Collins@environment-agency.gov.uk>; Debenham, Jory <Jory.Debenham@defra.gov.uk>; O'Donovan, Christopher <Christopher.O'Donovan@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>; Cope, James <james.cope@environment-agency.gov.uk>

Cc: Jonathan1 Read <Jonathan1.Read@thameswater.co.uk>; Angela Barugh <angela.barugh@thameswater.co.uk>; Jonathan Hagan <Jonathan.Hagan@thameswater.co.uk>; Tim Griffiths (Guest) <tim.griffiths@ofwat.gov.uk>

Subject: RE: IED/Defra Call Slides

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Clive, I was wondering whether you had any feedback on the query I raised regarding secondary containment.

As an update following the workshop we have been able to progress the following key actions, (and by way of an update for all), is allowing us to reshape our IED programme.

- Tank Covering – we are developing an integrated, delivery plan aligning with the need to maintain throughput across our 25 Sludge Treatment Centres and our digester refurbishment programme. This will allow us to share a “deliverable/best endeavours” investment programme. Our aim is to share this with you, so that we can agree appropriate timescales for improvement conditions. **For clarity... the ICs will all have a 31 March 2025 deadline, and best endeavours will be considered after that date should the conditions not be complied with. Best endeavours will be your principal mitigation if deadlines are not met. It will be for Area operational teams to decide whether and what enforcement action is appropriate.**
- Cake Barns – we have recognised that this investment will no longer be needed in AMP8 and will be revisited in AMP9 as appropriate. **Thank you**
- Waste acceptance and return liquor monitoring – your guidance and subsequent input from the local EA team, is allowing us to significantly reduce our sampling programme, and we are finalising our approach which we will share with the local EA team as part of the ongoing permit application process. **Please note that we are working on a national solution which recognises the technical limitations of analysing particularly dirty samples such as AD return liquors. I'm meeting Area colleagues tomorrow to update them on progress.**

The final element is the secondary containment. Currently we are drafting an option to follow CIRA C736 which recommends a risk based approach, but would welcome confirmation this indeed is acceptable to the EA. Also, I can confirm we have received confirmation from the local EA team that containment does not necessarily need to be via concrete structures, and alternative can be considered. **Please see comment above about temporary defences.**

Our aim is to confirm as much of the above at the “wrap up” session planned for 25th January.

If you have points of clarification or queries please don't hesitate to drop me a line.

Regards

Steve Spencer

PR24 Wholesale Programme Director

Pronouns: he/him

steve.spencer@thameswater.co.uk

Clearwater Court, Vastern Road, Reading, RG1 8DB

From: Humphreys, Clive <clive.humphreys@environment-agency.gov.uk>
Sent: 14 December 2023 19:16
To: Steve Spencer <steve.spencer@thameswater.co.uk>; Overton, Michael <Michael.Overton@defra.gov.uk>; Berman, Lucy <Lucy.Berman@defra.gov.uk>; Tom Boichot (Guest) <Tom.Boichot@ofwat.gov.uk>; Molyneux, Steve <steven.molyneux@environment-agency.gov.uk>; Hatch, Richard <richard.hatch@environment-agency.gov.uk>; Eugenia Vela (Guest) <Eugenia.Vela@ofwat.gov.uk>; Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Gavin Yuill <Gavin.Yuill@ofwat.gov.uk>; Collins, Georgina <Georgina.Collins@environment-agency.gov.uk>; Debenham, Jory <Jory.Debenham@defra.gov.uk>; O'Donovan, Christopher <Christopher.O'Donovan@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>; Cope, James <james.cope@environment-agency.gov.uk>
Cc: Jonathan1 Read <Jonathan1.Read@thameswater.co.uk>; Angela Barugh <angela.barugh@thameswater.co.uk>; Jonathan Hagan <Jonathan.Hagan@thameswater.co.uk>; Tim Griffiths <tim.griffiths@ofwat.gov.uk>
Subject: RE: IED/Defra Call Slides

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Thanks Steve I'll look into the references you've provided and get back to you as soon as I'm able.

Regards

Clive

Clive Humphreys

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From: Steve Spencer <steve.spencer@thameswater.co.uk>
Sent: Thursday, December 14, 2023 5:31 PM
To: Humphreys, Clive <clive.humphreys@environment-agency.gov.uk>; Overton, Michael <Michael.Overton@defra.gov.uk>; Berman, Lucy <Lucy.Berman@defra.gov.uk>; Tom Boichot (Guest) <Tom.Boichot@ofwat.gov.uk>; Molyneux, Steve <steven.molyneux@environment-agency.gov.uk>; Hatch, Richard <richard.hatch@environment-agency.gov.uk>; Eugenia Vela (Guest) <Eugenia.Vela@ofwat.gov.uk>; Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Gavin Yuill <Gavin.Yuill@ofwat.gov.uk>; Collins, Georgina <Georgina.Collins@environment-agency.gov.uk>; Debenham, Jory <Jory.Debenham@defra.gov.uk>; O'Donovan, Christopher <Christopher.O'Donovan@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>; Cope, James

<james.cope@environment-agency.gov.uk>

Cc: Jonathan1 Read <Jonathan1.Read@thameswater.co.uk>; Angela Barugh <angela.barugh@thameswater.co.uk>; Jonathan Hagan <Jonathan.Hagan@thameswater.co.uk>; Tim Griffiths (Guest) <tim.griffiths@ofwat.gov.uk>

Subject: RE: IED/Defra Call Slides

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Clive, many thanks for the clarification and feedback, which is extremely useful and will allow us to review our costs accordingly. I will discuss with our permitting and technical teams and if we have any follow up queries I will drop you a note.

We also promised to provide some information on the back of the workshop regarding secondary containment and clarity regarding the CIRIA C736 guidance – Containment systems for the prevention of pollution.

The document is over 17MB, so difficult to email. I have therefore extracted below the elements where we understood that undertaking a risk assessment and determining a credible failure scenario was an option when sizing the requirements for secondary containment. Primarily linked to the recommendations in “Section 4 – containment system capacity”.

Page 38 Under Section 4.2.1 – The “110 per cent” and “25 per cent rules”, the guidance suggests that “*The basis for much industry practice in the past has been the 110 per cent and 25 per cent rule. Although not following the risk based approach recommended in this guide, this practice has been in use for many years*”.

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“In determining containment requirements, the volume of substance should be based on the loss from a credible scenario.....”

Hopefully, this provides context as to the further point of clarification I raised at the end of the meeting. In some cases the consideration of a “credible scenario” could reduce the scale of secondary containment and align more to a risk based approach. Given the CIRIA736 guidance document – we therefore wanted to explore whether the approach outlined in Section 4.3 was one that the EA would consider or whether we have previously misunderstood your references to the 110/25 percent rule.

Many thanks for your offer to look into this matter and provide clarification.

Regards

Steve Spencer

PR24 Wholesale Programme Director

Pronouns: he/him

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Clearwater Court, Vastern Road, Reading, RG1 8DB

From: Humphreys, Clive <clive.humphreys@environment-agency.gov.uk>
Sent: 14 December 2023 16:29
To: Overton, Michael <Michael.Overton@defra.gov.uk>; Berman, Lucy <Lucy.Berman@defra.gov.uk>; Tom Boichot (Guest) <Tom.Boichot@ofwat.gov.uk>; Molyneux, Steve <steven.molyneux@environment-agency.gov.uk>; Hatch, Richard <richard.hatch@environment-agency.gov.uk>; Eugenia Vela (Guest) <Eugenia.Vela@ofwat.gov.uk>; Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Gavin Yuill <Gavin.Yuill@ofwat.gov.uk>; Collins, Georgina <Georgina.Collins@environment-agency.gov.uk>; Debenham, Jory <Jory.Debenham@defra.gov.uk>; O'Donovan, Christopher <Christopher.O'Donovan@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>; Cope, James <james.cope@environment-agency.gov.uk>
Cc: Steve Spencer <steve.spencer@thameswater.co.uk>; Jonathan1 Read <Jonathan1.Read@thameswater.co.uk>; Angela Barugh <angela.barugh@thameswater.co.uk>; Jonathan Hagan <Jonathan.Hagan@thameswater.co.uk>; Tim Griffiths <tim.griffiths@ofwat.gov.uk>
Subject: RE: IED/Defra Call Slides

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Dear Steve

I'm writing in relation to the action taken by the EA at our meeting yesterday.

EA: By COP 14 Dec To confirm waste acceptance position to Thames in writing. Copy in Defra and Ofwat.

Waste Acceptance

Assumptions	Evidence
<ul style="list-style-type: none"> - Instructed to develop a proposal for a waste acceptance procedure that meets the requirements of Appropriate Measures - Characterisation of wastes imported - requirement to testing at MCERTS or UKAS accredited labs - Visually inspect every load (to visually inspect, some sort of sample needs to be taken to visualise it) - Every import to be sampled and analysed to confirm pre-acceptance checks - Procedure to be the same for inter-site as for third party imports 	<p>11) Final Opportunity Letter for Camberley from T Wager received 12th Oct 2022 to visually inspect every load, MCERT or UKAS accredited labs, inter[1]site to be subject to the same level of compliance as third-party wastes</p> <p>12) Final Opportunity Letter for Camberley from T Wager received 31/05/2023 – meet the requirements of ‘Appropriate Measures’. Key areas include but not limited to non-conformance/rejection, sampling, and visual assessment</p>

Our response

Despite being given multiple opportunities you failed to provide information to demonstrate compliance with BAT 2. The sludge can be expected to be of reasonably consistent quality, and where this is the case we would normally expect the producer to characterise the waste and rely on this evidence for multiple loads. You claimed to have a cradle to grave knowledge of the inter-works sludges but could only provide analysis results dating back to 2000 and 2009. The Pre-acceptance and Acceptance Procedures available to us at the time (version 2) and your responses to questions were incomplete or otherwise inadequate. Despite requests we received no amended procedures in respect of operations at Camberley. Tommy’s letters presented you with the default requirements which were considered necessary if you failed to present us with proposals for less onerous alternatives and supported this with evidence.

Comments in the 2 referenced letters have now been superseded by the requirements in the permit which was issued in early November. This references in *Table S1.2 'Operating Techniques'* an updated Pre-acceptance and Acceptance Procedure (version 3) originally received for your Reading sludge treatment facility. For clarity, this new procedure does not propose the sampling and analysis of each load. Instead and as recommended it commits you to conducting a sludge characterisation exercise, the results of which will form the basis for acceptance of inter-works sludges at Camberley. This exercise will need to be repeated periodically or when there is a significant change in operations likely to alter the nature of the sludge.

The cost of this periodic characterisation of sludge will be substantially less than the cost of sampling and analysing every load. You should therefore recalculate your costs against the permit requirements and apply this across each of your sludge sites.

Regards

Clive

Clive Humphreys

Senior Advisor, Environment and Business

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From: Overton, Michael <Michael.Overton@defra.gov.uk>

Sent: Wednesday, December 13, 2023 10:05 AM

To: Berman, Lucy <Lucy.Berman@defra.gov.uk>; Humphreys, Clive <clive.humphreys@environment-agency.gov.uk>; Tom Boichot (Guest) <Tom.Boichot@ofwat.gov.uk>; Molyneux, Steve <steven.molyneux@environment-agency.gov.uk>; Hatch, Richard <richard.hatch@environment-agency.gov.uk>; Eugenia Vela (Guest) <Eugenia.Vela@ofwat.gov.uk>; Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Gavin Yuill <Gavin.Yuill@ofwat.gov.uk>; Collins, Georgina <Georgina.Collins@environment-agency.gov.uk>; Debenham, Jory <Jory.Debenham@defra.gov.uk>; O'Donovan, Christopher <Christopher.O'Donovan@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>

Cc: Steve Spencer <steve.spencer@thameswater.co.uk>; Jonathan1 Read <Jonathan1.Read@thameswater.co.uk>; Angela Barugh <angela.barugh@thameswater.co.uk>; Jonathan Hagan <Jonathan.Hagan@thameswater.co.uk>; Tim Griffiths (Guest) <tim.griffiths@ofwat.gov.uk>

Subject: FW: IED/Defra Call Slides

Importance: High

Please find the slides shared by Thames attached.

From: Steve Spencer <steve.spencer@thameswater.co.uk>
Sent: 13 December 2023 09:56
To: Overton, Michael <Michael.Overton@defra.gov.uk>
Cc: Shaw, Cameron <Cameron.Shaw@defra.gov.uk>
Subject: RE: IED/Defra Call
Importance: High

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Michael, here are some introductory slides – if you can circulate to all attendees that would be great.

Our proposal is to talk through the assumptions on slide 3 – as it is our understanding of these assumptions that is driving the scope and costs.

During the session we have slides that will answer many of the questions you posed in your email – and we have site by site detail if required. (And will share a deep dive on Rye Meads).

PS Attendees at our end on the call – we are all in a single room at our Reading Offices.

- Myself
- Jonathan Hagan – PR24 Strategy & Planning Manager
- Angela Barugh – Head of Asset Strategy
- Andrew Hardman - Bioresources Strategy Manager
- Nicola Telcik – IED Programme Manager

Regards

Steve Spencer

PR24 Wholesale Programme Director

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From: Overton, Michael <Michael.Overton@defra.gov.uk>
Sent: 12 December 2023 15:34
To: Steve Spencer <steve.spencer@thameswater.co.uk>
Cc: Shaw, Cameron <Cameron.Shaw@defra.gov.uk>
Subject: RE: IED/Defra Call

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That's great – I look forward to seeing the materials you are pulling together. I will distribute these to those on the call if you can get them to me ASAP.

Kind Regards,

Michael

From: Steve Spencer <steve.spencer@thameswater.co.uk>
Sent: 12 December 2023 15:18
To: Overton, Michael <Michael.Overton@defra.gov.uk>
Cc: Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>; Berman, Lucy <Lucy.Berman@defra.gov.uk>
Subject: RE: IED/Defra Call

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Michael, thank you for the positive feedback. We also felt it was a successful meeting - between all parties, we identified actions that could make a material difference to the chemicals programme.

We will be taking a similar approach to IED. We will be laying out the assumptions in our plan at a high level, and the rationale for those assumptions. To help ensure we can clear up any misunderstandings we will also identify the correspondence with the EA, that has led us to our conclusions.

We will then discuss options which could significantly reduce the investment requirements – subject to EA review and ensuring we have understood the BAT conclusions correctly.

We also have all the details available site by site, including a deep dive into Rye Meads.

We are aiming to try and get some information pulled together and distributed as soon as possible.

Regards

Steve Spencer

PR24 Wholesale Programme Director

Pronouns: he/him

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Clearwater Court, Vastern Road, Reading, RG1 8DB

From: Overton, Michael <Michael.Overton@defra.gov.uk>
Sent: 12 December 2023 14:58
To: Steve Spencer <steve.spencer@thameswater.co.uk>
Cc: Shaw, Cameron <Cameron.Shaw@defra.gov.uk>; Amzour, Amira <Amira.Amzour@defra.gov.uk>; Berman, Lucy <Lucy.Berman@defra.gov.uk>
Subject: IED/Defra Call

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Hi Steve,

You should have received an updated question sheet for tomorrow. The Chemicals call was successful today in large part because Thames identified flexibilities and any barriers ahead of time. Would you and your colleagues be able to replicate this format for IED tomorrow?

Michael

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Reading STW – IED Containment

SUBJECT

Secondary Containment

PROJECT NO.

[project no]

DATE

8th January 2024

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DISTRIBUTION

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1. Introduction

AtkinsRéalis were tasked to undertake a high level BAT assessment for secondary containment at Reading STC and the provisions within 'Best Available Techniques' (BAT) for waste treatment under the Industrial Emissions Directive (IED) [1] with specific regard to BAT 19 and CIRIA C736 [2]. This could be used to inform whether the provisions for secondary containment within the existing permit for Reading STC could be re-visited as part of the updated BAT assessment.

The EU's Industrial Emissions Directive (IED) [1] takes an integrated approach to controlling pollution to air, water and land, and sets challenging industry standards for the most polluting industries. The IED aims to prevent and reduce harmful industrial emissions, while promoting the use of techniques that reduce pollutant emissions and that are energy and resource efficient.

Applicable facilities are required to use 'Best Available Techniques' (BAT) to prevent or minimise emissions and impacts on the environment. 'Techniques' include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned. BAT reference documents (BREFs) [3], informed by BAT Conclusions, contain emission limits associated with BAT, which must not be exceeded unless agreed.

This Technical Note seeks to identify the relevant provisions within the BAT conclusions, BAT reference document for waste treatment, other guiding documents and CIRIA, and therefore identify what the storage volumes of secondary containment need to be and how this applies to Reading STW to assess / inform whether the provisions for secondary containment within the existing permit for Reading Sludge Treatment Centre could be re-visited.

2. Applicable provisions for secondary containment

2.1 Waste Treatment BREF document

The published Waste Treatment documents [4] cover:

- common waste treatments such as the temporary storage of waste, blending and mixing, repackaging, waste reception, sampling, checking and analysis, waste transfer and handling installations, and waste transfer stations.
- biological treatments of waste such as aerobic/anaerobic treatments and mechanical and biological treatments.
- physio-chemical treatments of waste such as dewatering, filtration, oil/water separation, precipitation, solidification and stabilisation.

Specifically, the sections of BREF that detail how secondary containment should be managed:

- Section 2.3.11 Techniques for the prevention and reduction of soil and water contamination
 - Having in place **containment measures to prevent wastes from escaping**. All bunds, humps, vessels, tanks, pipes, containers are sound, and maintained and checked as required.
 - Providing and then maintaining the **surfaces of operational areas**, including applying **measures to prevent or quickly clear away leaks and spillages**, and ensuring maintenance of drainage systems and other subsurface structures.
 - **Depending on the risks** posed by the waste in terms of soil and/or water contamination, making the **surface of the whole waste treatment areas** (e.g., waste reception, handling, storage, treatment and dispatch areas) **impermeable** to the liquids concerned.
 - **Depending on the risks** posed by the liquids in terms of soil and/or water contamination, ensuring that the areas where **liquids are transferred are banded** and that the bund is resistant to stored materials. The bund is designed so that in the event of an accident the liquid can be contained until security measures are in place. The **bund has sufficient capacity** to cope with any spillage and firefighting water (it is **normally sized to accommodate the loss of containment of the largest tank** within the secondary containment) and is used to ensure containment of wastes and raw materials.
- Section 6.1.5 Emissions to Water (BAT19)
 - Technique D - Techniques to reduce the likelihood and impact of overflows and failures from tanks and vessels - **Depending on the risks posed** by the liquids contained in tanks and vessels in terms of soil and/or water contamination, this includes **techniques such as**:
 - overflow detectors.
 - overflow pipes that are directed to a contained drainage system (i.e., the relevant secondary containment or another vessel).
 - tanks for liquids that are located in a suitable secondary containment; the volume is normally sized to accommodate the loss of containment of the largest tank within the secondary containment.
 - isolation of tanks, vessels and secondary containment (e.g., closing of valves).

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- Technique H - Design and maintenance provisions to allow detection and repair of leaks - Regular monitoring for potential leakages is risk-based, and, when necessary, equipment is repaired. The installation of **secondary containment for underground piping may be limited in the case of existing plants.**
- Emissions from Storage (guidance for BAT implementation) [5] specifies that secondary containment must be coated with an impermeable material and have the same height as the maximum liquid level, **a total capacity 25% greater than the capacity of the associated tank or sufficient capacity to accommodate the loss of containment of the largest tank** within the area covered as applicable.

2.2 Control of Major Accident Hazards Regulations (COMAH)

The main aim of the Control of Major Accident Hazards Regulations [6] is to prevent and mitigate the effects of those major accidents involving dangerous substances that can cause serious damage/harm to people and/or the environment. COMAH ensure that businesses and duty holders:

- take **all measures necessary** (AMN) to prevent major accidents involving dangerous substances,
- limit the consequences to people and the environment of any major accidents that do occur.

AMN must be in place **'so far as is reasonably practicable'** (SFAIRP) to prevent environmental harm and in particular a 'major accident to the environment' (MATTE). AMN are interpreted to require use of good practice for pollution prevention, and these are deemed to be in place when the risks are demonstrated to be either 'broadly acceptable' or ALARP. The HSE definition states:

*"ALARP, 'as low as reasonably practicable', [enables the regulator] to set **goals** for duty-holders, **rather than being prescriptive**. This flexibility is a great advantage, but it has its drawbacks too. Deciding whether a risk is ALARP can be **challenging because it requires operators and regulators to exercise judgement**. In essence, making sure a risk has been reduced **ALARP is about weighing the risk against the sacrifice needed to further reduce it.**" [7]*

2.3 Environmental Permitting Regulations

The Environmental Permitting Regulations (England and Wales) [8] recognises the potential harm that can be caused by accidental releases from primary containment vessels and a condition of the permit will be the **provision of secondary containment or other appropriate measures** to prevent or minimise leakage from the primary container.

No specific recommendation is made on containment capacities, however, where there is potential for significant pollution to occur an emissions management plan is required informed by an environmental risk assessment. The outcome of the risk assessment determines the containment or other measures that may be required.

2.4 Biological waste treatment: appropriate measures for permitted facilities.

This guidance [9] explains the standards (appropriate measures) that are relevant to permitted waste management facilities that handle organic waste, also known as biowaste. The guidance explains that there is overlap between best available techniques (BAT) for waste installations and necessary measures for waste operations. The Environment Agency uses the term 'appropriate measures' to

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cover both sets of requirements. The guidance sets out what you **must** consider when assessing the appropriate measures for a facility, it also allows alternative measure to be proposed but they must achieve the same level of environmental protection and provide the evidence to support this.

Section 4.2 provides guidance on primary and secondary containment and states:

Existing sites

16. Operators of existing sites **must use a chartered engineer** to carry out a detailed **assessment of primary and secondary containment** where it has not previously been validated to industry recognised standards.
17. You **must assess containment structures against CIRIA 736**. This is a risk-based assessment. Where you have not used CIRIA 736, the assessment must be an equivalent approved standard. Where improvements are identified, you must propose an improvement programme or process monitoring to make sure there are no uncontrolled process releases.
18. You **should monitor underground pipe work** or ducting and drainage to make sure there is no leakage.
19. **Underground tanks should have secondary containment**. You **must implement a method of inspection and leakage detection** as a minimum.

2.5 CIRIA C736 Guidance Document

CIRIA C736 [2] was published in 2014 to provide practical guidance on containment systems around best practices on spill prevention, mitigation, and response following several incidents including the Buncefield Fire. The guidance advocates a risk-based approach to managing the storage of inventory appropriate to the regulatory regime within which a site or facility is operating.

Secondary containment minimises the consequences of a failure of the primary storage by preventing the uncontrolled spread of the inventory. Secondary containment is achieved by equipment that is external to and structurally independent of the primary storage, for example concrete or earth bunds around storage tanks, or the walls of a warehouse storing drums.

Clause 1.3.3 states that “*The application of this guidance to existing facilities should be **based on risk**, and any upgrades completed to reduce risk sufficiently to satisfy the law and to be in accordance with guidance under the relevant legislative regime. Upgrades may be subject to as **low as reasonably practicable (ALARP) and/ or best available techniques (BAT) ‘tests’ and supporting cost-benefit analyses (CBA)** depending on the legislative regime (COMAH, EPR etc). It is, however, recognised that **the costs of upgrading existing facilities might outweigh the environmental benefits**, and therefore not be viable, or that other equally effective risk reduction measures to those suggested in this guidance may be implemented*”.

Details on estimating containment capacity for local systems can be found in 7.Appendix A.

2.6 WINEP – Options Development Guidance

Introduction of the Industrial Emissions Directive [1], as transposed into the Environmental Permitting Regulations [8], is not seen by the Environment Agency as a new obligation arising from environmental legislation. As such this is not included within the Water Industry National Environment Programme (WINEP) [10].

However, if IED provision had been included in the WINEP for PR24 the industry would have had to follow the WINEP Methodology. The WINEP options development guidance [10] sets out the 6 principles water companies should follow when developing the WINEP options:

- Environmental net gain – **quantifiable benefits** to the environment and society.
- Natural capital approach.

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- Catchment and nature-based solutions – where feasible.
- Proportionality - **options** to address the environmental risks and issues ensuring the full range of benefits and opportunities are identified.
- Evidence - **evidence based** and transparent.
- Collaboration - collaborative approach with regulators to understand the environmental risks.

It also sets out the evidence required to support the options development and sets out how to evaluate **costs and benefits** of WINEP options to support consistency across water companies.

A **best value plan** is one that considers factors alongside **economic cost** and seeks to achieve an outcome that increases the overall **benefit to customers, the wider environment and overall society**. A best value plan should be efficient and affordable to deliver, legally compliant and account for the range of legislation that applies to it.

In developing the best value plan the methodology requires development of a fully unconstrained list of options, which are then screened against:

- Expected to meet statutory obligation(s) or meet non-statutory requirements.
- Contribute to the WINEP wider environmental outcomes.
- Be technically feasible.
- Be deliverability.

This short-list is then further assessed to leave a list of feasible options. Importantly this stage requires a whole life calculation of costs and benefits (including environmental benefits and dis-benefits using natural capital metrics) calculated over 30 years considering opex and capex to be completed.

From the feasible options a preferred, lowest cost and up to 2 alternative options are submitted for review and consideration by the EA.

3. CIRIA C736 - Risk Assessment and Containment Classification Approach

3.1 Risk Assessment

Risk is a combination of **consequence** and the **likelihood** (or probability of occurrence) of that consequence. Consequence can be further defined in terms of the extent of harm and the severity of harm.

CIRIA C736 [2] recognises the fact that there is always a finite risk of a loss of primary containment, for example error in design, structure behaviours differently than expected, construction error etc as well as changes over the asset life due to O&M issues.

The general framework for the risk assessment is a three-step approach:

- Step 1 applies the source– pathway–receptor model to the site to assess the hazard presented by the inventory to the surrounding environment.
- Step 2 considers the likelihood of a loss of containment. This will depend on several factors such as the reliability of the operations and inspections undertaken on site, the conditions of the primary storage vessels and the degree they are protected from impact damage etc.
- Step 3 uses the likelihood of a loss of containment and combined with the site hazard rating which leads to a recommendation for an appropriate class of containment.

The **Source** considers such things as:

- The inventory being contained and its potential impact as a pollutant if released,
- Environmental Harm Index (EHI) – a function of the sensitivity of the receptor, severity of the impact, extent of the impact and duration it could last for.
- Toxicity Hazard Assessment

Pathway considers the means by which a substance would reach the receptor and looks at the topography, geology and hydrogeology of a site and the proximity of receptors. In addition, climatic conditions are considered as these can impact the way and speed that substances can reach receptors.

Receptors includes humans, animals, fish, plants and biota, watercourse or body, groundwater or soils that would be affected (directly or indirectly) by the escape of the inventory. A receptor could also be a downstream process such as a WwTW, which could be impacted if the substance overloads that process.

The three factors are now combined to obtain an overall **site hazard rating** designated as high, moderate or low.

To assess the risk, it is necessary to consider the events that may lead to the release of inventory from the primary containment and the likelihood that this would occur.

The potential failures and the reasons for failure are stated to include:

- operational failures, such as failure of plant, or human failure by operators
- shortfalls in design – lack of alarms and fail-safe devices
- structural failure – materials, components, detailing, corrosion or when exposed to heat and flame.

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- abuse – inappropriate change of use or other misuse
- impact, e.g., from a vehicle
- vandalism, terrorism, force majeure etc
- flood, fire or explosion
- geological factors -subsidence etc
- ageing or deteriorating assets/sub-components.

By analysing the events and circumstances that may affect a site it is possible to arrive at an assessment of the probability of a loss of containment and release of inventory expressed as low, medium or high. It is unlikely to be possible to precisely estimate the probability of a failure of the primary containment due to the inherent uncertainties involved, and as such the guidance gives the following probabilities outlined in Table 3-1:

Table 3-1: CIRIA C736 Containment risk probabilities

Loss of containment risk	Annual Probability
High	Greater than 1% (1 in 100)
Medium	Between 1% (1 in 100) and 0.001% (1 in 1 million)
Low	Less than 0.001% (1 in 1 million)

The loss of containment risk is combined with the source– pathway–receptor risk to give an overall site hazard risk outlined in Table 3-2:

Table 3-2: CIRIA C736 Site Hazard Risk Categorisation

Site Hazard Risk	Combined risk (containment loss/S-P-R)
High	HH, HM, MH
Medium	MM, HL, LH
Low	LL, ML, LM

An alternative method that CIRIA C736 refers to combines EHI with likelihood of occurrence (frequency) and has three zones showing where mitigation would be required:

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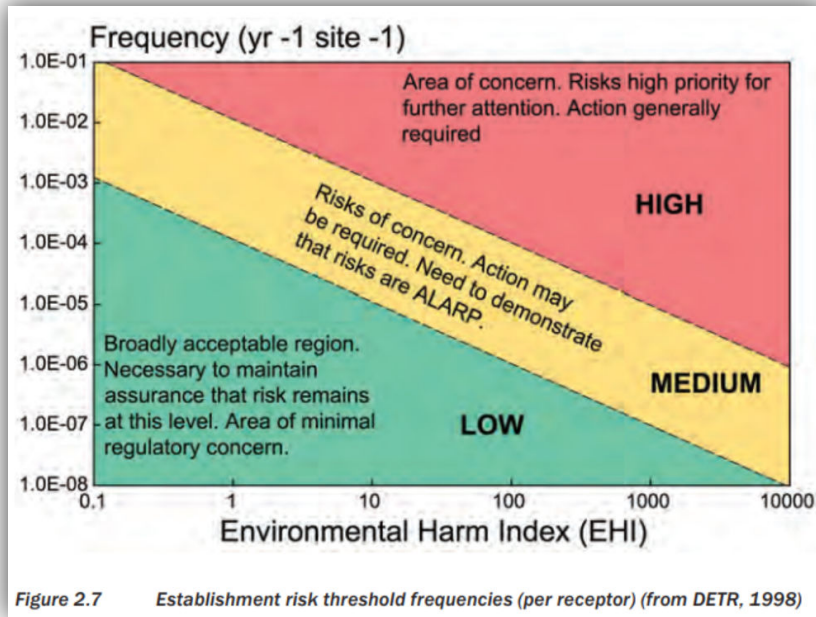


Figure 1: Risk / frequency model from CIRIA C736

3.2 Containment Classification System

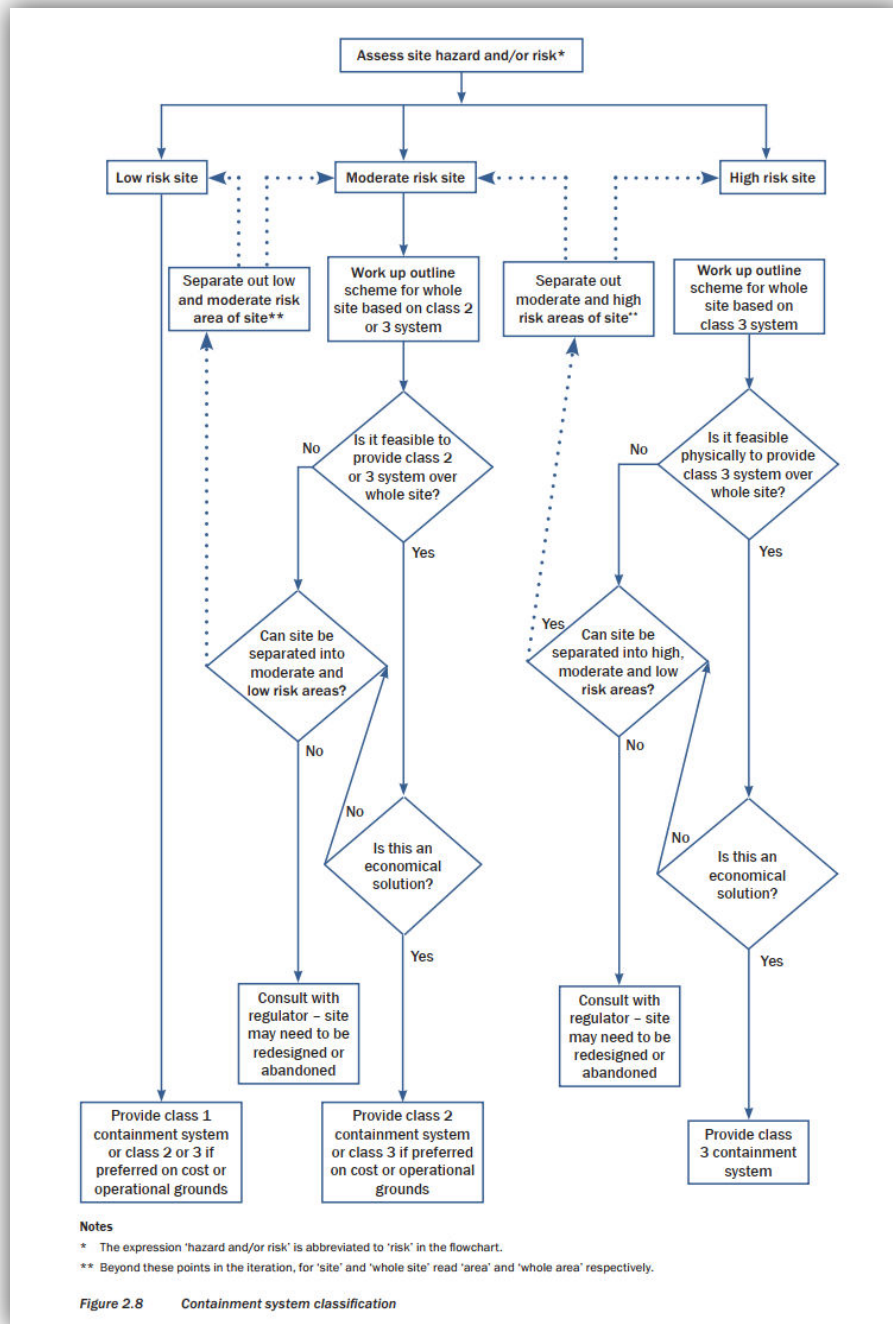
Based on the results of the risk-based assessment, the guide then provides specific recommendations for managing the assessed level of risk appropriate to the class of containment. Recommendations cover design, construction and performance considerations with increasing requirements corresponding to the three classes in terms of design and construction integrity:

- low overall site risk containment type class 1, i.e., base level of integrity,
- moderate overall site risk containment type class 2, i.e., intermediate degree of integrity,
- high overall site risk containment type class 3, i.e., highest degree of integrity.

The site classification uses a flowsheet (Figure 2) to identify the containment class that should be provided at a site.

Figure 2: CIRIA C736 Containment System Classification

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Class 2 and Class 3 containment systems, located on sites classified as relatively medium and high overall risk, respectively, include more detailed recommendations compared to Class 1 containment systems which are located on sites classified as low overall risk. The guide further provides increased requirements for classes 2 and 3 in terms of testing, inspection, and maintenance of the containment system to ensure ongoing integrity.

The guide recommends that the risk assessment and capacity requirements of secondary containment should be routinely reviewed in accordance with the specific methodology set out in the report, but as minimum this should be undertaken every five years or where *'there are any modifications made to the primary or secondary containment; the volume of material in the primary containment is increased; the nature of the material in the primary containment is change/reclassified; or the potential pathways and/or receptors have changed.'*

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Once the class secondary containment system has been validated, it is recommended that a gap analysis exercise be conducted to identify any deficiencies in the system's design or operation against criteria that are specific to its containment class. This exercise also includes determining the necessary improvements to ensure that the identified risks have been managed sufficiently to comply with the law. Where the class of a secondary containment facility has not been determined (e.g., for pre-1994 and small sites) the guidance stipulates that a baseline asset survey should be completed by competent personnel to identify and evaluate the effectiveness of existing control measures, irrespective of class, to then allow classification by the CIRIA C736 risk-based methodology.

3.3 Containment system capacity

Where the site hazard assessment shows that there is a risk to receptors from loss of containment, secondary containment systems are required. The size of the containment system has to be sized on a most likely credible failure scenario so that it is efficient (i.e., economic in terms of resources) and adequate (i.e., has the required capacity to store the spill).

3.3.1 The '110%' and '25%' rules

Within CIRIA there is reference to a simplified sizing method has been used as an industry 'rule of thumb' historically, however this **does not follow the CIRIA recommended risk-based approach** (see CIRIA C736 section 4.2.1 paragraph 1). This method employs:

- Where a single bulk liquid tank is banded, the recommended minimum bund capacity is 110% of the capacity of the tank.
- Where two or more tanks are installed within the same bund, the recommended capacity of the bund is the greater of:
 - 110% of the capacity of the largest tank within the bund.
 - 25% of the total capacity of all of the tanks within the bund, except where tanks are hydraulically linked in which case they should be treated as if they were a single tank.

3.3.2 CIRIA C736 Recommended Approach

The CIRIA C736 recommendations on estimating capacity for local systems (designated areas surrounding primary storage vessel to contain spills) can be summarised as follows:

- Allowance based on risk assessment of a credible spill scenario while accounting for tertiary containment (measures for additional level of spill protection such as diversion tanks and lagoons) and where applicable fire-fighting waters.
 - For single-tank installations minimum capacity of 100% of the primary containment volume.
 - For multi-tank installation capacity based on risk assessment around credible scenario
- Allowance for total volume of accumulated rainfall with annual exceedance probability (AEP) of 10% (if uncovered) with a minimum retention period of eight days.
- Minimum freeboard (increased height to account for uncertainty factors) of 100 mm for firefighting agents (e.g., foams).
- Freeboard allowance for dynamic effects which varies depending on the type of containment structure e.g., 250 mm for secondary containment tanks.

Additional allowances, such as the provision of sufficient capacity to manage firefighting and cooling water, are also included in containment capacity estimates for remote systems (designated areas

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located away from spilling or leaking equipment) and combined systems, which contain elements of both local and remote systems along with the means of collecting and transferring spills.

The CIRIA C736 further states:

“The designer of the containment system should take into account the probability of a number of events occurring simultaneously. The worst-case scenario for containment is represented by the design return period rainfall (e.g., the rainfall that is likely to occur, e.g., once in 10 years) coinciding with the sudden and total loss of primary containment and a fire involving applied firefighting water. At low-risk sites or sites where it can be demonstrated that the probability of a simultaneous occurrence of events is sufficiently low, it may be possible to apply less stringent capacity requirements. Such relaxations should be subject to the designer’s and site operator’s discretion and the agreement of the various regulatory bodies in the light of the particular circumstances.”

Which implies that if the designer can demonstrate that the risk of worse-case scenario is low then a lower level of containment could be proposed.

4. Discussion point

The EA have stated that they expect relevant guidance (e.g., CIRIA C736) be adhered to for new and existing facilities and have advised that adherence to the more conservative 110%/25% rule is expected rather than a risk-based approach.

BREF states that secondary containment should be able to accommodate the total volume from the largest tank within the containment area, and a risk-based approach should be followed to assess the impacts of containment failure.

Whilst CIRIA C736 discusses the 110%/25% rule it doesn’t recommend this as a blanket approach and suggests a site-specific risk assessment is more appropriate to ensure that secondary containment is efficient and adequate.

The CIRIA C736 approach (e.g., 110%/25% rule) may result in costs greater than those if only BREF requirements (largest tank volume) were met. However, it should be noted that CIRIA C736 was developed prior to BREF being released and was based on UK containment experiences and as such does go further than the later recommendations of BREF. The EA have used CIRIA C736 in their interpretation of BREF requirements at a national level for all new permit applications, as they have done historically.

Whilst CIRIA C736 has wide applicability, Section 1.2 of the guidance describes issues that are not covered in the guide. This specifically states that “sewage and sewage effluents, farm waste and related materials” are excluded as “Stored inventory”.

The guidance also notes in Section 1.1.3 that the “costs of upgrading existing facilities might outweigh the environmental benefits, and therefore not be viable, or that other equally effective risk reduction measures to those suggested in this guidance may be implemented”.

As such there is precedence within BREF and CIRIA C736 that suggests site specific risk assessment should be carried out to ascertain the most cost beneficial secondary containment solution, while providing an acceptable level of environmental protection. Neither document state that the solution must provide total environmental protection, rather as low as reasonably practical.

5. Findings

The review of the relevant documents detailed in Section 2 and following the Risk Assessment and Containment Classification approach in Section 3, the impacts at Reading on the most credible primary containment failure are detailed in Table 5-1 below. This shows that it is unlikely that there will be a catastrophic failure of the largest storage vessels due to their construction, age and condition. However, there is a medium risk that a lower level of containment loss (leak) or a slower release (failure of a pipe penetration) could occur. In addition, the arrangement of these tanks would unlikely cause a cascade failure of other tanks. As such the 'rule of thumb' consideration of 25% of total tank volume is not a credible solution and worse case would be 100% loss of the largest tank.

Furthermore, this risk is low and could be managed via more local secondary containment around the higher risk pipe penetration areas. The remaining area around the tanks could be laid to hardstanding fed to a drainage system back to the adjacent WwTW should minor leakage occur from the entire tank. A full risk assessment based on CIRIA C736 methodology can be seen in Section 7.Appendix A Reading Site Specific Risk Assessment.

The failure mode analysis using the CIRIA C736 recommended risk-based approach suggests that the site is MEDIUM risk and therefore a lower level of containment might be acceptable to offer the same level of environmental protection. Furthermore, a review of the credible failure modes shows that the failure of multiple assets simultaneously is unlikely and therefore a secondary containment system of 110% of the largest single tank, in line with BREF, is more appropriate.

Table 5-1 - Risk Assessment and Containment Classification

	Failure at a penetration (pipe or mixer)	Fire and/or explosion	Overflow/spill	Adverse pressure build-up (burst or negative pressure collapse/inwards buckling)	Corrosion	Leak	Mechanical (physical) failure	Equipment failure	Tank impact (e.g., vehicle)	Operator / human error
Impact at Reading	There are low level penetrations into the tanks for the feed pipe and the mixing system. These were cast during the construction of the insitu reinforced concrete tank with correctly designed thrust and water stops. On the glass fused to steel tanks, these were all installed during manufacture/construction and have the correct level of strengthening around the opening. The stub pipes have bolted flanges attached to isolation valves. The orientation of the pipes is away from the bank of tanks, thus reducing risk of jetting adversely impacting/damaging other tanks. The tanks have been in service for 20-years and have not shown any sign of failure of these penetrations. Visual inspection is carried out during site walk-arounds to look for sign of damage, missing bolts, leakage and none have been identified.	Biogas is contained in separate gas holders protected by catenary lightning conductors to reduce risk of explosion/fire from lightning strikes. Robust procedures in place to avoid risk of biogas release and working in zoned areas is controlled by Permit to Work system	Overflow from tanks is monitored by level protection inside tank and for the primary digesters there are pressure release valves on roof. Both are monitored and alarmed to the site control room and remote operations centre. Other tanks on site are fitted with high level overflows to drains that return to the WwTW, these are also monitored with high level alarms and process inhibits to upstream pumping.	Pressure monitoring on pumps and tanks to mitigate risks.	Concrete tanks - so unlikely within life of assets. Glass fused to steel tanks are potentially prone to corrosion if the glass gel coat is damaged (such as through impact damage or scour due to process fluids) Regular inspections are carried out to look for surface pitting that if left unchecked could lead to panel failures. Damaged panels are replaced when identified.	Potential risk around joint failures, especially of construction mastic. Periodic replacement and resealing and monitoring for visual indication	Insitu reinforced Concrete tanks - so unlikely within life of assets Glass fused to steel tanks are potentially prone to corrosion if the glass gel coat is damaged (such as through impact damage or scour due to process fluids) Regular inspections are carried out to look for surface pitting that if left unchecked could lead to panel failures. Damaged panels are replaced when identified. Impact of failure of tank on adjacent tanks is negligible due to construction (e.g., RC, low pressure, slow release and orientation of most likely damage locations)	Potential risk around mechanical plant (pumps and valves) but generally low volume release	Very Low probability and protective barriers (armaco, kerbs etc) in place where there is a perceived risk	Potential for operator error, but online instrument and monitoring should identify process parameters before failure occurs
Likelihood	MEDIUM	LOW	LOW	LOW	LOW	MEDIUM	LOW	LOW	LOW	MEDIUM
Mitigation	- Frequent inspection of penetrations - Online instruments to protect against vibration/load - Design undertook full HAZOP study to understand failure modes	Fire alarms and containment in place already; Lightning protection to current standards	Not a risk due to arrangement of tanks	Not a risk due to arrangement of tanks	Not a risk due to arrangement of tanks	- Periodic inspection of tanks - Proactive repair of surface cracks and replacement of sealant	Not a risk due to arrangement of tanks - impact on adjacent tanks is negligible due to construction and orientation.	Proactive maintenance of ancillary equipment	Impact protection already installed	Proactive maintenance of ancillary and monitoring equipment Operator training
Potential containment solution(s)	Local hardstanding to road drainage; temporary spill containment systems; gully sucker to clean up spills	No additional works	NONE	NONE	NONE	hardstanding around tank	Challenge to 125% of total volume as negligible likelihood of multiple tank failures. Single tank failure possible due to failure of ancillary equipment but this would only lose containment of single vessel. Therefore, recommend that 110% of single tank for overall secondary containment	NONE	NONE	NONE

6. Secondary Containment Solutions

Containment solution	CIRIA C736 Class	Strength	Weakness	Reading consideration
Full concrete bund wall around tank area	Class 3	<ul style="list-style-type: none"> Local to tanks. Fully engineered containment system. 	<ul style="list-style-type: none"> Will need to be emptied to remove rainwater. Access into bund area will need stairs and lifting facility to move plant/machinery into area. Hinders easy operation of site as vehicle access not possible. Construction will interfere with ongoing operation. 	No, adverse impact on existing operation
Accessible concrete bund wall around tank area	Class 2/3	<ul style="list-style-type: none"> Local to tanks. Fully engineered containment system. Access into bund area provided by vehicle gates. 	<ul style="list-style-type: none"> Will need to be emptied to remove rainwater. Access gates will need to be automated to avoid operator error in leaving them open. 	Yes, mitigates permanent issues with access/egress
Earth bund around lagoon (impermeable surfaces)	Class 2	<ul style="list-style-type: none"> Remote from tank area so construction may not impact operation. Fully engineered containment system. 	<ul style="list-style-type: none"> Will need to be emptied to remove rainwater. Transfer system required from tank area, thereby needed small local bund to tanks or around penetrations to capture initial spill. 	No, topography difficult to provide this option
Earth bund around diffuse spill area (impermeable surface or sacrificial land)	Class 1/2	<ul style="list-style-type: none"> Remote from tank area so construction may not impact operation. Engineered solution. 	<ul style="list-style-type: none"> Initial spill allowed to flow across natural surface area and contained within topography of site. Extended clean up following spill. 	Yes, earth bunding to reduce risk of spill leaving site, with containment utilising topography of site, sites roads,

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			<ul style="list-style-type: none"> Some of spill will enter local drainage system 	car parks and/or sacrificial grassed area.
Temporary bunding system (CIRIA C736 section 11.4)	Class 1	<ul style="list-style-type: none"> Remote from tank area so construction may not impact operation. No permanent installation to hinder operation 	<ul style="list-style-type: none"> Initial spill allowed to flow across natural surface area and topography of site. Relies on operator intervention to install barriers after initial spill occurs 	No, not a permanent engineering solution

7. Conclusion

The review demonstrates that a risk-based approach at Reading would still need secondary containment but smaller than the current permit requirements and further consideration of local containment and/or with operational intervention.

The current permit application process has been issued based on a single feasible solution, which is based on the worst case failure scenario. A cost benefit analysis of alternative options, which might provide the same degree of environmental protection but at a lower cost has not been accepted at this time as they were not submitted with the initial permit application. This is contrary to the WINEP methodology, and the risk-based approach recommended in CIRIA C736.

Analysis of the site using the '110%/25%' Rule has demonstrated that an engineering solution can be provided but it is not cost effective and potentially provides more storage than the site requires. As such, using the CIRIA recommended approach shows that the site is medium risk and could provide the required environmental protection by only containing the largest tank volume.

In addition, the most credible failure mode is not a catastrophic tank failure, but rather a slower escape of material over time, due to leakage or a failure of pipe penetration. This could facilitate an operational solution whereby the spill is managed by temporary bunding directed to tertiary containment or controlled return to the adjacent WWTWs – whilst it is appreciated this is not in line with BAT/CIRIA, spill modelling over time could provide evidence that a spill at Reading could be managed without the need for permanent concrete bunding.

Provision of capacity for firefighting water is not required as the contained material is not flammable and therefore only consideration of the stored capacity and management of rainwater needs to be considered.

Appendices

Appendix A. Reading Site Specific Risk Assessment

A.1 Site Hazard Rating

Type of failure modes	1 Failure at a penetration (pipe or mixer)	2 Fire and/or explosion	3 Overflow/spill	4 Adverse pressure build-up (burst or negative pressure collapse/inwards buckling)	5 Corrosion	6 Leak	7 Mechanical (physical) failure	8 Equipment failure	9 Tank impact (e.g., vehicle)	10 Operator / human error
Typical factors to facilitate the failure mode	Pipe stub at the penetration breaks/shears as a result of excess vertical loading: - Design deficiency results in pipe/ancillaries all hanging off the stub rather than being supported elsewhere - Mechanical plant affixed to the stub generates fatigue due to significant vibration (failing bearings or the like) - Valve on outlet fails to operate to provide isolation. - incorrect detailing in original design	Ignition source - examples include - electrical issues with failure of component or fire in adjacent facility. - Gas and air mixture to ignite - unauthorised hot work in the vicinity of the zoned area - lightning strike	Overflow operation and discharge requires inflow to continue, and other exit routes being blocked	- Pressure relief valves blocked - Foaming is a typical element contributing to PRV failure - Failure of level instrument leading to overflowing and lifting of roof structure - Blockage of inlet but outlet pump continues to draw down volume	- Corrosion on internal surfaces (such as through scour from grit) results in water path to external surface. Corrosion exacerbates a weakness in the surface - external mechanical damage to glass coating on steel tank (such as through stone chips from grass cutting) can create corrosion path	- Pipework joint - relaxation of fittings or gasket position or gasket age - incorrect re-assembly of joint after maintenance - failure of joint sealant in construction joints - thermal cracking of concrete	-Corrosion of structural elements (e.g., post tension steel cables, carbonation/sulphite attack of concrete and rebar, loss of gas coating on steel tanks, unwinding of plastic tanks) - Gas holder (raising bell on guide) failure when guide mechanism failed, resulting in misalignment and gas escape. - Gas membrane brittleness leading to fabric cracking	- Failure of control system (monitoring and control instruments) - Valve failure on pipeline linked to tank - Pipe rupture (pressure impacts, erosion, corrosion, UV attack)	- Proximity to road - Driver error/failure to have vehicle leaving road at speed - Incorrectly designed protection barriers	- Incorrect operation of plant - driver failing to detach pipe from tanker discharge - shift handover failing to pass on communication of issues - Lack of training / inexperience
What type of tank / asset is this likely to occur on? (e.g., RC or glass coated steel?)	All tanks. - Glass coated steel more susceptible as has both the connection to the tank as well as the flange, and the tank shell is thinner. - Note that failures, occur when attached equipment not properly supported or a tank is modified, and the design not correctly assessed	Gas holders (membrane or steel bell type)		Glass coated steel tanks as excess pressure gives seeping at panel joints Negative pressures induce buckling. Concrete tanks have sufficient strength that walls not impacted	More likely on Glass Coated Steel tanks	All tanks	All tanks	All tanks	All tanks but glass coated steel tanks more susceptible due to thinner structural elements	All tanks
Age of tank? (any, over a certain age or asset condition?)	Risk will increase with age	Risk will increase with age - electrical assets over 20-yrs old likely to have higher probability of fire due to break down of electrical insulation	Risk will increase with age	Risk will increase with age	Risk increases with age - concrete tanks designed for a 60-year asset life whereas glass coated steel tanks have a nominal life of 20-years	Risk increases with age	Risk will increase with age - membrane gas holders have a nominal life of 15-yrs before deterioration of fabric	Risk increases with age		
Where on the tank / asset is it likely to fail?	- Failure location indicated by the penetration position. Tanks frequently fed at low level and drawn-off at high level - Failure due to the applied loading on the pipe rather than location on the tank	Explosion will lead to loss of containment of biogas, but tank containment not lost Fire examples are where external items caught fire and the fire spread - this is likely to lead to a stoppage of the process (especially if control panels are involved) but not a loss of containment within tanks	Tank does not catastrophically fail as overflow protects from excess loadings, but material will spill until overflow condition is stopped.	Any location where the pressure exceeds the safe working pressure in the system.	Both at the lower margin where potential construction impacts more likely and at the upper margins where fluid levels may vary allowing combined gas/liquid interaction	Any location	Any location	Any location	Generally, towards base of structure	Any location
What would size of failure likely be that would allow spilling? (circular aperture and diameter, crack and crack width-length, etc)	Typical 300-400 mm dia opening is common. May get an initial crack around two thirds of the pipe but failure could be rapid after crack formation	As above - does not impact the tank walls	Not a loss of primary containment	Opening of panel joints	Pin hole escapes in Glass Coated Steel tanks and weeping at fine cracks in concrete	Pin hole escapes in Glass Coated Steel tanks and weeping at fine cracks in concrete	Escape of gas rather than liquid containment		Generally, a catastrophic failure would incur if damage significant enough to impact structural integrity.	
What loss of liquid waste would we get spilling from the tank? How would it be lost? Volume, rate and risk to adjacent tanks?	- Potential for release of 90%+ of tank contents is real from lower penetrations. - Rate of discharge depends upon depth of liquid in the tank. Rate could be in range 500-700 l/s for the likely orifice size. - Risk is low due to rate of flow, time for tank to empty and directional nature of flow. - Risk to adjacent structures depend on pressure behind the flow and the direction of impact on adjacent structures - unlikely to have any impact on concrete structures only glass coated tanks	Volume of loss of biogas is dependent on the scale of the damage to the system, range from a minor emission to full catastrophic loss	Discharge of flow commensurate with the rate of inflow Does not threaten adjacent tanks	Leakage at joints - low rate of escape	Low rates of escape flow and low volumes escaping	Low rates of escape flow and low volumes escaping	Volume of loss is dependent on the scale of the damage to the system, range from a minor emission to full catastrophic loss	Low rates of escape flow and low volumes escaping	Generally deemed a catastrophic failure and loss of content of entire tank. Unlikely to have impact on adjacent structures as energy dissipated around vehicle	Low rates of escape flow and low volumes escaping
Impact on adjacent process tanks - would the failed tank be connected to other tanks? - How are they	Site specific - but generally tanks are not hydraulically linked as process fluid often pumped between them or set as	Fire may result in loss of process capacity but not loss of containment	Discharge of flow commensurate with the rate of inflow Does not threaten adjacent tanks	Site specific - but generally tanks are not hydraulically linked as process fluid often pumped between them or set	Site specific - but generally tanks are not hydraulically linked as process fluid often pumped between them or set	Site specific - but generally tanks are not hydraulically linked as process fluid often pumped between them or set as spill/fill, so largest loss would be 1 tank volume	Site specific - but generally tanks are not hydraulically linked as process fluid often pumped		Unlikely to have impact on adjacent structures	

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connected? - Are there valves and/or bypasses?	spill/fill, so largest loss would be 1 tank volume			as spill/fill, so largest loss would be 1 tank volume	as spill/fill, so largest loss would be 1 tank volume		between them or set as spill/fill, so largest loss would be 1 tank volume			
Early warning indication what signs would we get of the failure? Visual, sensors? How long in advance? How could we monitor for these? And how regularly?	- Visual site tours looking for movement around penetrations or damage to pipe/valves, settlement around tanks - clear markers could help operatives notice changes - online instrumentation of flows and vibration monitors Weekly recorded inspection and more thorough annual external inspections	- Fire alarms in relevant locations (e.g., within CHP unit housing) - Condition checks on fuel lines and firebreaks - level indication in fuel sumps - Lightning protection systems in working order (site wide) - catenary wire system over gas holders -	Level sensor in tank giving overflow level and alarm	- Feed/draw off pumps fitted with pressure protection that will be set below safe working pressure in tanks - Pressure sensor would give ability to respond to issue and arrange isolation of flow. - Pressure relief valves fitted to digesters - Pressure test (water test) included as part of 5/10 year inspection for tanks	Visual inspection and NDT testing undertaken during 10-yr inspections	Visual inspection	Visual inspection - check on alignments	Visual inspection	Catastrophic event - no prior warning	Catastrophic event - no prior warning
Likelihood of this failure mode - HSE Ref. Failure Rate and Event Data for use within Land Use Planning Risk Assessments Is there a Reference/source of data? COMAH, CDOIF	Potential weak point of the system 6 failures recorded across (what would be the total number of tanks???? Say 100,000 in the UK) over a 8-9 year period (2010-2018)- so a likelihood of 6/ (800,000)	Electrical equipment installed into these areas is suitably rated (Ex). Low likelihood for this equipment failing. Tank contents at STW are not flammable. Risk of gas gives explosion, but materials do not burn.	Low - particularly when level controls in place as needing instrument failure and control failure	Newer tanks have multiple PRVs - increasing small probability	Tanks designed for appropriate asset life and inspected both internally and externally at prescribed intervals to identify issues.	Low volumes escape and are generally fixable before progressive failure occurs. Normally seen as seepage in joints or failed sealants both of which are patch repairable	Not typical for the sludge tank mechanisms - floating digester roofs are being replaced.	Routine maintenance and condition-based monitoring	Very Low probability and protective barriers (armaco, kerbs etc) in place where there is a perceived risk	Correct training and periodic refresher courses. Rotation of staff to know issues at other sites to cover shift rota's
Impact at Reading	There are low level penetrations into the tanks for the feed pipe and the mixing system. These were cast during the construction of the insitu reinforced concrete tank with correctly designed thrust and water stops. On the glass fused to steel tanks, these were all installed during manufacture/construction and have the correct level of strengthening around the opening. The stub pipes have bolted flanges attached to isolation valves. The orientation of the pipes is away from the bank of tanks, thus reducing risk of jetting adversely impacting/damaging other tanks. The tanks have been in service for 20-years and have not shown any sign of failure of these penetrations. Visual inspection is carried out during site walk-arounds to look for sign of damage, missing bolts, leakage and none have been identified.	Biogas is contained in separate gas holders protected by catenary lightning conductors to reduce risk of explosion/fire from lightning strikes. Robust procedures in place to avoid risk of biogas release and working in zoned areas is controlled by Permit to Work system	Overflow from tanks is monitored by level protection inside tank and for the primary digesters there are pressure release valves on roof. Both are monitored and alarmed to the site control room and remote operations centre. Other tanks on site are fitted with high level overflows to drains that return to the WwTW, these are also monitored with high level alarms and process inhibits to upstream pumping.	Pressure monitoring on pumps and tanks to mitigate risks.	Concrete tanks - so unlikely within life of assets. Glass fused to steel tanks are potentially prone to corrosion if the glass gel coat is damaged (such as through impact damage or scour due to process fluids) Regular inspections are carried out to look for surface pitting that if left unchecked could lead to panel failures. Damaged panels are replaced when identified.	Potential risk around joint failures, especially of construction mastic. Periodic replacement and resealing and monitoring for visual indication	Insitu reinforced Concrete tanks - so unlikely within life of assets Glass fused to steel tanks are potentially prone to corrosion if the glass gel coat is damaged (such as through impact damage or scour due to process fluids) Regular inspections are carried out to look for surface pitting that if left unchecked could lead to panel failures. Damaged panels are replaced when identified. Impact of failure of tank on adjacent tanks is negligible due to construction (e.g., RC, low pressure, slow release and orientation of most likely damage locations)	Potential risk around mechanical plant (pumps and valves) but generally low volume release	Very Low probability and protective barriers (armaco, kerbs etc) in place where there is a perceived risk	Potential for operator error, but online instrument and monitoring should identify process parameters before failure occurs
Likelihood	Medium	LOW	LOW	LOW	LOW	Medium	LOW	LOW	LOW	Medium
Mitigation	- Frequent inspection of penetrations - Online instruments to protect against vibration/load - Design undertook full HAZOP study to understand failure modes	Fire alarms and containment in place already; Lightening protection to current standards	Not a risk due to arranging of tanks	Not a risk due to arranging of tanks	Not a risk due to arrangement of tanks	- Periodic inspection of tanks - Proactive repair of surface cracks and replacement of sealant	Not a risk due to arrangement of tanks - impact on adjacent tanks is negligible due to construction and orientation.	Proactive maintenance of ancillary equipment	Impact protection already installed	Proactive maintenance of ancillary and monitoring equipment Operator training
Potential containment solution(s)	Local hardstanding to road drainage; temporary spill containment systems; gully sucker to clean up spills	No additional works	NONE	NONE	NONE	hardstanding around tank	Challenge to 125% of total volume as negligible likelihood of multiple tank failures. Single tank failure possible due to failure of ancillary equipment but this would only lose containment of single vessel. Therefore recommend that 110% of single tank for overall secondary containment	NONE	NONE	NONE

The site hazard rating, looking at credible failure modes of the primary containment system has shown that there is unlikely to be a catastrophic failure of a tank, and consequential impact on other tanks due to the most likely failure will have negligible impact – therefore this scenario would be deemed a LOW risk. However, operator error and gradual deterioration of assets over time resulting in leaks could happen which would raise the site hazard to **MEDIUM** risk.

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A.2 C736 Containment risk probabilities

Table 7-1: CIRIA C736 Containment risk probabilities

Loss of containment risk	Annual Probability
High	Greater than 1% (1 in 100)
Medium	Between 1% (1 in 100) and 0.001% (1 in 1 million)
Low	Less than 0.001% (1 in 1 million)

Based on the credible failure modes above and an understanding of historic performance of the site where there have been negligible spills in the 20-years that the site has been in operation, the loss of containment risk is deemed as **MEDIUM**.

A.3 CIRIA C736 Site Hazard Risk Categorisation

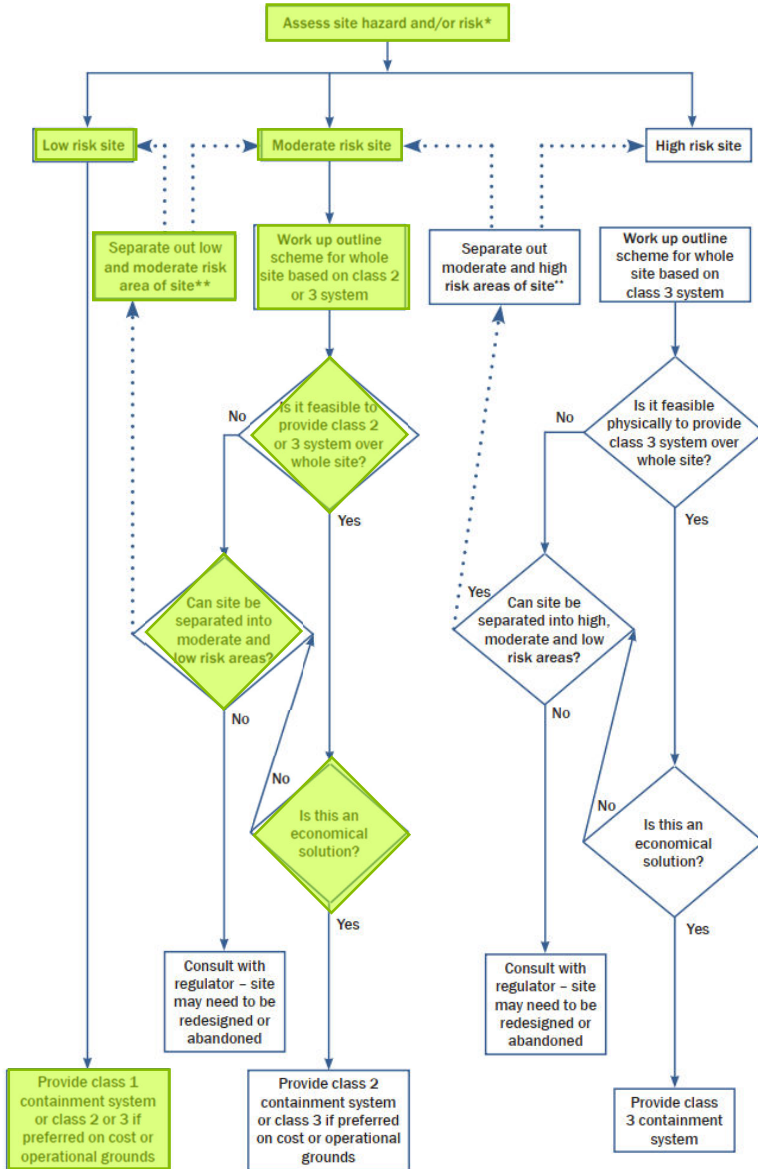
Table 7-2: CIRIA C736 Site Hazard Risk Categorisation

Site Hazard Risk	Combined risk (containment loss/S-P-R)
High	HH, HM, MH
Medium	MM, HL, LH
Low	LL, ML, LM

Taking the Containment loss risk (medium) and Site Hazard Rating (medium), the overall Site Hazard Risk based on CIRIA C736 is **MEDIUM**.

Using the flowsheet from CIRIA C736 to assess the type of containment system required and the flood risk assessment modelling previously carried out for a catastrophic tank failure (using the 110%/25% Rule) the secondary containment system for the site is uneconomic to provide that for the entire permitted area. Therefore, the methodology recommends separating the area into medium and low risk areas and considering these separately.

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Notes

* The expression 'hazard and/or risk' is abbreviated to 'risk' in the flowchart.

** Beyond these points in the iteration, for 'site' and 'whole site' read 'area' and 'whole area' respectively.

Figure 2.8 Containment system classification

Addressee only

Date: 18 March 2024

Chris Weston, CEO Thames Water Utilities Ltd
Email: chris.weston@thameswater.co.uk

Dear Chris

Implementation of the Industrial Emissions Directive

Further to my letter of 7 June 2023 I am writing to update you on the current position regarding the implementation of the Industrial Emissions Directive (IED) to help ensure you remain clear about your environmental permitting obligations.

The original deadline for compliance with the requirements of the IED was July 2015 but due to legal challenges implementation was delayed. This was resolved, and in April 2019 water and sewerage companies were informed of the need to obtain permits and comply with the standards detailed in the Waste Treatment Best Available Techniques (BAT) reference document (the BREF) by August 2022.

This deadline passed and to provide operators additional time to complete their implementation actions we initially extended the date to December 2024 and are now extending this deadline to 31 March 2025, providing consistency across the sector and additional time for planning and implementing necessary improvements. This means you will have had, a full six years to obtain permits and comply with the Waste Treatment BAT conclusions.

To ensure that those who have already received their permits are not disadvantaged we will provide the option of not complying in full with improvement conditions until 31 March 2025. Any interim deadlines contained within improvement conditions, typically for the submission of plans or proposals, will remain unchanged and we will expect you to meet these deadlines.

In September 2023 Defra set companies a deadline of 20 December 2023 to provide any additional information they judged necessary to support their permit applications. The team dealing with water company IED applications has recently been doubled in

size and these submissions are currently being assessed. Any minor deficiencies or clarifications in the applications will be dealt with by information notices, but major deficiencies will result in applications being returned as not being capable of determination or refused. In such instances the facility will be treated as unauthorised and referred to local operational teams to consider the most appropriate action consistent with our enforcement and sanctions policy.

Notwithstanding that you have been aware of the position since April 2019, it is apparent from the information submitted with permit applications that many facilities in the sector are yet to achieve the standards of operation required by the IED. Where this is the case, your permits will include improvement conditions that require compliance with best available techniques by 31 March 2025.

To help you to make the improvements necessary to achieve these standards we are giving advance notice of improvement conditions that we will use where appropriate to deliver the standards required. These conditions can be found in the appendix to this letter. There is already widespread knowledge of these conditions across the industry because they are being shared across Water UK groups such as the Waste and Recycling Network.

The permitting team will continue to process applications throughout the coming year. If you do not currently operate to the BAT standard or equivalent, you should be taking immediate steps to comply do so regardless of whether you have received your permit.

Despite the time that has elapsed we understand that some companies believe that they are unable to implement all the changes and complete the works required to comply with BAT by 31 March 2025. Should you find yourself in this position there is significant risk of enforcement action. In keeping with standard practice we have advised that you should look to document and provide evidence that you have taken all available measures to achieve compliance by the earliest possible date. We have described this as demonstrating 'best endeavours'.

I am sure you will understand that as the regulator we cannot fetter our discretion, putting forward mitigation does not ensure that you will avoid enforcement, but it can be taken into account when deciding the appropriate level of regulatory response. Demonstrating best endeavours requires you to strive to be compliant before the March 2025 deadline and to take all available measures to do so. You do not need to try to demonstrate you have used best endeavours before this deadline.

In any event I would encourage you to continue to work with our permitting team to enable them to issue you with permits, and with your local area team for any site-specific matters arising after the permit has been issued.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Collins', is centered within a light gray rectangular box.

Georgina Collins
Director, Regulated Industry

Appendix – Improvement Conditions

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
Improvement condition for secondary containment design		
ICX	<p>The operator shall submit a written ‘secondary containment implementation plan’ and shall obtain the Environment Agency’s written approval to it. The plan shall contain the finalised designs and an implementation schedule for the identified secondary containment systems proposed in the document [insert containment report title “xxxxxxxxxxx”, [date]]. The finalised design(s) and specifications shall be produced by appropriate competent individuals (qualified civil or structural engineer), in accordance with the risk assessment methodology detailed within CIRIA C736 (2014) guidance. The plan shall include but not be limited to the following components:</p> <p>An updated BAT assessment with specific regard to BAT 19 of the Waste Treatment BREF.</p> <p>An assessment of the suitability for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure.</p> <p>Finalised designs and specifications of the proposed secondary containment proposal completed by appropriate competent individuals.</p> <p>A program of works with timescales for the commissioning of the secondary containment systems to comply with CIRIA C736 (2014) guidance, or equivalent.</p> <p>An updated site and infrastructure plan.</p> <p>A preventative maintenance and inspection regime.</p> <p>The plan shall be implemented in accordance with the Environment Agency’s prior written approval.</p>	<p>DD/MM/YYYY [6 months of permit issue] or such other date as agreed in writing with the Environment Agency</p> <p>Implementation of all required and approved containment improvements must be completed by 31/03/2025.</p>
Improvement conditions for enclosure of tanks storing (or treating) sewage sludge (pre-AD) [Abatement proposed]		
ICX	<p>Drafting note: Where there are open tanks pre-primary digestion, BAT is to contain and abate these tanks. This IC should be implemented if OCU type and emissions points have been identified and</p>	<p>DD/MM/YYYY [6 months of permit issue] or such other date as agreed</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>emissions and monitoring requirements have been updated as per the permit template requirements.</p> <p>The operator shall submit a written 'enclosure and abatement plan' and obtain the Environment Agency's written approval to it.</p> <p>The plan shall contain the final designs and an implementation schedule for the installation of enclosures/covers and associated emission abatement systems in line with BAT 14 and BAT 53 for storage and treatment tanks pre-anaerobic digestion identified as [insert tank names], and emission points [insert OCU emission points] on the site plan in schedule 7.</p> <p>The report shall include evidence that the tank enclosures/covers will be designed and installed in accordance with guidance Biological waste treatment: appropriate measures for permitted facilities, and provide evidence to demonstrate why the OCUs will be effective and meet the requirements of BAT 53. The report shall include as a minimum:</p> <p>The final designs and an implementation schedule for the installation of enclosures/covers and associated abatement.</p> <p>Full investigation and characterisation of the waste gas streams emitted to points [insert OCU emission points].</p> <p>Evidence that the pollutants of the waste gas stream will be controlled and/or abated either by the abatement plant or by the proposed abatement systems.</p> <p>Abatement stack monitoring results (including but not limited to odour, ammonia, hydrogen chloride and total volatile organic chemicals).</p> <p>Abatement process monitoring results (including but not limited to odour, ammonia, hydrogen chloride and total volatile organic chemicals).</p>	<p>in writing with the Environment Agency</p> <p>Implementation of all required vessel cover improvements and abatement must be completed by 31/03/2025</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>Details of air quality quantitative impact assessment including modelling and a proposal for site-specific “action levels” (including but not limited to odour, ammonia, hydrogen chloride and total volatile organic chemicals).</p> <p>Odour monitoring results at the site boundary.</p> <p>Records of odour complaints and odour related incidents.</p> <p>Recommendations for improvement including the replacement or upgrading of the abatement plant.</p> <p>The plan shall be implemented in accordance with the Environment Agency’s prior written approval.</p>	
Improvement conditions for enclosure of tanks undertaking AD		
ICX	<p>The operator shall submit a written ‘Primary anaerobic digestion vessel cover’ plan and obtain the Environment Agency’s written approval to it. The plan shall contain the final designs and an implementation schedule for the installation of covers for vessels undertaking anaerobic digestion in the [insert number and name of tanks]. The plan shall also contain a detailed description of the proposed gas utilisation plant, gas storage infrastructure for the biogas produced during anaerobic digestion, pressure relief valves and gas pipe-work. The plan shall include but not be limited to the following components:</p> <p>Evidence that the vessel covers, gas utilisation plant and ancillary equipment have been designed by appropriately qualified engineers.</p> <p>Evidence that the vessel covers, and gas utilisation plant will be designed and installed in accordance with guidance, Biological waste treatment: appropriate measures for permitted facilities.</p> <p>An updated Hazard and Operability Study (HAZOP) and DSEAR risk assessment.</p>	<p>DD/MM/YYYY or such other date as agreed in writing with the Environment Agency</p> <p>Implementation of all required vessel cover improvements must be completed by 31/03/2025</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>An assessment of gas storage capacity and gas utilisation capacity including proposals for additional gas utilisation plant.</p> <p>A program of works with timescales for the commissioning of the vessel covers, gas utilisation infrastructure and ancillary equipment.</p> <p>The plan shall be implemented in accordance with the Environment Agency's prior written approval.</p>	
Improvement conditions for enclosure of tanks storing (or treating) stable and unstable digestate		
ICXa	<p>Drafting note: where there are open tanks post primary digestion, it's possible that the digestate produced and stored in these tanks are producing biogas and emitting to atmosphere. We understand that most WaSC sites treat waste for a limited period which is less than the typical residence times for anaerobic digestion. This means that the digestate produced and stored in the open tanks could still be producing biogas. If the applicant has not provided evidence to show that the digestate is stable, then they will need to prove this. This is to inform whether the digestate storage should be enclosed and connected to the site gas management infrastructure or is suitable for standard waste storage requirements in an enclosed tank with air discharged by a suitable abatement system. Include for any open tanks. This IC is a mechanism to determine the type of enclosure required, not a mechanism to justify the tanks remaining open.</p> <p>The operator shall submit a written report, with supporting evidence, on the stability of digestate stored within the [insert name of existing open tank(s)] tank[s] and obtain the Environment Agency's written approval to it. The report shall assess whether an effective digestion process has taken place within the anaerobic digestion tanks and whether biogas emissions from post digestion storage or treatment are minimised. The report shall</p>	<p>DD/MM/YYYY</p> <p>[6 months of permit issue] or such other date as agreed in writing with the Environment Agency</p> <p>Implementation of all required vessel cover improvements must be completed by 31/03/2025</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>assess digester stability and the potential for biogas production. The report shall include but not be limited to:</p> <p>An assessment of residual biogas potential in accordance with the OFW004-005 [N6] methodology specified by BSI PAS 110: Producing Quality Anaerobic Digestate or an equivalent methodology for assessing residual biogas potential of the digestate stored within the [insert name of existing open tank(s)] tanks(s).</p> <p>An assessment of the stability of the digestion process in the [insert name of anaerobic digester tanks], to be undertaken in accordance with BAT 38 of the Waste Treatment BREF. The assessment shall be supported by process monitoring data recorded using an automatic and/or manual monitoring system (and sampling of the digester feed) [replace automatic with manual if they do not use a SCADA system] for the following parameters over a period of one month:</p> <p>pH and alkalinity of the digester feed digester operating temperature hydraulic loading rate organic loading rate volatile fatty acids concentration ammonia liquid and foam levels in the digester</p>	
ICXb	<p>Unless the report approved under [ICXa] concludes that the digestion process is stable and the digestate has minimal potential for biogas production, the operator shall submit a written 'anaerobic digestion vessel cover' plan and obtain the Environment Agency's written approval to it. The plan shall contain the final designs and an implementation schedule for the installation of covers for vessels undertaking anaerobic digestion and storing or treatment of unstable digestate [insert name of tank/vessel(s)]. The plan shall also contain a detailed description of the proposed gas utilisation plant, gas storage infrastructure for the biogas</p>	<p>DD/MM/YYYY [6 months of the Environment Agency's written approval of [ICXa] or such other date as agreed in writing with the Environment Agency</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>produced during anaerobic digestion, pressure relief valves and gas pipe-work. The plan shall include but not be limited to the following components:</p> <p>Evidence that the vessel covers, gas utilisation plant and ancillary equipment have been designed by appropriately qualified engineers.</p> <p>Evidence that the vessel covers, and gas utilisation plant will be designed and installed in accordance with guidance, Biological waste treatment: appropriate measures for permitted facilities.</p> <p>An updated Hazard and Operability Study (HAZOP) and DSEAR risk assessment.</p> <p>An assessment of gas storage capacity and gas utilisation capacity including proposals for additional gas utilisation plant.</p> <p>A program of works with timescales for the commissioning of the vessel cover(s), gas utilisation infrastructure and ancillary equipment.</p> <p>The plan shall be implemented in accordance with the Environment Agency's prior written approval.</p>	<p>Implementation of all required vessel cover improvements must be completed by 31/03/2025</p>
ICXc	<p>Should the report approved under [ICXa] conclude that the digestion process is stable and the digestate has minimal potential for biogas production, the operator shall submit a written 'waste water and digestate storage enclosure plan' and obtain the Environment Agency's written approval to it. The plan shall contain the final designs and an implementation schedule for the installation of enclosures/covers (and associated waste gas abatement systems) for waste water/stable digestate storage tanks identified as: [insert name of tank/vessel(s)].</p> <p>The report shall include evidence that the tank [and lagoon] enclosures/covers will be designed and installed in accordance with guidance, Biological waste treatment: appropriate measures for permitted facilities.</p>	<p>DD/MM/YYYY [6 months of the Environment Agency's written approval of [ICXa] or such other date as agreed in writing with the Environment Agency</p> <p>Implementation of all required vessel cover improvements must be</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	The plan shall be implemented in accordance with the Environment Agency's prior written approval.	completed by 31/03/2025
Improvement conditions for primary containment tanks		
ICX	<p>The operator shall submit a written 'primary containment plan' and shall obtain the Environment Agency's written approval to it. The plan shall contain the results of an inspection and program of works undertaken by an appropriately qualified engineer and shall assess the extent, design specification and condition of primary containment systems (including associated pipework) where polluting liquids and solids are being stored, treated, and/or handled.</p> <p>The plan shall include, but not be limited to: An assessment of the physical condition of all primary containment systems (storage and treatment vessels and associated pipework) using a Written Scheme of Examination and their suitability for providing primary containment when subjected to dynamic and static loads. A program of works with timescales for the implementation of individual improvement measures necessary to demonstrate that the primary containment is fit for purpose or alternative appropriate measures to ensure all polluting materials will be contained on site. A preventative maintenance and inspection regime.</p> <p>The plan shall be implemented in accordance with the Environment Agency's written approval.</p>	DD/MM/YYYY [12 months of permit issue] or such other date as agreed in writing with the Environment Agency.
Improvement conditions for operational storage buffer capacity		
ICX	The operator shall submit a written "waste water and digestate buffer storage plan" and shall obtain the	DD/MM/YYYY [6 months of

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>Environment Agency's written approval to it. The plan shall contain the results of a review of the current storage of waste water and digestate produced from site operations. The review shall propose and describe site contingency arrangements to provide appropriate storage capacity or other appropriate measures to prevent or minimise emissions of waste water or digestate being discharged off site during any occasions when the receiving wastewater treatment works is in storm overflow operating conditions.</p> <p>The storage plan shall include but not be limited to: Proposals for additional storage capacity with secondary containment within the site boundary for wastewater and/or other digestate during any occasions when the receiving wastewater treatment works is in storm overflow operating conditions. Procedures to cease discharges during these conditions. Calculation of a reasonable contingency capacity of waste water and/or other digestate during any occasions when the receiving wastewater treatment works is in storm overflow operating conditions. A description and design specification of the buffer storage infrastructure and secondary containment measures. The design shall be completed by an appropriately qualified engineer and secondary containment shall be designed in line with CIRIA C736. A program of works with timescales for the implementation and construction of the buffer storage. A preventative maintenance and inspection regime.</p> <p>The plan shall be implemented in accordance with the Environment Agency's prior written approval.</p>	<p>permit issue] or such other date as agreed in writing with the Environment Agency</p> <p>Implementation of all required containment improvements must be completed by 31/03/2025</p>
<p>Improvement conditions for establishing an inventory of liquid waste water discharged from anaerobic digestion and associated activities (ARX – ARX) [include activities which are relevant to the AD activity]</p>		

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
ICXa	<p>The operator shall submit a sampling programme in relation to waste water streams and shall obtain the Environment Agency's written approval to it. The sampling programme shall be designed to fully characterise the waste waters discharged to [insert name of WwTW] wastewater treatment works (WwTW) from emission points [insert emission point references e.g. S1, S2, SX] in (table S3.3 of this permit).</p> <p>The programme shall include but not be limited to a methodology for a minimum of one 24-hour flow proportional sample a month, for each emission point, for a period of 12 months. The programme shall detail the sampling methods/standards used. Sampling methods shall be in accordance with BAT conclusion 20 of the Waste Treatment BREF. The programme shall include the National Grid Reference (NGR) of the sampling point(s) location(s).</p> <p>The programme shall establish the characteristics of the liquid waste water streams and shall include as a minimum for each emission point: Average values and variability of flow, pH, temperature and conductivity. Average concentration and load values of all relevant substances and their variability. Data on bioeliminability.</p> <p>The programme shall sample for all relevant substances and must include: Hydrocarbon oil index (HOI) (mg/l) Free cyanide (CN-) (mg/l) Adsorbable organically bound halogens (AOX) (mg/l) Metals and metalloids; arsenic (expressed as As), cadmium (expressed as Cd), chromium (expressed as Cr), hexavalent chromium (expressed as Cr(VI)), copper (expressed as Cu), lead (expressed as Pb), nickel (expressed as Ni), mercury (expressed as Hg), zinc (expressed as Zn) (µg/l)</p>	<p>Within 2 months of issue of this permit</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>The operator shall submit the collected monitoring data in writing to the Environment Agency according to agreed reporting periods.</p> <p>The sampling programme shall be produced in accordance with Environment Agency guidance:</p> <p>Specific substances and priority hazardous substances – Surface water pollution risk for your environmental permit Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk).</p> <p>Monitoring discharges to water: guidance on selecting a monitoring approach Monitoring discharges to water: guidance on selecting a monitoring approach - GOV.UK (www.gov.uk)</p> <p>The monitoring programme shall be carried out and the monitoring data submitted in accordance with the Environment Agency’s written approval.</p>	
Improvement conditions for indirect discharges to water discharged from anaerobic digestion and associated activities (ARX – ARX) [include activities which are relevant to the AD activity]		
ICXb	<p>The operator shall submit a report for approval by the Environment Agency, following completion of the sampling programme approved under ICXa. The report shall include but not be limited to; a summary of the sample results, a completed H1 risk assessment(s) and modelling outputs where appropriate.</p> <p>The operator shall provide conclusions on whether the waste waters discharged from [insert emission point references e.g. S1, S2, SX] will have any adverse impact on the receiving waters once discharged from [insert name of WwTW]. An assessment shall be made against the parameters specified in the relevant environmental standards as specified within Environment Agency guidance as follows:</p>	<p>Within 12 months of the Environment Agency’s written approval of the sampling programme submitted under ICXa or such other date as agreed in writing with the Environment Agency</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>Specific substances and priority hazardous substances – Surface water pollution risk for your environmental permit Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk).</p> <p>Sanitary substances – H1 annex D2: assessment of sanitary and other pollutants in surface water discharges 1076_14 H1 Annex D2 - Assessment of sanitary and other pollutants within Surface Water Discharges (publishing.service.gov.uk)</p> <p>The report shall include any proposals and/or additional measures required to prevent or minimise any significant emissions from the installation along with timescales for implementation.</p>	
ICXc	The operator shall implement any improvements identified within the report approved under ICXb in accordance with the Environment Agency’s written approval and provide written confirmation to the Environment Agency that the improvements have been completed.	Within 12 months of the report in relation to ICXb being approved by the Environment Agency or such other date as agreed in writing with the Environment Agency
Improvement conditions for biogas upgrading plant		
ICX	The operator shall carry out a monitoring study to verify the assumptions made in the application in relation to the releases of pollutants to air. The study shall include the monitoring of point source releases to air from the biogas upgrading plant emission point xx during normal operation, having regard to the Environment Agency technical guidance, Monitoring stack emissions: environmental permits and to MCERTS standards. As a minimum, two separate	DD/MM/YYYY [6 months of permit issue] or such other date as agreed in writing with the Environment Agency

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>monitoring campaigns in a year shall be completed (one monitoring survey six months following commissioning of the biogas upgrading plant).</p> <p>The pollutants to be monitored shall include: Total volatile organic compounds. Hydrogen sulphide.</p>	
ICX	<p>Following the completion of ICX [insert correct IC number], the operator shall undertake an emissions impact assessment of point source releases to air from point xx, using the information obtained through the emissions monitoring. The emissions impact assessment report and all associated monitoring reports and assessments shall be submitted in writing to the Environment Agency for review.</p> <p>The emissions impact assessment shall, as a minimum, include: Reports showing details of the monitoring undertaken and the results obtained. Results of the assessment of long and short-term impacts from the emissions in accordance with Environment Agency Guidance – Air emissions risk assessment for your environmental permit. A completed H1 assessment software tool.</p> <p>If the H1 assessment shows potential long or short-term impacts from the emissions, the operator shall propose an action plan to reduce the impacts of the substances identified.</p>	DD/MM/YYYY [6 months of permit issue] or such other date as agreed in writing with the Environment Agency
Improvement condition to address methane slip emissions from gas engines burning biogas		
ICX	<p>The operator shall establish a site-specific leak detection and repair (LDAR) programme to detect and mitigate the release of volatile organic compounds, including methane from diffuse sources. The plan shall include but not be limited to a diffuse emissions source inventory and associated</p>	Within 6 months of issue of this permit or as agreed in writing with the

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	monitoring arrangements. The plan shall be submitted to the Environment Agency for approval.	Environment Agency
ICX	The operator shall establish the methane emissions in the exhaust gas from engines burning biogas and compare these to the manufacturer's specification agreed in writing with the Environment Agency. The operator shall, as part of the methane leak detection and repair (LDAR) programme, develop proposals to assess the potential for methane slip and take corrective actions as soon as practicable where emissions above the manufacturer's specification are identified.	<p>Within 12 months of the Environment Agency's written approval of the LDAR programme submitted under ICX or such other date as agreed in writing with the Environment Agency [use above text if inserting IC for a new LDAR programme]</p> <p>Within 12 months of issue of this permit or as agreed in writing with the Environment Agency</p>
Improvement condition for review of effectiveness of abatement plant		
ICX	The operator shall carry out a review of the abatement plant [include names of abatement plant and emission point] on site, to determine whether the measures have been effective and adequate to prevent and where not possible minimise emissions	DD/MM/YYYY [6 months of permit issue] or such other date as agreed in writing with

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>released to air including but not limited to odour and ammonia.</p> <p>The operator shall submit a written report to the Environment Agency following this review for assessment and approval.</p> <p>The report shall include but not be limited to the following aspects:</p> <p>Full investigation and characterisation of the waste gas streams.</p> <p>Evidence that the pollutants of the waste gas stream will be controlled and/or abated either by the abatement plant or by the proposed abatement systems.</p> <p>Abatement stack monitoring results (including but not limited to odour and ammonia).</p> <p>Abatement process monitoring results (including but not limited to odour and ammonia).</p> <p>Details of air quality quantitative impact assessment including modelling and a proposal for site-specific “action levels” (including but not limited to odour concentration, hydrogen sulphide and ammonia).</p> <p>Odour monitoring results at the site boundary.</p> <p>Records of odour complaints and odour related incidents.</p> <p>Recommendations for improvement including the replacement or upgrading of the abatement plant.</p> <p>Timescales for implementation of improvements to the abatement plant.</p> <p>The operator shall implement the improvements in line with the timescales as approved by the Environment Agency.</p>	the Environment Agency
Improvement condition for establishing an inventory of liquid waste water discharged from the Head of works waste operation/installation activity (ARX) [include activities which are relevant to the HoW activity]		
ICXa	The operator shall submit a sampling programme in relation to waste water streams and shall obtain the Environment Agency’s written approval to it. The sampling programme shall be designed to fully characterise the waste waters discharged to [insert	Within 2 months of issue of this permit

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>name of WwTW] wastewater treatment works (WwTW) from emission point SX [insert emission point references e.g. S1, S2, SX] in (table S3.3 of the permit).</p> <p>The programme should include but not be limited to a methodology for a minimum of one 24-hour flow proportional sample a month, for the emission point, for a period of 12 months. The programme shall detail the sampling methods/standards used. Sampling methods shall be in accordance with guidance, Non-hazardous and inert waste: appropriate measures for permitted facilities https://www.gov.uk/guidance/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities.</p> <p>The programme shall include the National Grid Reference (NGR) of the sampling point(s) location(s).</p> <p>The programme shall establish the characteristics of the liquid waste water streams and shall include as a minimum for each emission point:</p> <p>Average values and variability of flow, pH, temperature and conductivity. Average concentration and load values of all relevant substances and their variability. Data on bioeliminability.</p> <p>The operator shall submit the collected monitoring data in writing to the Environment Agency according to agreed reporting periods.</p> <p>The sampling programme shall be produced in line with Environment Agency guidance:</p> <p>Specific substances and priority hazardous substances – Surface water pollution risk for your environmental permit Surface water pollution risk</p>	

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	<p>assessment for your environmental permit - GOV.UK (www.gov.uk).</p> <p>Monitoring discharges to water: guidance on selecting a monitoring approach Monitoring discharges to water: guidance on selecting a monitoring approach - GOV.UK (www.gov.uk)</p> <p>The monitoring programme shall be carried out and the monitoring data submitted in accordance with the Environment Agency's written approval.</p>	
Improvement conditions for indirect discharges to water discharged from the Head of works waste operation/installation activity (ARX) [include activities which are relevant to the HoW activity]		
ICXb	<p>The operator shall submit a report for audit and approval by the Environment Agency, following completion of the sampling programme referred to in ICXa. The report shall include but not be limited to; a summary of the sample results, a completed H1 risk assessment(s) and modelling outputs where appropriate.</p> <p>The operator shall provide conclusions on whether the waste waters discharged [to/from] [insert emission point references e.g. S1, S2, SX] will have any adverse impact on the receiving waters once discharged from [insert name of WwTW]. An assessment shall be made against the parameters specified in the relevant environmental standards as specified within our guidance as follows:</p> <p>Specific substances and priority hazardous substances – Surface water pollution risk for your environmental permit Surface water pollution risk assessment for your environmental permit - GOV.UK (www.gov.uk).</p> <p>Sanitary substances – H1 annex D2: assessment of sanitary and other pollutants in surface water discharges 1076_14 H1 Annex D2 - Assessment of sanitary and other pollutants within Surface Water Discharges (publishing.service.gov.uk).</p> <p>The report shall include any proposals and/or additional measures required to prevent or minimise</p>	<p>Within 12 months of the Environment Agency's written approval of the sampling programme submitted under ICXa or such other date as agreed in writing with the Environment Agency</p>

Table S1.3 Improvement programme requirements		
Reference	Requirement	Date
	any significant emissions from the installation along with timescales for implementation.	
ICXc	The operator shall implement the improvements identified within the report approved under ICXb in accordance with the Environment Agency's written approval and provide written confirmation to the Environment Agency that the improvements have been completed.	Within 6 months of the report in relation to ICXb being submitted to the Environment Agency or such other date as agreed in writing with the Environment Agency

Operator:	Thames Water Utilities Limited
Permit Ref:	EPR/MP3338LU/003
Site:	Reading Sludge Treatment Centre
Date:	6/1/2022

[Full Waste Treatment BREF](#)

[Waste Treatment BAT Conclusions](#)

This document has been compiled as a tool to help clearly identify where there may be gaps in complying with the Waste Treatment BAT conclusions.

The information contained only relates to:

General BAT conclusions

General BAT conclusions for the biological treatment of waste

BAT conclusions for the aerobic treatment of waste

BAT conclusions for the anaerobic treatment of waste

BAT conclusions for the mechanical biological treatment (MBT) of waste

BAT conclusions for the physico-chemical treatment of solid and/or pasty waste

Additional BAT conclusions may apply depending on the operations carried out.

It can be used by applicants/operators or EA officers but is not a substitution for the official BAT documents or other official Environment Agency guidance.

BAT No.	Topic	Brief Description	BAT	Applicable BAT- AEL	Compliant now?	Derogation needed?	Provide brief comments on how compliance with BAT is (or will be) achieved Where "N/A" or "other" is given, please explain why
General BAT conclusions							
1	Overall performance	EMS <i>Applicability</i> The scope (e.g. level of detail) and nature of the EMS (e.g. standardised or non-standardised) will generally be related to the nature, scale and complexity of the installation, and the range of environmental impacts it may have (determined also by the type and amount of wastes processed).	In order to improve the overall environmental performance, BAT is to implement and adhere to an environmental management system (EMS) that incorporates all of the following features:				
			i) commitment of the management, including senior management;		Yes		The EMS has received sign-off from Senior Management and the Thames Water Environmental Governance Board. In addition Thames Water operate several steering groups attended by Senior Managers where procedures can be highlighted and issues raised.
			ii) definition, by the management, of an environmental policy that includes the continuous improvement of the environmental performance of the installation;		Yes		Thames Water's EMS includes a commitment to continuous improvement.
			iii) planning and establishing the necessary procedures, objectives and targets, in conjunction with financial planning and investment;		Yes		Procedures are in place to identify and control environmental issues arising from company activities. This includes an Asset Planning System and Project Stage Gate Process for supporting investment decisions. Thames Water are regulated by OFWAT and financial investment is governed through the Price Review process and agreement of performance commitments.
			iv) implementation of procedures paying particular attention to: (a) structure and responsibility, (b) recruitment, training, awareness and competence (c) communication, (d) employee involvement, (e) documentation, (f) effective process control, (g) maintenance programmes, (h) emergency preparedness and response, (i) safeguarding compliance with environmental legislation;		Yes		Thames Water operates a SharePoint-based EMS with procedures linked from across the organisation. Procedures cover items (a) to (i) and include documents such as Site Operating Manuals and Asset Standards for design and operation of plant, EMS Standards, planned and preventative maintenance programmes and corporate incident response procedures.
			v) checking performance and taking corrective action, paying particular attention to: (a) monitoring and measurement (see also the JRC Reference Report on Monitoring of emissions to air and water from IED installations – ROM), (b) corrective and preventive action, (c) maintenance of records, (d) independent (where practicable) internal or external auditing in order to determine whether or not the EMS conforms to planned arrangements and has been properly implemented and maintained;		Yes		Thames Water's EMS includes procedures allow for checking of performance and preventative and corrective actions. Monitoring checks are completed as necessary and records are maintained, including use of SCADA and SAP systems for electronic records. Periodic inspections of sites are carried out internally to monitor compliance with EMS procedures. Electronic systems are in place to assign ownership, and track the progress of, any corrective actions resulting from internal or external inspections.
			vi) review, by senior management, of the EMS and its continuing suitability, adequacy and effectiveness;		Yes		The EMS has received sign-off from Senior Management and the Thames Water Environmental Governance Board. In addition Thames Water operate several steering groups attended by Senior Managers where procedures can be highlighted and issues raised.
			vii) following the development of cleaner technologies;		Yes		Thames Water has an Asset Management System that is accredited to ISO55001. Included in the associated policy is a commitment to work to providing and delivering high-performing, sustainable and efficient asset base to achieve our commitments, including net zero operational carbon by 2030 which requires us to look at reducing our use of fossil fuels and look at low carbon alternatives.
			viii) consideration for the environmental impacts from the eventual decommissioning of the plant at the stage of designing a new plant, and throughout its operating life;		Other (explain)		Thames Water has an Asset Management System that is accredited to ISO55001. Our Asset Standards consider the assets from design through to operation and some include decommissioning, these include consideration of environmental impacts and regulatory requirements. We are currently developing an overarching decommissioning asset standard which will include consideration of environmental impacts.
			ix) application of sectoral benchmarking on a regular basis;		Yes		Thames Water are an active members of the WaterUK Management System Forum (and other Water UK Network groups) and meet industry colleagues on an ad-hoc basis to compare approaches.
			x) waste stream management (see BAT 2);		Other (explain)		This is requirement is broadly met - see BAT 2
			xi) an inventory of waste water and waste gas streams (see BAT 3);		Yes		A site-specific inventory of waste water and waste gas streams will be included as part of the Residues Management Plan which is submitted alongside the permit application.
			xii) residues management plan (see description in Section 6.5);		Yes		A site-specific Residues Management Plan which covers the management of raw materials, waste water and biogas used or generated as part of the permitted activities is included and submitted alongside the permit application.

			xiii) accident management plan (see description in Section 6.5);		Yes		Thames Water operates a SharePoint-based Accident Management Plan and Environmental Risk Assessment. Information includes; Incident management arrangements, EMS essential standards, H&S procedures, Thames Water wide contact details, Site specific information (Site Operating Manual), permit, site plans, vulnerable receptors).
2	Overall performance	Improvement of overall environmental performance	In order to improve the overall environmental performance of the plant, BAT is to use all of the techniques given below.				
			a) Set up and implement waste characterisation and pre-acceptance procedures		Other (explain)	Thames Water has a Biorecycling Management System that is certified to ISO14001 and accredited under the Biosolids Assurance Scheme (BAS). The scheme covers the sludge recycling process including inputs into sites, the treatment process right through to the recycling of biosolids as fertiliser to land. In addition our Commercial Operations Scheme carry out Duty of Care checks on third-party companies delivering waste to the head of the works prior to issuing of access to data logger key fobs. Sludge received is also subject to information recording for each deposit. Thames Water are updating our waste pre-acceptance (and acceptance) procedures taking account of BAT and plan to implement them across our Sludge Treatment Centres.	
			b) Set up and implement waste acceptance procedures		Other (explain)	Thames Water has a Biorecycling Management System that is certified to ISO14001 and accreditation under the Biosolids Assurance Scheme (BAS). All third-party waste accepted at the HoW is recorded by TWUL data logger system which records information for each deposit including; Time, date, place of transfer, Volume of transaction, Vehicle Registration, Customer / Waste Holder name, Waste description / EWC. Waste deliveries can be monitored at all sites, by our Commercial Operations Team, using webcams. Sludge received is also subject to information recording for each deposit. Thames Water are updating our waste pre-acceptance (and acceptance) procedures taking account of BAT and plan to mplement them across our Sludge Treatment Centres.	
			c) Set up and implement a waste tracking system and inventory		N/A (explain)	Item c is broadly not met, due to the nature of the operations on site. Waste tracking is not undertaken as imported materials are not stored or held separately on site. The imported waste (excluding UWWTD derived waste from the sewer system) is tracked through the pre-acceptance process and to which discharge point it was discharged into the process. Retention times within the process are understood, and digestate outputs are tracked to land via BAS.	
			d) Set up and implement an output quality management system		Yes	Outputs are subject to the requirements of the Sludge Use in Agriculture Regulations 1989 (SUiAR), and in accordance with the Biosolids Assurance Scheme (BAS). Digested sludge cake output is subject to regular testing and corrective action plans to manage non-compliance.	
			e) Ensure waste segregation		N/A (explain)	Item e) does not apply to this site. Waste is only accepted by the site for biological treatment following waste pre-acceptance and waste acceptance procedures. There is no segregation of waste.	
			f) Ensure waste compatibility prior to mixing or blending of waste		Yes	Thames Water accept a limited number of waste types. Waste is only accepted by the site for biological treatment following waste pre-acceptance and waste acceptance procedures. This ensures compatibility prior to mixing or blending activities.	
			g) Sort incoming solid waste		N/A (explain)	Item g does not apply to this site. Solid waste is not received by the site	
3	Overall performance	Inventory <i>Applicability</i> The scope (e.g. level of detail) and nature of the inventory will generally be related to the nature, scale and complexity of the installation, and the range of environmental impacts it may have (determined also by the type and amount of wastes processed).	In order to facilitate the reduction of emissions to water and air, BAT is to establish and to maintain an inventory of waste water and waste gas streams, as part of the environmental management system (see BAT 1), that incorporates all of the following features:		Yes		As far as is reasonably practicable
			(i) information about the characteristics of the waste to be treated and the waste treatment processes, including: (a) simplified process flow sheets that show the origin of the emissions; (b) descriptions of process-integrated techniques and waste water/waste gas treatment at source including their performances;		Yes	All sites have block flow diagrams for their operations available within the EMS, and plant performance is monitored through the site SCADA system. Output quality is monitored at various points (cake quality; biogas quality). Plant performance measures are checked regularly for digester health and H ₂ S levels, amongst other key operational parameters.	
			(ii) information about the characteristics of the waste water streams, such as: (a) average values and variability of flow, pH, temperature, and conductivity; (b) average concentration and load values of relevant substances and their variability (e.g. COD/TOC, nitrogen species, phosphorus, metals, priority substances/micropollutants); (c) data on bioeliminability (e.g. BOD, BOD to COD ratio, Zahn-Wellens test, biological inhibition potential (e.g. inhibition of activated sludge)) (see BAT 52);		Yes	Waste waters generated from waste treatment are subject to monitoring inline with OFWAT guidance and the sampling programme included within the main application document. The scope of monitoring broadly aligns with BAT and the characteristics identified within this clause.	

			(iii) information about the characteristics of the waste gas streams, such as: (a) average values and variability of flow and temperature; (b) average concentration and load values of relevant substances and their variability (e.g. organic compounds, POPs such as PCBs); (c) flammability, lower and higher explosive limits, reactivity; (d) presence of other substances that may affect the waste gas treatment system or plant safety (e.g. oxygen, nitrogen, water vapour, dust).		Yes		Gas quality is measured continuously for certain parameters through the biogas management system and, if required, appropriate clean up equipment installed to control levels, e.g. siloxane filters. Overall gas quality is monitored live on line via electronic means by a dedicated specialist team. Additional sampling is undertaken periodically and sent off for laboratory analysis. Systems such as SCADA and Cockpit are used to monitor site processes; provide trending and then inform any required corrective action.
4	Overall performance	Techniques for storage of waste	In order to reduce the environmental risk associated with the storage of waste, BAT is to use all of the techniques given below.		Yes		Thames Water is compliant as far as practicable.
			a) Optimised storage location		N/A (explain)		Item A is generally applicable directly to new plants. However, compliance is pre-defined due to the locational constraints of existing sites and infrastructure within the existing works for storage.
			b) Adequate storage capacity		Yes		Item B is controlled through the retention times within the biological treatment system, including the use of any holding tanks installed with known capacities. Should capacity be an operational issue, imports will be diverted to other Thames Water sites.
			c) Safe storage operation		Yes		Only the first consideration in Item (c) applies to the site and is controlled through the provision of site transfer pipework for tanker offloading and loading. There is labelling for different waste inputs at the waste import points. There is a design standard for these waste import assets, and the discharge of waste is controlled by activation fobs which allows access to the correct discharge point
			d) Separate area for storage and handling of packaged hazardous waste		N/A (explain)		Item (d) does not apply to the wastes handled at the site as no packaged waste is accepted.
5	Overall performance	Techniques for handling and transfer of waste	In order to reduce the environmental risk associated with the handling and transfer of waste, BAT is to set up and implement handling and transfer procedures.		Yes		Thames Water is fully compliant with the requirements of this BAT. All staff are appropriately trained in site procedures, with a TCM in place and all waste management procedures are covered by the EMS. Spill kits are available on site and staff trained to use them. Waste transfers are carried out only using vacuum transfer lines at dedicated disposal points.
6	Monitoring	Waste water - Monitor key parameters	For relevant emissions to water as identified by the inventory of waste water streams (see BAT 3), BAT is to monitor key process parameters (e.g. waste water flow, pH, temperature, conductivity, BOD) at key locations (e.g. at the inlet and/or outlet of the pretreatment, at the inlet to the final treatment, at the point where the emission leaves the installation).		Yes		Emissions to a water body are indirect, via site drainage to the inlet of a sewage works controlled by the applicant. Therefore Thames Water complies with this requirement at the outfall with monitoring at key locations completed and the sampling programme included within the main application document. Output quality is monitored automatically for the biogas system. Cake quality is monitored in line with BAS requirements, including pathogen level and moisture content, which shows how both the digestion and dewatering processes are operating. Returns of liquors to the works inlet are not currently sampled, however, BOD and NH4 will be sampled in future. Future sampling that aligns with the requirements in BAT will be undertaken by the applicant and analysed by MCERTS accredited providers.
7	Monitoring	Waste water - Monitoring frequencies and standards	BAT is to monitor emissions to water with at least the frequency given below, and in accordance with EN standards. If EN standards are not available, BAT is to use ISO, national or other international standards that ensure the provision of data of an equivalent scientific quality.	See 'Water emissions tables' tab	Yes		There are no direct emissions to water from the permitted operations. As the statutory undertaker, all liquids are transferred from the permitted area to the wider sewage treatment works for treatment and discharge via the site drainage. There are no direct emissions to water from these processes. Indirect emissions to water will be monitored and monitoring will be undertaken to meet the requirements for biological treatment of waste.
8	Monitoring	Channelled air emissions - Monitoring frequencies and standards	BAT is to monitor channelled emissions to air with at least the frequency given below, and in accordance with EN standards. If EN standards are not available, BAT is to use ISO, national or other international standards that ensure the provision of data of an equivalent scientific quality.	See 'Air emissions tables' tab	Yes		Thames Water comply with this requirement for the following substances, which are applicable to their processes: H ₂ S; NH ₃ ; Odour. H ₂ S is monitored within the biogas system. NH ₃ is subject to spot monitoring within the biogas system.
9	Monitoring	Diffuse emissions - Monitor organic compounds	BAT is to monitor diffuse emissions of organic compounds to air from the regeneration of spent solvents, the decontamination of equipment containing POPs with solvents, and the physico-chemical treatment of solvents for the recovery of their calorific value, at least once per year using one or a combination of the techniques given below.		N/A (explain)		These activities are not applicable to this site.
			a) Measurement		N/A (explain)		These activities are not applicable to this site.
			b) Emissions factors		N/A (explain)		These activities are not applicable to this site.
			c) Mass balance		N/A (explain)		These activities are not applicable to this site.

10	Monitoring	<p>Odour - Monitor emissions</p> <p><i>Applicability</i> The applicability is restricted to cases where an odour nuisance at sensitive receptors is expected and/or has been substantiated.</p>	<p>BAT is to periodically monitor odour emissions.</p> <p>(The monitoring frequency is determined in the odour management plan (see BAT 12).)</p>		Yes		Thames Water carries out odour monitoring in accordance with BAT 10 requirements. Monitoring of OCUs is carried out monthly and quarterly for various parameters including hydrogen sulphide. Our contractors undertake hydrogen sulphide monitoring typically using Draeger or Gastec analysis tubes widely used in the waste water industry. Where applicable, OCUs may also have online hydrogen sulphide monitoring.
11	Monitoring	<p>Monitor annual consumption and generation of waste outputs</p>	<p>BAT is to monitor the annual consumption of water, energy and raw materials as well as the annual generation of residues and waste water, with a frequency of at least once per year.</p>		Yes		Thames Water meets this BAT requirement through annual monitoring of key process parameters (biogas production; energy consumption and export; raw material use; waste produced). Pre and Post AD process returns back to the sewage works are monitored in order to ensure control and optimisation of the works. For returns from the digestion process to the treatment works – drainage, waste process water, condensate, dirty washwater. This can be sampled but are not routinely monitored see response to BAT 6.
12	Emissions to air	<p>Odour Management Plan</p> <p><i>Applicability</i> The applicability is restricted to cases where an odour nuisance at sensitive receptors is expected and/or has been substantiated.</p>	<p>In order to prevent or, where that is not practicable, to reduce odour emissions, BAT is to set up, implement and regularly review an odour management plan, as part of the environmental management system (see BAT 1), that includes all of the following elements:</p> <ul style="list-style-type: none"> — a protocol containing actions and timelines; — a protocol for conducting odour monitoring as set out in BAT 10; — a protocol for response to identified odour incidents, e.g. complaints; — an odour prevention and reduction programme designed to identify the source(s); to characterise the contributions of the sources; and to implement prevention and/or reduction measures. 		Yes		The site has an odour management plan which is subject to regular monitoring and periodic updating.
13	Emissions to air	Odour reduction techniques	<p>In order to prevent or, where that is not practicable, to reduce odour emissions, BAT is to use one or a combination of the techniques given below.</p> <p>a) Minimising residence times</p>		Yes		Thames Water complies with this BAT requirement
			<p>b) Using chemical treatment</p>		Yes		Waste storage time is minimised prior to digestion and untreated sludge is only stored within closed tanks and vessels. All sludge handling and processing takes place within enclosed buildings, with the exception of the anaerobic digestion which is fully enclosed within digesters.
			<p>c) Optimising aerobic treatment</p>		N/A (explain)		H ₂ S levels are controlled through chemical dosing outside of the installation boundary. Odour control assets are designed in accordance with Asset Standards, the current Asset Standard requires construction to WIMES 8.05. Aerobic treatment is not utilised within the installation
14	Emissions to air	Diffuse emission reduction techniques	<p>In order to prevent or, where that is not practicable, to reduce diffuse emissions to air, in particular of dust, organic compounds and odour, BAT is to use an appropriate combination of the techniques given below.</p> <p>Depending on the risk posed by the waste in terms of diffuse emissions to air, BAT 14d is especially relevant.</p>		Other (explain)		Thames Water operates a number of existing facilities, entering IED for the first time. As such, existing plant and equipment may not be fully compliant with the requirements of this item.
			<p>a) Minimising the number of potential diffuse emission sources</p>		Yes		Use of gravity transfer over pumping and appropriate design of piping layout is carried out as far as practicable within the organisations design codes. Site has a vehicle speed limit.
			<p>b) Selection and use of high- integrity equipment</p>		Other (explain)		Applicability of item b) is restricted due to existing operability requirements of the plant.
			<p>c) Corrosion prevention</p>		Yes		Construction materials specified are based on the operational requirements, e.g. stainless steel used in biogas pipework to prevent corrosion.
			<p>d) Containment, collection and treatment of diffuse emissions</p>		Yes		Storage of wastes and materials that may generate diffuse emissions takes place within enclosed tanks within buildings at Reading STC. Treatment of waste sludges takes place within enclosed tanks, some of which are within enclosed buildings. There is limited handling of wastes and materials as this is mainly transferred automatically by pumps or conveyors. Digested sludge cakes is automatically deposited into lorries for removal from site via screw conveyors. Emissions are directed as appropriate to odour control units to treat emissions. Targeted monitoring of releases from open top tanks, including at different pressures, is now being programmed in for collection using a specialist methodology. Any proposed solutions, such as coverings and collection systems, will be subject to the EA Cost benefit methodology with deliverability informed by health & safety considerations
			<p>e) Dampening</p>		N/A (explain)		Item e) is not relevant to Thames Water's operations
<p>f) Maintenance</p>		Other (explain)		Routine maintenance is the responsibility of site staff who complete day-to-day activities with the support of approved contractors. Maintenance activities and regular checks are recorded electronically. Access to potentially leaky equipment may be restricted in the case of pre-existing facilities.			

			g) Cleaning of waste treatment and storage areas		Yes		Cleaning and regular maintenance of all plant and equipment will be completed on the time scale specified by the equipment manufacturer. Spillages are cleaned up as required making use of available spill kits.
			h) Leak detection and repair (LDAR) programme		Yes		A leak detection and repair (LDAR) plan has been prepared for the site and is included within the main application document.
15	Emissions to air	Flare use minimisation techniques	BAT is to use flaring only for safety reasons or for non-routine operating conditions (e.g. start-ups, shutdowns) by using both of the techniques given		Yes		Use of the flare is minimised in order to obtain best value from the biogas generation at the site
			a) correct plant design		Yes		Site is equipped with sufficient biogas storage capacity and multiple outlets for its use with high-integrity relief valves only used in emergency situations and not to control biogas volumes
			b) Plant management		Yes		Plant is managed to optimise biogas production for economic use. Multiple outlets are available to make use of biogas and imports of waste can be reduced in order to reduce biogas generation during planned maintenance on key plant.
16	Emissions to air	Flare emissions minimisation techniques	In order to reduce emissions to air from flares when flaring is unavoidable, BAT is to use both of the techniques given below.		Yes		Thames Water complies with this BAT requirement.
			a) Correct design of flaring devices		Yes		Thames Water specify ground mounted flares for use when flaring is unavoidable.
			b) Monitoring and recording as part of flare management		Yes		Thames Water monitors the hours of operation of the flare, in line with the standard requirements of environmental permits issued by the Environment Agency, that is only carrying out emissions monitoring should the flare operate over 10% of annual hours.
17	Noise and vibrations	Noise management plan <i>Applicability</i> The applicability is restricted to cases where a noise or vibration nuisance at sensitive receptors is expected and/or has been substantiated.	In order to prevent or, where that is not practicable, to reduce noise and vibration emissions, BAT is to set up, implement and regularly review a noise and vibration management plan, as part of the environmental management system (see BAT 1), that includes all of the following elements:		N/A (explain)		Thames Water does not routinely prepare noise and vibration plans for sites due to a lack of noise and / or vibration issues at nearby sensitive receptors. There is no history of substantiated noise or vibration complaints against the wider site. In accordance with the applicability criteria for this BAT item, Thames Water is therefore compliant.
			i) a protocol containing appropriate actions and timelines;		N/A (explain)		Although not applicable to this site, Thames Water's EMS contains protocols including for appropriate actions and timelines in the event of feedback from stakeholders.
			ii) a protocol for conducting noise and vibration monitoring;		N/A (explain)		Although not applicable to this site, Thames Water's EMS contains protocols for conducting noise and vibration monitoring.
			iii) a protocol for response to identified noise and vibration events, e.g. complaints;		N/A (explain)		Thames Water's EMS contains protocols for managing feedback from stakeholders.
			iv) a noise and vibration reduction programme designed to identify the source(s), to measure/estimate noise and vibration exposure, to characterise the contributions of the sources and to implement prevention and/or reduction		N/A (explain)		Although not applicable to this site, a noise and vibration reduction programme would be implemented as a result of substantiated claims.
18	Noise and vibrations	Noise and vibration reduction techniques	In order to prevent or, where that is not practicable, to reduce noise and vibration emissions, BAT is to use one or a combination of the techniques given below.		Yes		Thames Water meet the requirements of this BAT requirement as far as practicable, considering their existing infrastructure and constraints on site layout.
			a) Appropriate location of equipment and buildings		Yes		For existing plant appropriate locations and building openings/exits is restricted to plant design but where possible plant and openings are located away from sensitive receptors. Where this is not possible, doors are kept closed to minimise noise and vibration emissions.
			b) Operational measures		Yes		While the avoidance of night operations is not possible as works must operate 24 hours per day, where possible noise is minimised during these periods. Plant and equipment is maintained at the time scale specified by the equipment manufacturer to minimise noise and vibration emissions. Activities at the site are completed by competent and trained staff.
			c) Low-noise equipment		Yes		Item c) is met through design standards for the organisation for new plant and equipment.
			d) Noise and vibration control equipment		Yes		Item d) is met through design standards for the organisation for new plant and equipment.
			e) noise attenuation		Yes		Item e) is implemented on new plant and equipment on a risk assessed basis.
19	Emissions to water	Water management techniques	In order to optimise water consumption, to reduce the volume of waste water generated and to prevent or, where that is not practicable, to reduce emissions to soil and water, BAT is to use an appropriate combination of the techniques given below.		Other (explain)		Thames Water is currently not in full compliance with this BAT requirement. However, a CIRIA 736 assessment of containment has been carried out and is presented in the main application document.
			a) water management		N/A (explain)		Item a) is not carried out at sites, because Thames Water is also responsible for the treatment of any waste water generated. Where possible, final effluent from the UWWTD works is utilised for cleaning operations in place of potable water and roof guttering is diverted to surface water drainage on new builds.
			b) water recirculation		N/A (explain)		Item b) is not carried out at sites, because Thames Water is also responsible for the treatment of any waste water generated to the adjacent sewage treatment works. Where possible, final effluent from the UWWTD works is utilised for cleaning operations in place of potable water and roof guttering is diverted to surface water drainage on new builds.

			c) impermeable surface		Other (explain)		Item c) is not met for all operational areas although the majority of activities do take place on impermeable surfaces, e.g. sludge dewatering activities and pasteurisation. However, the surfacing around the buildings and surfacing surrounding the primary digester tanks may not be impermeable to materials within the tank. The whole site is bunded with pumps that return site drainage to the sewage treatment works within the same location.
			d) Techniques to reduce the likelihood and impact of overflows and failures from tanks and vessels		Other (explain)		Item d) is not complied with for the primary digester tanks or digested sludge cake silos. While these tanks are equipped with level alarms and the digesters are monitored for foaming, tanks are not routinely equipped with secondary containment. Isolation valves and pump inhibitors are installed at appropriate points to allow for tanks and vessels to be isolated. The sludge building provides a level of containment to the holding tanks located within this building. The whole site is bunded with pumps that return site drainage to the sewage treatment works within the same location, so this could capture spillages.
			e) Roofing of waste storage and treatment areas		Yes		Item e) is met for all tanks at Reading STC.
			f) Segregation of water streams		Yes		The site is bunded and has a single drainage system, which returns water to the head of the works for full treatment via the UWWTD route, using three sets of pumps.
			g) Adequate drainage infrastructure		Yes		The site has a single drainage system, which returns water to the head of the works for full treatment via the UWWTD route, using three sets of pumps.
			h) Design and maintenance provisions to allow detection and repair of leaks		Yes		Tanks and vessels are generally above ground structures and subject to routine visual inspection. Some of the tanks within the sludge building are located within the basement but accessible to routine visual inspection. Primary digesters have a planned schedule of emptying and cleaning during which they are inspected for integrity and any necessary repairs carried out. Where visual checks identify issues with tanks or vessels these are actioned for addressing, however, replacement of tanks may be limited through the OFWAT regulated process.
			i) Appropriate buffer storage capacity		Yes		Item i) is accounted for in the overall process design, based on a combination of the population equivalence for the overall works and a specified level of storm event. In the event of a capacity issue during normal operational periods, excess sludge is transferred to another appropriate digester site for treatment
20	Emissions to water	Water emission reduction techniques	In order to reduce emissions to water, BAT is to treat waste water using an appropriate combination of the techniques given below.	See 'Water emissions tables' tab	Other (explain)		Liquors from the installation are returned to the inlet of the adjacent sewage treatment works, controlled by the installation operator. Liquors are subject to processing in a mixture with UWWTD materials, through a series of process which meet the requirements of BAT 20. Process liquors will have elevated levels of BOD, suspended solids, and ammonia. pH will be close to that of the incoming separated sludge
			a) equalisation		N/A (explain)		n/a as there are no direct emissions to water
			b) neutralisation		N/A (explain)		n / a as pH is similar to UWWTD materials
			c) Physical separation, e.g. screens, sieves, grit separators, grease separators, oil- water separation or primary settlement tanks		Other (explain)		Liquors enter at the inlet, which then goes through degritting, grease separators and into primary settlement tanks
			d) adsorption		N/A (explain)		n/a as there are no direct emissions to water
			e) distillation/rectification		N/A (explain)		n/a as there are no direct emissions to water
			f) precipitation		N/A (explain)		n/a as there are no direct emissions to water
			g) chemical oxidation		N/A (explain)		n/a as there are no direct emissions to water
			h) chemical reduction		N/A (explain)		n/a as there are no direct emissions to water
			i) evaporation		N/A (explain)		n/a as there are no direct emissions to water
			j) ion exchange		N/A (explain)		n/a as there are no direct emissions to water
			k) stripping		N/A (explain)		n/a as there are no direct emissions to water
			l) activated sludge process		Other (explain)		The wider sewage works uses this technology to treat the compounds within the liquor.
			m) membrane bioreactor		N/A (explain)		n/a as there are no direct emissions to water
			n) Nitrification/denitrification when the treatment includes a biological treatment		Other (explain)		ammonia is removed through the sewage treatment process at the adjacent works
			o) coagulation and flocculation		Other (explain)		n/a as there are no direct emissions to water
			p) sedimentation		N/A (explain)		n / a - not appropriate to liquor components
			q) Filtration (e.g. sand filtration, microfiltration, ultrafiltration)		Other (explain)		Sand filtration is used for final polishing of effluent from the works
			r) floatation		N/A (explain)		n / a - not appropriate to liquor components

21	Emissions from accidents and incidents	Prevention and limitation techniques	In order to prevent or limit the environmental consequences of accidents and incidents, BAT is to use all of the techniques given below, as part of the accident management plan (see BAT 1).		Yes	Thames Water has considered accidents and incidents and developed site specific accident management plans. DSEAR assessments have been undertaken on sites and appropriate zoning designated.
			a) protection measures		Yes	Site employs physical site security to prevent unauthorised access to the site which is manned 24/7. Physical protection methods including fencing, bollards and kerbing are in place around some assets. Fire detection and automatic safety features are fitted to biogas systems.
			b) Management of incidental/accidental emissions		Yes	Site has an Accident Management Plan which includes spill prevention steps for trained staff to clean up spillages using suitable spill response kits. Site drainage system is suitably sized to handle firefighting waters. Safety features are connected to site SCADA system which is monitored 24/7 with additional visual checks completed by site staff.
			c) Incident/accident registration and assessment system		Yes	All accidents and incidents are logged within the company wide management system. Sensitive receptor risk assessments have been undertaken for all sites.
22	Material efficiency	Material efficiency <i>Applicability</i> Some applicability limitations derive from the risk of contamination posed by the presence of impurities (e.g. heavy metals, POPs, salts, pathogens) in the waste that substitutes other materials. Another limitation is the compatibility of the waste substituting other materials with	In order to use materials efficiently, BAT is to substitute materials with waste.		Yes	Thames Water comply with this BAT requirement as far as they are able. However, the installation has a low level of raw material consumption in the process and there is limited opportunity to substitute waste products for materials in the process. The process also has specific requirements for specific applications, e.g. use of polymer to aid digested sludge cake production, use of oil in the biogas combustion plant. In addition, substitution of materials with waste is currently seen as non-compliant with SUIAR, as it is deemed codigestion.
23	Energy efficiency	Energy efficiency techniques	In order to use energy efficiently, BAT is to use both of the techniques given below.		Yes	Thames Water comply with this BAT requirement.
			a) energy efficient plant		Yes	Thames Water have an ISO 50001 accredited Energy Management System. All CHP engines are accredited under the Combined Heat and Power Quality Assurance Scheme. Included within the EMS is an energy efficiency plan for the business in order to optimise energy consumption and to plan for improvements, e.g. increased insulation to reduce heat losses in transmission from CHP engines to digesters. Use of the flare is monitored and minimised as far as possible and energy efficient plant and equipment specified during asset replacement schemes. Imports of waste are planned to optimise biogas generation and can be diverted to other sites to meet shortfalls or plan for decreases in storage/generation capacity from planned maintenance.
			b) energy balance record		Yes	Thames Water monitor energy consumption used by the installation in processing the waste and export from their sites from generation within CHP engines, in order to maximise the value of biogas generated within the sites. Monitoring is completed for all fuel sources.
24	Reuse of packaging	Reuse of packaging <i>Applicability</i> Some applicability restrictions derive from the risk of contamination of the waste posed by the reused packaging.	In order to reduce the quantity of waste sent for disposal, BAT is to maximise the reuse of packaging, as part of the residues management plan (see BAT 1).			Thames Water complies with this BAT requirement. There is limited packaging used on site with all wastes are delivered by tankers, which is inherently a reuse activity. Where possible, bulk deliveries are made by tanker eliminating the need for packaging, or containers from chemicals used on site, are rinsed and returned to the supplier for reuse. Other containers are sent offsite for recovery or recycling as appropriate.

This information only shows monitoring and A

BAT 7

Monitoring emissions to water

Substance/parameter	Standard(s)
Chemical oxygen demand (COD) (15) (16)	No EN standard available
Arsenic (As), Cadmium (Cd), Chromium (Cr), Copper (Cu), Nickel (Ni), Lead (Pb), Zinc (Zn) (13) (14)	Various EN standards available (e.g. EN ISO 11885, EN ISO 17294-2, EN ISO 15586)
Mercury (Hg) (13) (14)	Various EN standards available (i.e. EN ISO 17852, EN ISO 12846)
PFOA (13)	No EN standard available
PFOS (13)	
Total nitrogen (Total N) (16)	EN 12260, EN ISO 11905-1
Total organic carbon (TOC) (15) (16)	EN 1484
Total phosphorus (Total P) (16)	Various EN standards available (i.e. EN ISO 15681-1 and -2, EN ISO 6878, EN ISO 11885)
Total suspended solids (TSS) (16)	EN 872

- (11) Monitoring frequencies may be reduced if the emission levels are proven to be
- (12) In the case of batch discharge less frequent than the minimum monitoring frequ
- (13) The monitoring only applies when the substance concerned is identified as rele
- (14) In the case of an indirect discharge to a receiving water body, the monitoring fr
- (15) Either TOC or COD is monitored. TOC is the preferred option, because its mon
- (16) The monitoring applies only in the case of a direct discharge to a receiving wat

BAT 20

Table 6.1 BAT-associated emission levels (BAT-AELs) for direct disch

Substance/Parameter	BAT-AEL (24)
Total organic carbon (TOC) (25)	10-60 mg/l
Chemical oxygen demand (COD) (25)	30-180 mg/l
Total suspended solids (TSS)	5-60 mg/l
Total nitrogen (Total N)	1-25 mg/l (28) (29)

Total phosphorus (Total P)	0.3-2 mg/l
	1-3 mg/l (27)
Metals and metalloids (31)	
Arsenic (expressed as As)	0.01 - 0.05 mg/l
Cadmium (expressed as Cd)	0.01 - 0.05 mg/l
Chromium (expressed as Cr)	0.01 - 0.15 mg/l
Copper (expressed as Cu)	0.05 - 0.5 mg/l
Lead (expressed as Pb)	0.05 - 0.1 mg/l (32)
Nickel (expressed as Ni)	0.05 - 0.5 mg/l
Mercury (expressed as Hg)	0.5 - 5 ug/l
Zinc (expressed as Zn)	0.1 - 1 mg/l (33)

(24) The averaging periods are defined in the General considerations.

(25) Either the BAT-AEL for COD or the BAT-AEL for TOC applies. TOC monitoring

(27) The BAT-AEL may not apply to plants treating drilling muds/cuttings.

(28) The BAT-AEL may not apply when the temperature of the waste water is low (e

(29) The BAT-AEL may not apply in the case of high chloride concentrations (e.g. a

(31) The BAT-AELs only apply when the substance concerned is identified as releva

(32) The upper end of the range is 0,3 mg/l for mechanical treatment in shredders of

(33) The upper end of the range is 2 mg/l for mechanical treatment in shredders of n

Table 6.2 BAT-associated emission levels (BAT-AELs) for indirect dis

Substance/Parameter	BAT-AEL (24)
Metals and metalloids (36)	
Arsenic (expressed as As)	0.01 - 0.05 mg/l
Cadmium (expressed as Cd)	0.01 - 0.05 mg/l
Chromium (expressed as Cr)	0.01 - 0.15 mg/l
Copper (expressed as Cu)	0.05 - 0.5 mg/l
Lead (expressed as Pb)	0.05 - 0.1 mg/l (37)
Nickel (expressed as Ni)	0.05 - 0.5 mg/l
Mercury (expressed as Hg)	0.5 - 5 ug/l
Zinc (expressed as Zn)	0.1 - 1 mg/l (38)

(36) The BAT-AELs only apply when the substance concerned is identified as releva

(37) The upper end of the range is 0,3 mg/l for mechanical treatment in shredders of

(38) The upper end of the range is 2 mg/l for mechanical treatment in shredders of n

AELs associated with certain treatments

Waste treatment process	Minimum monitoring frequency (11)(12)	Monitoring associated with
All waste treatments except treatment of water-based liquid waste	Once every month	BAT 20
Mechanical biological treatment of waste, Physico-chemical treatment of solid and/or pasty waste	Once every month	
Mechanical biological treatment of waste, Physico-chemical treatment of solid and/or pasty waste	Once every month	
All waste treatments	Once every six months	
Biological treatment of waste	Once every month	
All waste treatments except treatment of water-based liquid waste	Once every month	
Biological treatment of waste	Once every month	
All waste treatments except treatment of water-based liquid waste	Once every month	

sufficiently stable.
 uency, monitoring is carried out once per batch.
 evant in the waste water inventory mentioned in BAT 3.
 equency may be reduced if the downstream waste water treatment plant abates the pollutants concerned.
 itoring does not rely on the use of very toxic compounds.
 er body.

Charges to a receiving water body

Waste treatment process to which the BAT-AEL applies
All waste treatments except treatment of water-based liquid waste
All waste treatments except treatment of water-based liquid waste
All waste treatments
Biological treatment of waste

Biological treatment of waste
Treatment of water-based liquid waste
Mechanical biological treatment of waste, Physico-chemical treatment of solid and/or pasty waste

is the preferred option because it does not rely on the use of

e.g. below 12 °C).
 above 10 g/l in the waste input).
 ent in the waste water inventory mentioned in BAT 3.
 f metal waste.
 metal waste.

charges to a receiving water body

Waste treatment process to which the BAT-AEL applies
Mechanical biological treatment of waste, Physico-chemical treatment of solid and/or pasty waste
ent in the waste water inventory mentioned in BAT 3. f metal waste. metal waste.

This information only shows monitoring and AELs

BAT 8

Monitoring channelled emissions to air

Substance/ Parameter	Standard(s)	Waste treatment process
Dust	EN 13284-1	Mechanical biological treatment of waste
		Physico-chemical treatment of solid and/or pasty waste
H ₂ S	No EN standard available	Biological treatment of waste (20)
NH ₃	No EN standard available	Biological treatment of waste (20)
		Physico-chemical treatment of solid and/or pasty waste (18)
Odour concentration	EN 13725	Biological treatment of waste (21)
TVOC	EN 12619	Mechanical biological treatment of waste
		Physico-chemical treatment of solid and/or pasty waste (18)

(17) Monitoring frequencies may be reduced if the emission levels are proven to be sufficiently

(18) The monitoring only applies when the substance concerned is identified as relevant in the inventory mentioned in BAT 3.

(20) The odour concentration may be monitored instead.

(21) The monitoring of NH₃ and H₂S can be used as an alternative to the monitoring of the odour

BAT 34

Table 6.7 BAT-associated emission levels (BAT-AELs) for channelled NH₃, or TVOC emissions to air from the biological treatment of waste

Parameter	Unit	BAT-AEL (average over sampling period)
NH ₃ (41) (42)	mg/Nm ³	0.3 - 20
Odour concentration (41)	ouE/Nm ³	200 - 1,000
Dust	mg/Nm ³	2 - 5
TVOC	mg/Nm ³	5 - 40 (43)

(41) Either the BAT-AEL for NH₃ or the BAT-AEL for the odour concentration applies.

(42) This BAT-AEL does not apply to the treatment of waste mainly composed of manure.

(43) The lower end of the range can be achieved by using thermal oxidation.

BAT 41

BAT-associated emission level (BAT-AEL) for channelled emissions of dust to air from the physico-chemical treatment of solid and/or pasty waste

Parameter	Unit	BAT-AEL (Average over the sampling period)
Dust	mg/Nm ³	2 - 5

Associated monitoring given in BAT 8

associated with certain treatments

Minimum monitoring frequency (17)	Monitoring associated with
Once every six months	BAT 34
Once every six months	BAT 41
Once every six months	BAT 34
Once every six months	BAT 34
Once every six months	BAT 41
Once every six months	BAT 34
Once every six months	BAT 34
Once every six months	BAT 41
stable. waste gas stream based on the our concentration.	

dour, dust and

Waste treatment process
All biological treatments of waste
Mechanical biological treatments of waste



Notice of request for more information

The Environmental Permitting (England & Wales) Regulations 2016

The Director or Company Secretary

Thames Water Utilities Limited

Clearwater Court

Vastern Road

Reading

Berkshire

RG1 8DB

Application number: EPR/MP3903MU/A001

The Environment Agency, in exercise of its powers under paragraph 4 of Part 1 of Schedule 5 of the above Regulations, requires you to provide the information detailed in the attached schedule. The information is required in order to determine your application for a permit duly made on 14/07/2021.

Send the information to the email below by **05/08/2022**. If we do not receive this information by the date specified then we may treat your application as having been withdrawn or it may be refused. If this happens you may lose your application fee.

Email address: For waste or installations psc@environment-agency.gov.uk and tommy.wager@environment-agency.gov.uk

Name	Date
Tommy Wager	24/06/2022

Authorised on behalf of the Environment Agency

Notes

These notes do not form part of this notice.

Please note that we charge £1,200 where we have to send a third or subsequent information notice in relation to the same issue. We consider this to be the first notice on the issues covered in this notice.

The notes in italics that appear after information requests in the attached schedule do not form part of the notice. The notes are intended to assist you in providing a full response.

Schedule

Section 1 – Best Available Techniques (BAT)

The [Best Available Techniques \(BAT\) Reference Document for Waste Treatment](#) provides standards to which facilities should comply with. In line with this guidance we require responses to the following questions:

1. Confirm that the waste pre-acceptance and acceptance procedures detailed in the previous Schedule 5 Notice response have been formally implemented. If any of the procedures have been amended prior to implementation, then you must submit the amended procedures in response to this notice.
2. Ensure the following points have been addressed in a revised pre-acceptance procedure:
 - i) Explain how you take into account the age of waste received.
 - ii) Include a process for ensuring that waste composition is based on representative samples, taking into account the nature of the material, how it arises and any potential variation within it, for example, taking account of seasonal variations.
 - iii) Explain your process for verifying if waste is to be accepted at the facility, and who will be responsible for carrying this out.
 - iv) Explain how your waste pre-acceptance process will characterise the feedstock in order to understand its effect on the biological treatment process. [Appropriate measures for the biological treatment of waste - consultation draft \(publishing.service.gov.uk\)](#) advises that this includes understanding, for example; particle size distribution and physical contaminants, total solids and volatile solids, biochemical methane potential, total organic carbon (TOC), nutrient analysis, calorific value, fibre content, pH and alkalinity, volatile fatty acids (VFA), ammonia and total nitrogen content - carbon to nitrogen (C to N) ratio, heavy metals and potentially toxic elements (PTEs), carbohydrates and lipids
 - v) Explain what wastes are likely to contaminate your process, and how these will be addressed within your pre-acceptance process.
 - vi) Explain how you will re-assess information required at the pre-acceptance stage if the waste changes, the process giving rise to the waste changes or waste received does not confirm to the pre-acceptance information.
 - vii) Explain how you will take into account the wastes potential odour and emission impacts as part of your pre-acceptance process.
 - viii) Explain how you will decide and record what parameters will be checked at waste acceptance stage, and how the criteria for non-conformance or rejection will be undertaken.
 - ix) Explain your sampling approach, including your sampling methodology and frequency for your waste pre-acceptance process taking into account potential variations.
 - x) Explain who will carry out sampling, and to what standard i.e. UKAS or MCERT.
3. Ensure the following points have been addressed in a revised acceptance procedure:
 - i) Explain the criteria for rejecting of non-conforming wastes.
 - ii) Explain your procedure for recording, reporting and tracking non-conforming wastes, including notifying the relevant customer or waste producer and the Environment Agency
 - iii) Explain how staff will be trained to carry out waste acceptance checks to effectively identify and manage any non-conformances in the loads received.
 - iv) Explain who will carry out waste acceptance checks.

- v) Explain how you will carry out periodic audits of the accepted waste against pre-acceptance and duty of care criteria, and at what frequency this will be carried out.
- vi) Explain how you will undertake representative samples when sampling from tankers.
- vii) Explain your sampling and analysis procedure for waste acceptance, and to what standard i.e. UKAS or MCERT this will be carried out.

Reason for question

Under BREF guidance BAT conclusion 2 you must set up and implement waste characterisation, pre-acceptance and acceptance procedures. In your previous response you have detailed the procedures that cover BAT 2 requirements, however in the schedule 5 notice response letter received 15/03/2022 you have advised “As Camberley, is a newly permitted site we propose to update and formalise our waste acceptance and pre-acceptance procedures by the end of June 2022 and implement in line with BAT.” It is important that these procedures are fully implemented prior to the issue of the permit. If these procedures have been amended in the interim period between your schedule 5 response and full implementation you will need to provide them again in response to this schedule 5 notice as a separately written document.

On assessment of the application and the previous schedule 5 Notice response we can see that the proposed acceptance and pre-acceptance procedure does not adequately cover all of the key points listed above. You have also advised in your schedule 5 notice response that “Thames Water procedures also reflect the EA document ‘Draft appropriate measures for the biological treatment of waste’ which states in Section 79 that acceptance sampling is not required for sewage sludge and septic tank sludge” Under guidance [Appropriate measures for the biological treatment of waste - consultation draft \(publishing.service.gov.uk\)](#) “Acceptance sampling” where a sample is not required, you must still visually check the waste and carry out periodic audits of the waste against pre-acceptance and duty of care criteria. This process should be clearly set out.

Section 6 of guidance the appropriate measures consultation draft document “Waste pre-acceptance, acceptance and tracking appropriate measures” sets out the requirements for pre-acceptance and acceptance, in conjunction with [Sector Guidance Note S5.06: recovery and disposal of hazardous and non-hazardous waste - GOV.UK \(www.gov.uk\)](#). S5.06 defines that pre-acceptance procedures should be put into place to ensure wastes suitability for the proposed treatment route, stating that pre-acceptance checks must be carried out before any decision is made to accept a waste. On assessment of your procedure in the previous schedule 5 notice response you have advised that for waste characterisation “The characteristics of these materials have been assessed significantly under various studies, and ranges of typical constituents have been published in publications such as Metcalf and Eddy (2003). Wastewater Engineering—Treatment and Reuse, 4th Ed which has extensive data on the characteristics of various sludge types”. Waste characterisation is part of the pre-acceptance procedure and should be carried out prior to acceptance on site. Your procedure should be updated to clearly reflect/define waste pre-acceptance and acceptance.

4. Provide a revised copy of the Residue Management Plan and Principal Emission Points Site Plan to include the following:

- i) A summary of the sampling and analysis methodology of the effluent discharged and specify the likely pollutants in the effluent (guidance [Monitoring discharges to water: guidance on selecting a monitoring approach - GOV.UK \(www.gov.uk\)](#) and [Surface water pollution risk assessment for your environmental permit - GOV.UK \(www.gov.uk\)](#)).
- ii) A written statement with a commitment to undertake the sampling and analysis in line with BAT3.
- iii) A written statement with a commitment that those undertaking the sampling and analysis will be by accredited to [MCERTs](#) or provide evidence of equivalent standards.
- iv) A revised plan which identifies the effluent sampling point(s) and emission point for the effluent discharge from the installation.

Reason for question

Under the BREF guidance BAT conclusion 3 you must establish and maintain an inventory of waste water and waste gas streams. On assessment of your application, you have advised that site drainage to works inlet includes filtrate, condensate and return liquors from the sludge dewatering and cake maturation processes via a liquor pumping station. Effluent discharged to the head of the works is a point source emission to sewer. BAT conclusion 3 requires operators to have an emissions inventory for the effluent. We acknowledge that applicants may not hold this information in order to inform a quantitative risk assessment for existing discharges. A commitment to undertake the sampling and analysis in accordance with the points above is required.

On assessment of the Residue Management Plan (section 12) you have stated "Where drainage leaves the permit boundary, it may include waste waters from within areas of the site which sit outside of the permit boundary, due to the design and configuration of the drainage system within the works." The inclusion of waste waters from areas outside of the permitted boundary for the emission point T1, would suggest that sampling from this area of the site would not be appropriate. Whilst it may be appropriate to identify this area as an emission point where effluent leaves the permitted boundary, alternative sampling point(s) should be identified in addition to this.

- 5. Provide a written statement confirming that the overflow volumes from the digester 'fill and spill' operation represent a returned point source emission to the head of the works.**
- 6. Submit a revised Residue Management Plan to include the above emission in section 11 waste water streams.**
- 7. Submit a revised process flow diagram to include the above emission.**
- 8. Submit a revised Principle emission point plan to include the above emission point if separate to the currently identified emission point T1.**

Reason for question

On assessment of your response to question 6i in the previous schedule 5 notice you have advised that "Overflow volumes are returned back to the STW process and discharges via this route are monitored via the high-level alarms in each tank." This would indicate that fill and spill overflow volumes are returned to the head of works as an emission. If this is the case then you will need to update the relevant documents detailing waste water returns to include this waste water stream.

- 9. Provide a Leak Detection Repair Plan (LDAR) for fugitive emission to air that includes:**
 - i) A map of the site processes that identifies all known locations (point and area sources) for potential emissions, for example seals, flanges, valves, pumps, connections, pipework, tanks.**
 - ii) Methods for locating unknown emission sources.**
 - iii) Estimates of the type and volume of the potential emission at each leak location.**
 - iv) Prioritised locations (from highest risk to lowest risk) based on potential quantity of release and environmental impact.**
 - v) A risk-based LDAR programme of work for monitoring and controlling emissions in line with BAT requirements.**
 - vi) Identification of monitoring methods and frequency of monitoring to quantify significant emissions where possible.**
 - vii) Possible mitigation measures.**

Reason for question

Under the BREF guidance BAT conclusion 14, when emissions of organic compounds are expected a LDAR programme should be set up and implemented using a risk-based approach. This approach should consider in particular the design of the plant and the amount and nature of the organic compounds concerned in order provide a structured approach to reduce fugitive emissions of organic compounds by detection and subsequent repair or replacement of leaking components. Further guidance on what is expected to be included in LDAR plans can be located in [Appropriate measures for the biological treatment of waste](#). On assessment of your application you have advised that there is currently no formal LDAR programme at the site but leak detection and prevention are embedded in the wider management approach. In order to achieve BAT 14h a formal LDAR programme is expected to be in place.

Section 2 – Odour Management Plan (OMP)

Odour Management plans should be completed in line with guidance [Environmental permitting: H4 odour management](#) and [Best Available Techniques \(BAT\) Reference Document for Waste Treatment](#). Revise the OMP addressing the questions below:

10. For your choice of odour control unit (OCU), update your OMP to include an explanation of how you will control the process and maintain process parameters to ensure effectiveness. This should include but not be limited to:

- i) Optimum flow rate through the system to allow for effective treatment.**
- ii) The trigger levels/ranges for action if processes monitoring parameters are breached/ outside optimal parameters.**
- iii) Odorous components in the gas stream and concentrations of emissions**
- iv) Physical properties of the air stream at point of control i.e., humidity, optimum temp, pH for effective odour control**

11. Based on the above information provided in question 9:

- i) Explain why the abatement system has sufficiency capacity and is appropriately designed to effectively treat the odorous air stream(s).**

Reason for question

These questions were originally positioned in a previous schedule 5 Notice (Question 18 and 19), whilst we consider the questions partially answered specifically 18ii, 19ii and 19iii the other questions 18i, 18iii, 18iv, 18v and 19i remained unanswered. On assessment of the schedule 5 notice response, we cannot see any information regarding; optimum flow rate; trigger levels/ranges for action; odorous components and physical properties of the air stream relating to question 18.

In regard to question 19i your previous schedule 5 notice response you advised that “Asset Standards are in place for the design and operation of OCUs. OCUs would have been constructed in accordance with the Asset Standard in place at the time of construction. The current Asset Standard specifies that OCUs should be constructed in accordance with WIMES 8.05.” however this does not provide any information relating to appropriate odour treatment capacity neither does it confirm that the abatement system has been appropriately designed only that it ‘would’ have been designed in accordance with the asset standard at the time of construction. As we are not aware of the asset standards in place (or at the time of construction) we have no frame of reference to qualify this response.

12. Provide a description of your alternative technique for the control of diffuse emissions from all open tanks, demonstrating how this will provide a level of environmental protection that is equivalent to techniques specified in BAT conclusion 14.
13. Provide a cost benefit analysis of the proposed alternative method.

Reason for question

Under the BREF guidance BAT conclusion 14 you must ensure that diffuse emissions are contained. This includes techniques such as storing, treating and handling waste and material that may generate diffuse emissions in enclosed buildings and/or equipment, and collecting and directing the emissions to an appropriate abatement system. On assessment of your application, you have advised that the secondary digesters are open topped tanks. No details of how diffuse emissions will be contained has been provided.

Section 9 (Fugitive (Diffuse) emission to air) of guidance [Appropriate measures for the biological treatment of waste - consultation draft \(publishing.service.gov.uk\)](#) specifies that you must use appropriate measures to prevent emissions of odour, ammonia, dust and particulates, minimising releases where possible. It further provides that where possible you must contain, collect, extract and direct emissions from plant, equipment and processes to a suitably designed and engineered abatement system or gas recovery system in line with the requirements of BAT 14.

Section 7 of guidance [Appropriate measures for the biological treatment of waste - consultation draft \(publishing.service.gov.uk\)](#) specifies that you must cover lagoons and tanks used to store dirty water, digestate, slurries and other liquids and sludges, with covers designed to prevent odour, emissions such as ammonia and rainwater ingress. Further guidance on what is defined as a cover can be located in [intensive farming environmental permitting guidance](#). Where sites are existing, floating covers such as clay balls may be acceptable on lagoons used to store digestates and on existing storage vessels, however coverage must be sufficient to minimise fugitive emissions and using them must not compromise the integrity of plant and equipment.

Based on this we would expect that tanks carrying out processes that include biological activity would form part of the installation process and you must contain, collect, extract and direct emissions from plant, equipment and processes in line with BAT 14, where tanks are used for the storage of digestate that is predominantly biologically inactive we would accept alternative measures to minimise fugitive emissions, examples of proposals we would expect as part of the permit application can be found in appendix 9 of guidance [Covering Slurry Lagoons \(publishing.service.gov.uk\)](#).

14. Update 'table 4.1 - Odorous materials for Sludge Treatment Centre Permit' to include the following odorous sources:

- i) Raw Materials
- ii) Odorous gases - both diffuse and point source emissions to air (open tanks, OCUs etc)

Reason for question

On assessment of the OMP you have provided an inventory of odorous materials table 4.1. The table fails to identify key odour sources including raw materials and Odorous gas sources both diffuse and point source emissions to air such as the OCUs and open tanks.

15. Update your OMP to include a section which outlines the proposed monitoring for each of the odour point sources identified in in the OMP as required by BAT point 10 of the BREF waste

Treatment Guidance. The section must demonstrate that the EN standards or alternative techniques that will be applied to each point source emission in line with BAT 10 to periodically monitor either odour concentration or exposure.

Reason for question

*We consider that the previous response to this question (referenced as question 24 in the previous schedule 5 notice) provided 15th March 2022 is insufficient. **We consider this question's inclusion in this notice to represent the second time we have requested the necessary information to allow us to fully assess your application.***

Your OMP does not identify the monitoring requirements which are required by BAT 10. This BAT point is considered applicable because the site has odorous waste for which odour is expected. The previous schedule 5 response letter states "Thames Water carries out odour monitoring in accordance with BAT 10 requirements, only on sites with a history of substantiated recent odour complaints, in accordance with the applicability criteria. This site does not currently require odour monitoring to the required standard.". We disagree with this statement on the basis that the applicability criteria states 'The applicability is restricted to cases where an odour nuisance at sensitive receptors is expected and/or has been substantiated.' In this case the receptors identified in table 2.1 as cross referenced with the sensitive receptor map included in Appendix 4 clearly show receptors located within a reasonable distance to the site to constitute an expectation of odour nuisance.

On assessment of the previous schedule 5 notice response to question 24, you have not demonstrated a commitment to carry out monitoring inline with BAT 10. The response does not provide any clarification of the EN standards you would be using, or an alternative technique applied to each odour point source emission.

16. Update your OMP to address the odour process control monitoring addressing the following points:

- i) Explain for each odorous activity identified in the OMP what process parameters (e.g. temperature, flow concentrations, storage durations and amounts) will be monitored and what triggers (e.g. max threshold above which odour will be an issue) are used to ensure odour on site is minimised.**
- ii) Outline the actions to be taken if the processes identified in the OMP are outside their optimum process parameters, or trigger levels are not met.**
- iii) Include time scales for rectification of trigger actions identified, and responsibilities for who will carry out the actions identified.**

*We consider that the previous response to this question (referenced as question 26 in the previous schedule 5 notice) provided 15th March 2022 is insufficient. **We consider this question's inclusion in this notice to represent the second time we have requested the necessary information to allow us to fully assess your application.***

H4 guidance states that appropriate monitoring must be undertaken for every stage of process control (i.e., emissions, dispersion and impacts). The interpretation of monitoring results should be considered in advance and, where appropriate, monitoring trigger values should be specified for the implementation of contingency measures. Your OMP Table 4.4 and 4.5, describe Intermittent (Int),

abnormal (Ab), and emergency (E) events for assets under EPR that cover some of the site process failures, however the operational mitigation appears to represent notifying maintenance teams and reference to the site operating manual only. This does not describe any specific measures that would be taken. Furthermore, it does not relate to trigger levels or tie in with odour monitoring to establish the 'acceptable ranges' of excessive emissions. This also does not address potential cessation of operations, cessation of accepting waste and information on where waste could specifically be diverted to. Section 4.6 Emergency Response

and Incident Response Procedures describes some of the scenarios however it relates to a security and risk management document not available due to these being company confidential documents. This is not acceptable as the information regarding contingency measures could be reasonably extracted from these documents with an omission made to sensitive data and drafted into the OMP.

On assessment of the previous schedule 5 notice response to question 26, provided 15th March 2022, you have not demonstrated for each odorous activity the process parameter monitoring triggers and you have not outlined any actions to be taken should these triggers be met including the timescales for rectification.

Section 3 – Secondary Containment

Secondary Containment Assessment Reports should be completed in line with CIRIA 736 guidance: Containment Systems for the Prevention of Pollution, ADBA Secondary Containment at AD Plants: An Industry Guide and [Best Available Techniques \(BAT\) Reference Document for Waste Treatment](#). Revise the secondary containment report and any relevant supporting documents addressing the questions below:

- 17. Submit a revised spill model in the Camberley IED assessment report to assess the impact from a catastrophic tank failure. Your revised model must assess the impact of spill volumes using 110% of the largest tank or 25% of all tanks within a bunded area (whichever is greater) as opposed to a 'credible' spill volume.**

Reason for Question

BAT conclusion 19d states "tanks for liquids that are located in a suitable secondary containment; the volume is normally sized to accommodate the loss of containment of the largest tank within the secondary containment". Upon assessment of your application, we can see you have detailed in the report 'credible spill volume' of the largest secondary digester 2000m³ that falls short of the 110% and 25% rule outlined in the CIRIA 736 guidance, section 4.2.1. The additional 10% spill is considered to account for potential rainfall during a catastrophic tank failure incident and should be included in a revised spill model.

- 18. Update the Containment Assessment Report to with a full list of all the sensitive receptors including groundwater receptors and receptors located outside of the permitted boundary. Ensure you have included a detailed analysis of each receptor based on sensitivity, distance and environmental impact resulting from a potential pollution event.**

Reason For Question

We consider that the previous response to this question (referenced as question 34 in the previous schedule 5 notice) provided 15th March 2022 is insufficient. **We consider this question's inclusion in this notice to represent the second time we have requested the necessary information to allow us to fully assess your application.**

We are unable to fully assess the Containment Assessment Report due to lack of information regarding the receptors. CIRIA 736 guidance – section 2.3.3 states "A receptor includes humans, animals, fish, plants and biota, watercourse or body, groundwater or soils that would be affected (directly or indirectly) by the escape of the inventory. A receptor could also be a downstream process such as a WwTW". For us to fully assess the impact to receptors you would need to demonstrate that all of the sensitive receptors that could be impacted are considered in this report.

On assessment of the response to the previous Schedule 5 notice you have provided only 3 examples of receptors in the Containment Assessment Report. This is inconsistent with the receptor list contained in the

supporting containment classification assessment. Ensure that you have fully listed all of the sensitive receptors as outlined in section 2.3.3 of the CIRIA Guidance.

- 19. Submit a proposal for a programme of improvements to bring the site into adherence of BAT 19 and in line with recommendations outlined in the conclusion of the CIRIA 736 assessment. Considerations should be taken to ensure all the relevant options have been considered, including information on cost, timescales, on site safety impacts and how effective the secondary containment options would be in protecting receptors in the event of a catastrophic tank failure.**

Reason for Question

*We consider that the previous response to this question (referenced as question 39 in the previous schedule 5 notice) provided 15th March 2022 is insufficient. **We consider this question's inclusion in this notice to represent the second time we have requested the necessary information to allow us to fully assess your application.***

Under BREF guidance BAT conclusion 19 tanks for liquids must be provided with suitable secondary containment, and a detailed assessment of site infrastructure should be provided (e.g. LIT 11958 V2 6 secondary containment, tank specification, surfacing, storage lagoon etc.) as per the previous questions in this section of the schedule 5 notice. The site infrastructure should be compared with the relevant industry/construction standards (e.g. CIRIA guidance C736 for secondary containment and C535 for above-ground tanks etc.). The proposal should reflect the physical condition of primary containment systems (storage and treatment vessels), secondary containment (bunds), loading and unloading areas, transfer pipework/pumps, temporary storage areas and liners underlying the site. It should take into account the suitability for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure. Where the relevant containment standards are not met, a demonstration that their design and construction will achieve equivalent protection should be provided, along with an explanation of any work required to ensure compliance with the industry standards or equivalent. Your proposal should also include a preventative maintenance and inspection regime for site infrastructure identified.

You have not submitted any supporting documents outlining improvements, and associated timescales, you will make to ensure your containment measures are BAT compliant. Therefore, we do not currently have sufficient information to assess your application adequately. You have indicated in previous communications that the timescale for just preparing a proposal would take up to 18 months. This timescale is unacceptable. We recognise that capital works to make the improvements to secondary containment would likely be subject to longer timescales. However, we cannot accept the current proposed timescale for the internal decision-making process and subsequent proposal considering the options for containment outlined in the report.

On assessment of the response to the previous Schedule 5 notice you have provided a timescale for when detailed optioneering, including a full engineering review of the options outlined in the containment report would be provided as 31/01/2023. This timescale is not acceptable as the report should detail options that are fully informed by a qualified structural engineer necessary for the assessment of containment against BAT requirements.

- 20. Submit a revised version of the Camberley IED assessment report to include a site plan to show areas of impermeable and permeable surface following implementation of secondary containment.**
- 21. Provide revised spill modelling demonstrating the effectiveness of the bunding/embankments/surfacing used as containment mitigation measures with the scenario of a catastrophic tank failure. Your revised model must assess the impact of spill volumes using 110% of the largest tank or 25% of all tanks within a bunded area (whichever is greater) as opposed to a 'credible' spill volume.**

Reason for Question

Under BREF guidance BAT conclusion 19c, depending on the risks posed by the waste in terms of soil and/or water contamination, the surface of the whole waste treatment area (e.g. waste reception, handling, storage, treatment and dispatch areas) must be made impermeable to the liquids concerned. We require the inclusion of a site plan that clearly defines the areas of permeability and those that are impermeable to fully assess the effectiveness of any mitigation methods that have been recommended in the report and/or proposed as part of a programme of improvements. The site plan should include a clear outline of the locations and dimensions of any bunding/embankments/surfacing relating to the proposed secondary containment supported by spill modelling demonstrating the effectiveness of the mitigation measures. Importantly, any proposed design for containment measures must be informed by experienced structural engineers.

- 22. Submit a revised version of the Camberley IED assessment report to include a description which specifies what critical parts and chemicals are maintained on site to ensure availability in the event of a catastrophic failure.**
- 23. Submit a revised version of the Camberley IED assessment report Assessment to include a procedure which describes the inspections and maintenance undertaken for the impermeable surface and drainage system.**
- 24. Submit a revised version of the Camberley IED assessment report to include a statement which explains how leak detection and maintenance is carried out for underground tanks and pipes to ensure that contamination to groundwater and soil is prevented.**

Reason for Question

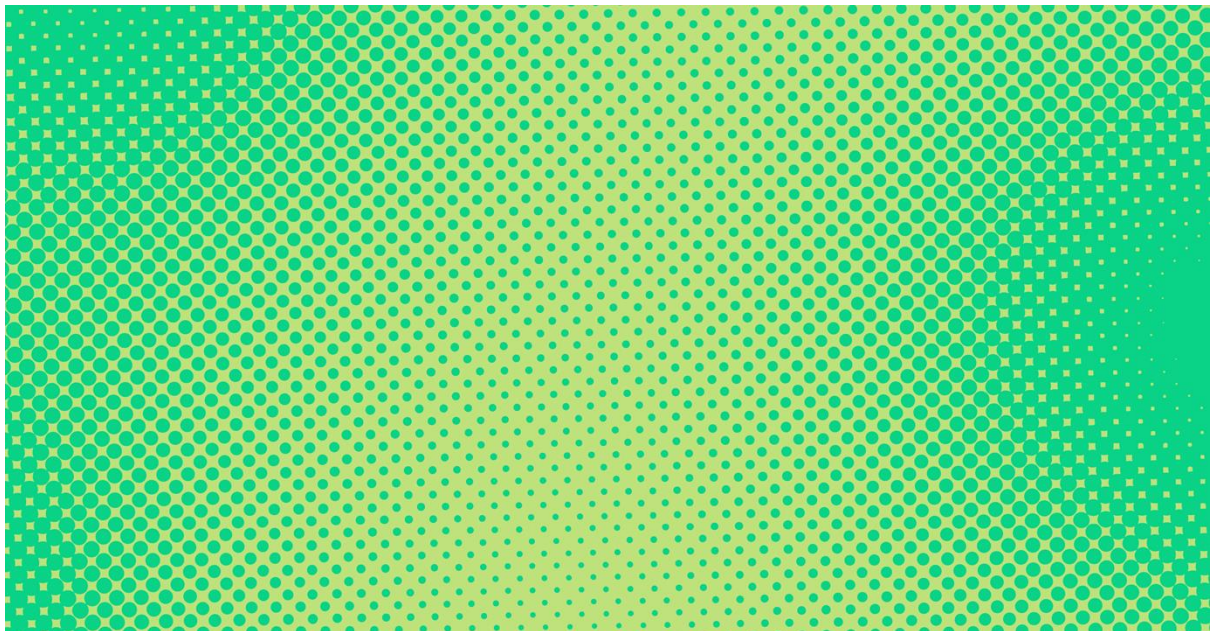
Under BREF guidance BAT conclusion 19 tanks for liquids must be provided with suitable secondary containment, and a detailed assessment of site infrastructure should be provided as per the previous questions in this notice. The site infrastructure should be compared with the relevant industry/construction standards (e.g. CIRIA guidance C736 for secondary containment). The proposal should reflect the physical condition of primary containment systems (storage and treatment vessels), secondary containment (bunds), loading and unloading areas, transfer pipework/pumps, temporary storage areas and liners underlying the site. It should take into account the suitability for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure. Where the relevant containment standards are not met, a demonstration that their design and construction will achieve equivalent protection should be provided, along with an explanation of any work required to ensure compliance with the industry standards or equivalent. Your proposal should also include a preventative maintenance and inspection regime for site infrastructure identified.

Reading STW Risk Identification and Containment Assessment Report

Document no: TW_STC_RP_27
Revision no: 0A

Thames Water
J698

Thames Water IED Containment Assessment
18 May 2022



Reading STW Risk Identification and Containment Assessment Report

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Introduction

Thames Water Utilities Limited (Thames Water) is required to assess and apply the principles of the Industrial Emissions Directive (IED) which will be incorporated into new Environmental Permits across its sludge treatment centres (STC) at sewage treatment works (STW). To support the Environmental Permit application for the sludge assets at the STW, there is a requirement to undertake a detailed assessment of the site infrastructures against industry standards such as CIRIA C736.

Jacobs Engineering U.K. Limited (Jacobs) was retained to undertake the IED Containment Assessment of sludge assets at 25 Thames Water STWs.

The current assessment identified gaps between the existing condition of the sludge assets in Reading STW and the requirements to meet the industrial standard (i.e., CIRIA C736 and The Anaerobic Digestion and Bioresources Association Limited (ADBA)). Site-specific risks, credible failure scenario and design containment volume for the Reading STW were identified through a desktop study, Light Detection and Ranging (LiDAR) analysis and a site visit.

Reading STW (Figure i), is located south of Reading, close to the A33 which links the town with the M4 motorway. To the south of the site, separated by a dual carriageway road, is the Green Park business park which consists of commercial office properties. To the west and south of the site there is agricultural land and to the west and north a local council household waste and recycling centre, closed landfill, and the local council waste transfer station. To the north of the site there are commercial properties and immediately to the east of the site there is derelict land and the A33. The STW serves a population equivalent of 264,000 taking in sewage from Reading and the surrounding area.



Figure i Satellite view of Reading Sewage Treatment Works

Chapter 1 outlines the site-specific risks at Reading for sludge holding and digestion assets, presents the uncontained spill event and the containment classification.

Chapter 2 determines the design containment volume based on a credible failure scenario and describes the uncontained spill map and flow paths.

Chapter 3 discusses the risks to the site from external flooding and jetting flows

Chapter 4 presents the main options for containment.

Chapter 5 presents the main conclusions of the containment assessment.

1. Site Specific Risks at Reading STW

To model the event of a credible and catastrophic tank failure which would result in loss of containment of sludge at Reading, the assets on site must be evaluated to identify the most significant failure events. There are **14 tanks** containing sludge with the total operational sludge volume is approximately **11,660 m³**.

The principal sludge holding and digestion tanks at Reading contained within the IED permitted area are detailed below:

Table 1. Principal sludge holding and digestion tank capacity and construction details

Tank Purpose	Number	Operational Volume (m ³)	Total Volume (m ³)	Construction
Raw Sludge Tank	2	1,200	2,400	Concrete
Sludge Blending Tank	2	500	1,000	Concrete
Small Pasteurisation Reactor	2	30	60	Steel
Large Pasteurisation Reactor	2	100	200	Steel
Primary Digester Tank	4	1,775	7,100	Concrete
Digested Sludge Buffer Tank	2	450	900	Concrete

For clarity, in each case the capacities given above refer to the total tank capacity, i.e., the maximum volume that a particular tank could hold. In practice the operational volumes are less due to freeboard and headspace, but the maximum volume is used to represent worst case scenario.

The site-specific risk factors that were identified at Reading are as follows:

- The overall number of large tanks of concrete and the individual tank capacities.
- Groundwater vulnerability is ranked as “Medium-High” in MAGIC by Defra.
- The site is at low risk of Pluvial (Incident Rainfall) and Fluvial (Rising river levels) flooding during extreme weather. It is surrounded by a flood zone.
- Proximity to busy A33 on the east, Hilton Hotel and Kennet Island Housing.
- The STW’s effluent channel is located at the northeast of the STW. This effluent channel is discharging to the Foudry Brook, of the River Kennet, a Thames tributary.

Table 1.1 Designated site review

Site Name	Designation	Direction from site	Distance from site
Thames Basin Heaths	Special Protection Area (SPA)	Southeast	8,150 m

The topography of the site (see Figure 2.2) is such that in a loss of containment event, liquid sludge would flow under gravity and therefore the provision of additional containment measures is required to prevent flow into the water systems and sites (Ground water, River Kennet, Foudry Brook, A33, residential and commercial such as Hilton hotel).

The plan below indicates the boundary of the permitted IED area, and the assets contained within.

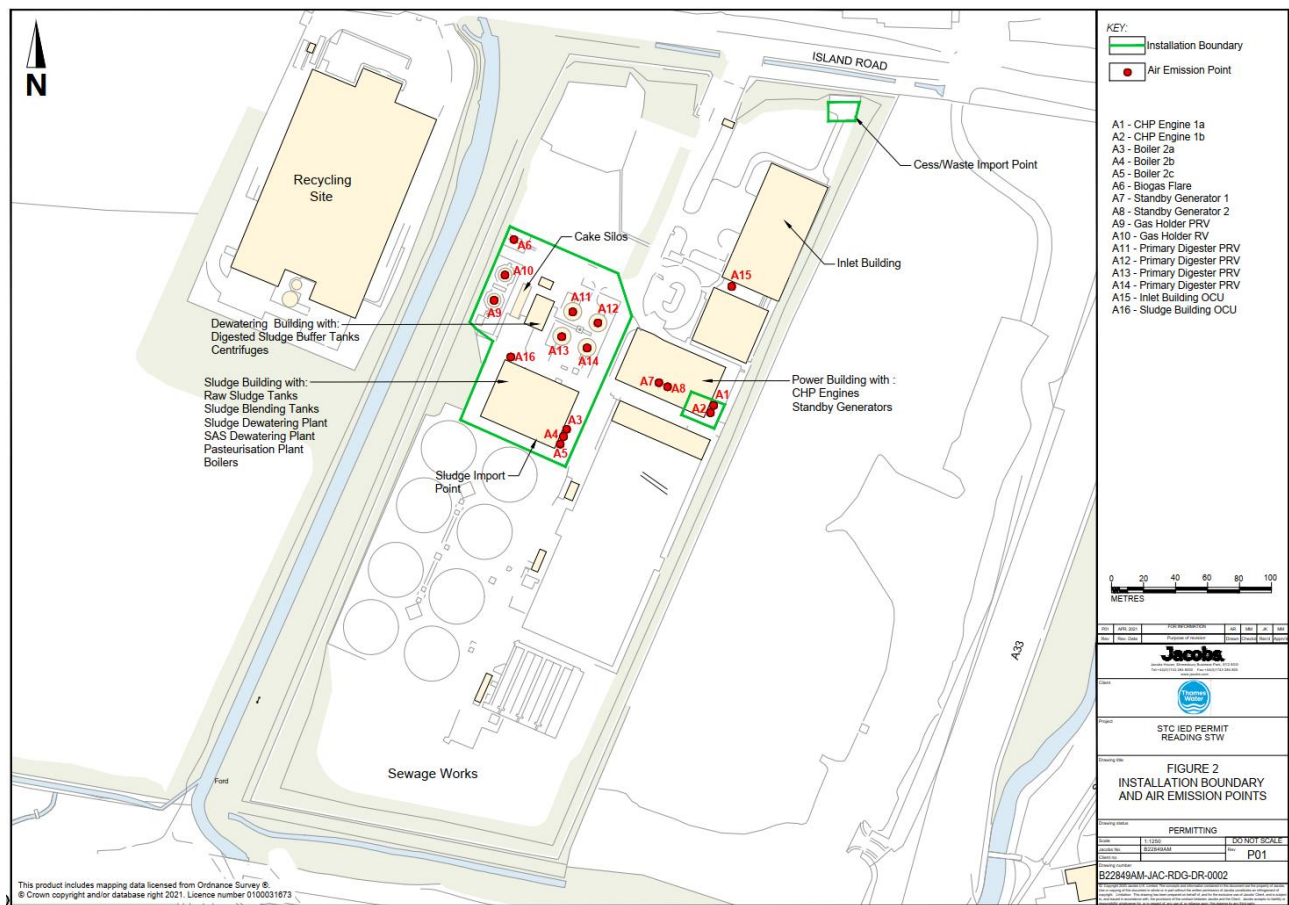


Figure 1.1 Boundary of the permitted IED area and the assets contained within Reading STW.

1.1 Containment Classification Assessment

ADBA Industry Guidance and CIRIA C736 state how the site hazard rating of the site risk and classification are to be calculated. A summary of the hazard risks for Reading STW are as follows:

Source – There are two sources that have been identified:

1. Domestic and trade effluent Wastewater sludges, both in a raw, semi treated and treated state.
2. Polyelectrolyte chemicals for sludge thickening.

The Source Hazard rating was determined as **High**.

Pathway – There are three pathways that have been identified:

1. The process and site drains take any liquid to the head of the works which would negatively impact the process stability on site and would eventually impact on the receiving watercourse.
2. There are several areas where a sludge spill could pass over permeable ground.
3. The river Kennet and Foudry Brook to the north and east can impact downstream.
4. The site inventory has a runoff time of 15 minutes.

Consequently, the Pathway Hazard rating was determined as **High**.

Receptor – There are several potential receptors which have been identified:

1. The site drainage system and the head of the works.
2. There is a “Medium-High” groundwater vulnerability in this location.
3. The River Kennet and its stream to the north and west of the site, at a lower elevation and Foudry Brook to the east, also at a lower elevation.
4. The A33 to the east at a lower elevation.
5. The Hilton hotel (commercial) and Kennet Island Housing (residential) across the A33.
6. The Amazon and DHL warehouse immediately north of the site.

The Receptor Hazard rating was determined as **High**.

Likelihood – For the purpose of this assessment the likelihood for mitigated and unmitigated risks was calculated based on the assumption that the likelihood hazard rating is medium.

Pre-mitigation measures, operational failures were highlighted as a high risk, shortfalls in design (provision of alarms and monitoring) together with structural failure were highlighted as a medium risk.

Post-mitigation measures operational failures were re-scored as a medium risk, the previous two medium risk items remained as medium.

Therefore, the final Likelihood Hazard rating was determined as **Medium**.

Based on the information above the overall site risk rating was calculated to be high which means that Class 3 secondary containment is required.

<u>Source Risk</u>	<u>Pathway Risk</u>	<u>Receptor Risk</u>	<u>Site Hazard Rating</u>	<u>Likelihood</u>	<u>Overall Site Risk Rating</u>
High	High	High	High	Medium	High (Class 3)

2. Flow Paths

2.1 Site Characterisation

The state-of-the-art open-source LiDAR (Light Detection and Ranging) imaging data was used utilised from the Environment Agency (EA) National LiDAR Programme in this work, on 1m pulse laser beam intervals and 1km grid tiles across the whole site. ArcGIS 10.8.1 modelling software was used to analyse LiDAR Digital Surface Model (DSM)/Digital Terrain Model (DTM) and formulate coloured hill shading and contour models. The DSM was used with aerial imagery to locate any buildings or tanks within the site so these could be removed from the process. The 1m resolution DTM uses the last return of the LiDAR pulse, classified as the ground, and as part of the EA National Programme has been manually filtered to improve accuracy of the ground model.

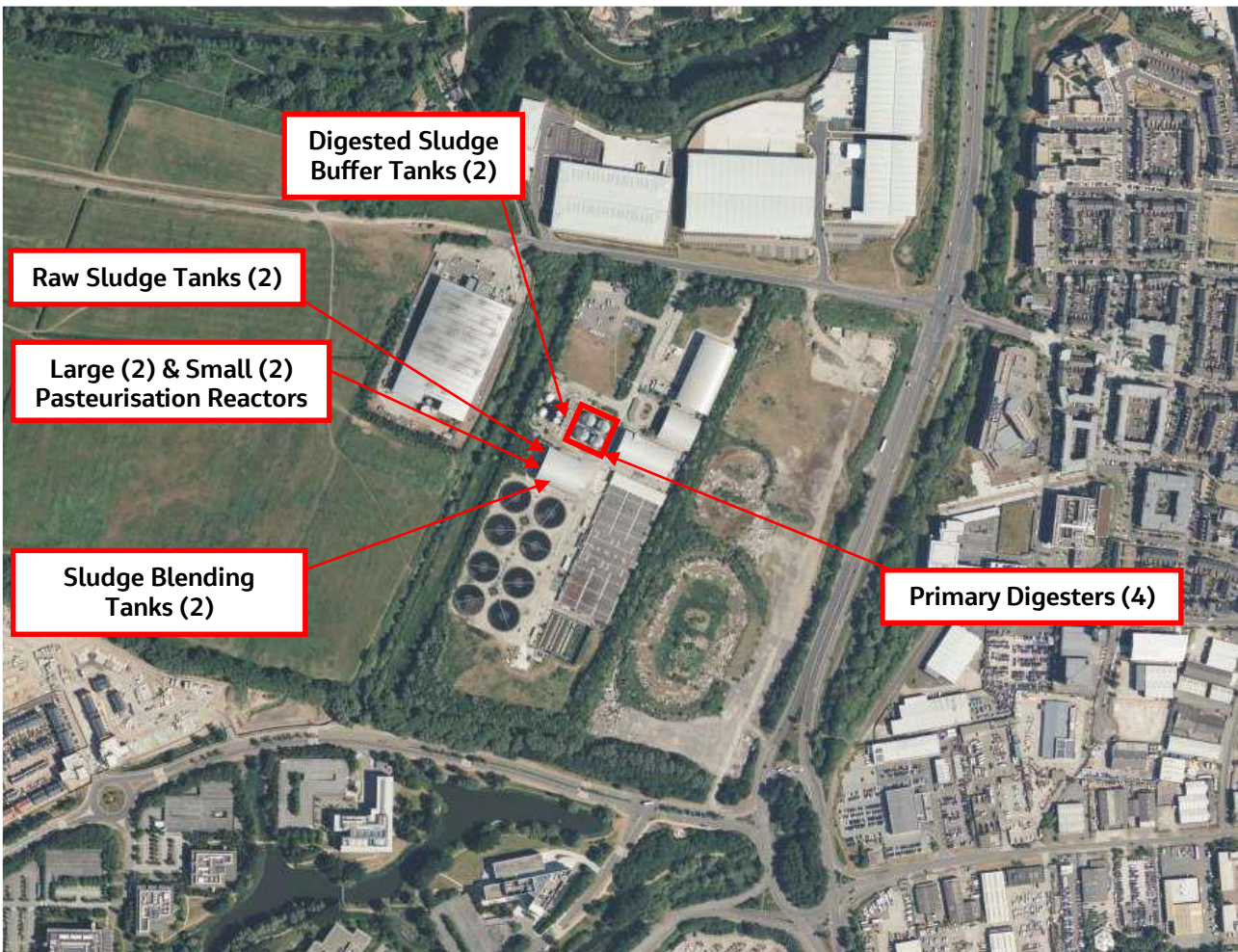


Figure 2.1 Labelled image of Reading Sewage Treatment Works

Figure 2.1 shows the site annotated with the sludge and digestion tanks and significant buildings. The effluent channel for the STW (Figure 2.2), which is discharging to Foudry Brook, is located 300 meters away in the northeast direction to the STW. Considering the topography of the sludge area, the high-resolution contouring revealed that the digesters and the surrounding areas are at a similar elevation. However, the contouring results showed that to the northeast of the digesters, the elevation increases and therefore, it is expected that in the event of catastrophic failure of one of the digesters, sludge would flow in any other direction except for the north east side of the digester area.

There is only one designated habitat site within the relevant distances of the site – the Thames Basin Heaths Special Protection Area (SPA) is approximately 8.15 km to the south-east of the site. There are no Local Nature

Reserves or Sites of Special Scientific Interest (SSSI) within 2 km of the site and no Special Areas of Conservation, Ramsar sites or Marine Protection Areas within 10 km of the site. The site is directly adjacent to DHL and Amazon warehouses to the north. Both warehouses use the Island Road bordering the site for access.

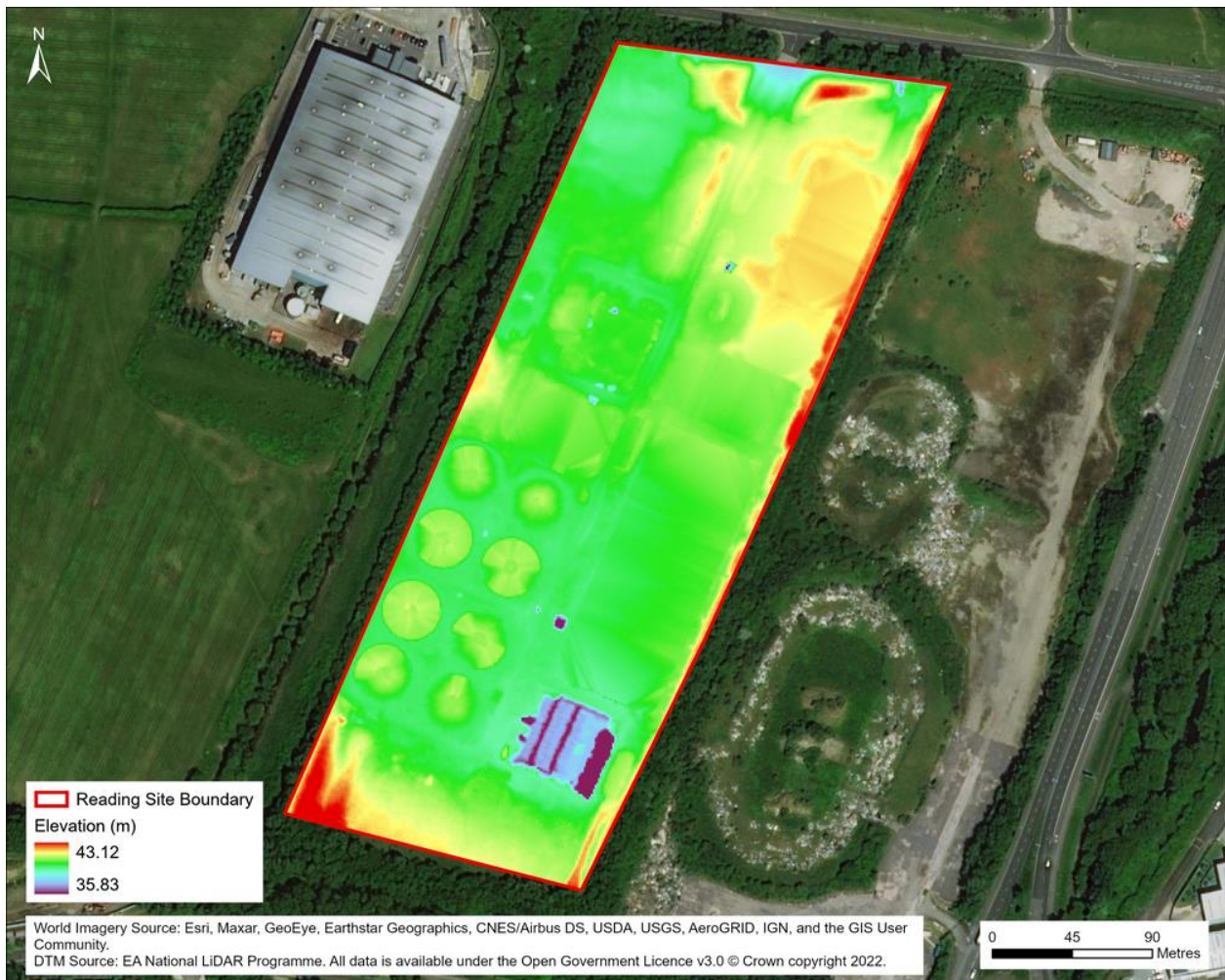


Figure 2.2 Digital Terrain Model of Reading Sewage Treatment Works

2.2 Loss of stock from most credible failure scenario

CIRIA C736 states that when considering a loss of containment of sludge, the volume of substance should be based on the loss from a *credible scenario*, this need not necessarily involve the *entire* site inventory.

None of the tanks are hydraulically linked, so rupture would affect only one digester or tank. Therefore, the volume from a credible failure scenario is the maximum capacity of the largest tank, which at Reading is the largest Primary Digester of 1,775 m³.

2.3 Uncontained spill mapping and flow paths

Hydraulic modelling has been applied to assess the uncontained spill following a catastrophic failure of the largest digester tank within the site only (1,775 m³), without rainfall contribution. The 2D model generated uses the TUFLOW software package (Version 2020-10-AC), which can be used for simulating depth-averaged, one and two-dimensional free-surface flows exhibited with floods and tides. TUFLOW's implicit 2D solver, solves the full two-dimensional, depth averaged, momentum and continuity equations for free-surface flow using a 2nd order semi-implicit matrix over a regular grid of square elements. Furthermore, it includes the viscosity or sub-grid scale turbulence term that other mainstream software omit.

The Digital Terrain Model (DTM) used in the model was of 1m resolution and the footprints of buildings and tanks were omitted from the model. The dimensions of the tank were used to calculate a constant flow of liquid in all directions from the circumference until it was emptied. Areas with different roughness coefficients were delineated using aerial imagery e.g., liquid would flow more easily over roads and paths as opposed to vegetated ground. The model outputs are 2m resolution with a timestep of one second. The model was run until the liquid front was no longer moving. Default parameters were used in the simulation and the model was stable with a mass balance error below the acceptable 1%.

Figure 2.3 shows the sludge spill mapping of an uncontained event at Reading STW. The modelling results showed that a potential sludge spill from the one of the digesters will not be self-contained within the site and therefore passive containment needs to be implemented to safeguard the nearby receptors. According to the model the spill will leave the site boundary (the northwest site boundary) in approximately 15 minutes following failure of one of the digesters.

The spilled content will initially spread within the sludge and digester area including the Dewatering and Sludge Buildings and the Power building containing the Combined Heat and Power engines. It is expected that the flow will further travel north bound and overflow the site's carpark space some sludge will partially spill over to adjacent grassland next to RE3 Waste Management Site, northwest of the site boundary. Most of this sludge will then spread to the road entering the site and will eventually spill onto Island Road, north of the site boundary which could potentially prevent access to the nearby Amazon and DHL warehouses. The spill will also travel south of the digesters within the STW; however, this run-off will not spill over the southern site boundary and therefore will be contained within the southern side of the Reading STW.

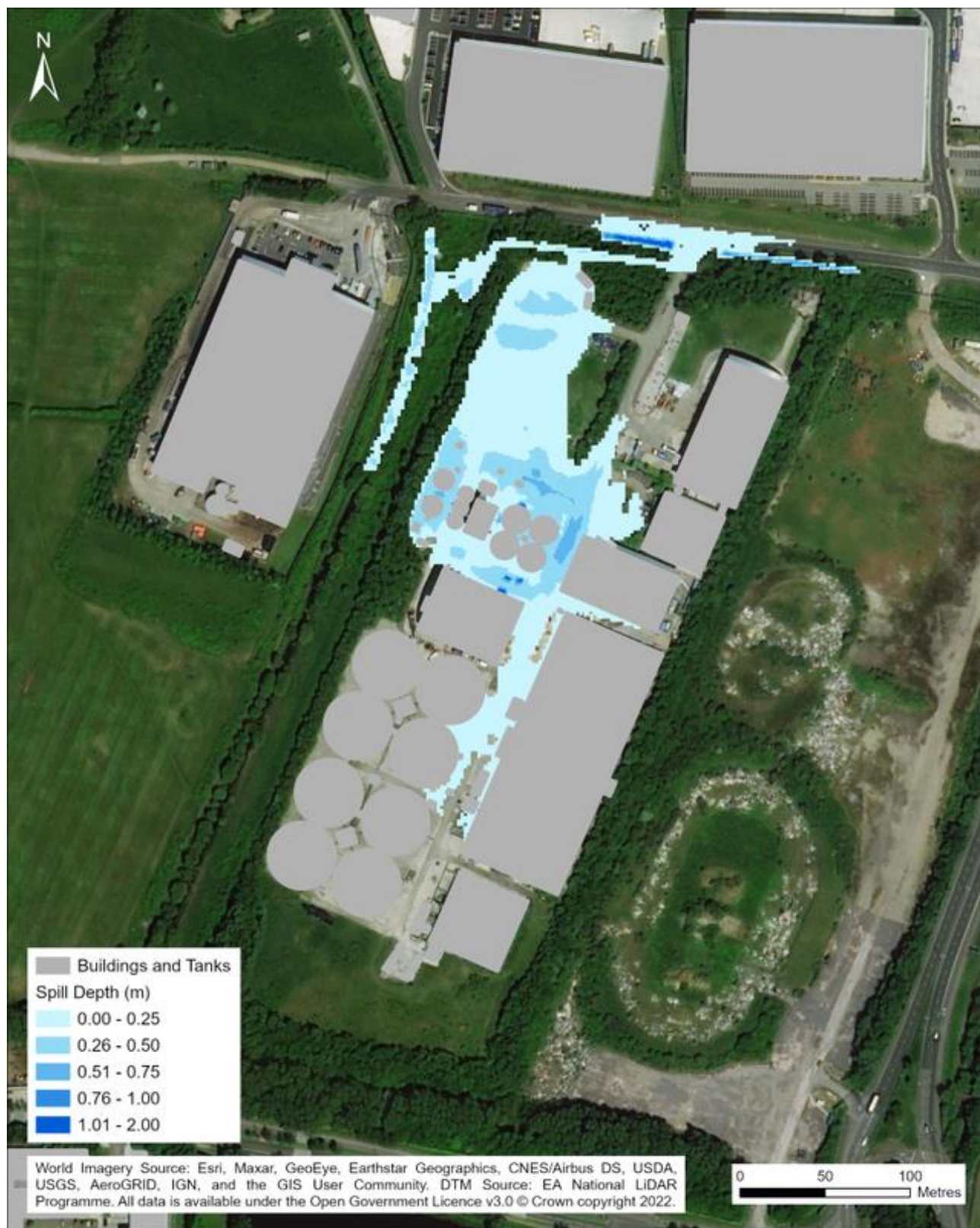


Figure 2.3 Map of the extent of an uncontrolled event of sludge spill in Reading STW

3. Other site risks

3.1 Jetting Flows

In addition to analysis of spill maps for containment assessed in this report, jetting effects have also been considered to better understand the flow paths for a potential spill. Jetting is the phenomenon whereby the failure of a tank through rupture or corrosion results in the escape of a jet of liquid with sufficient force causing projection out of the tank.

In the instance that tanks are located near the boundary of the containment areas, jetting could have potential implications on where sludge spills accumulate. The sludge area is a compact area and as a result, several tanks are near the containment area boundaries. Where it is not practical to locate a bund wall to contain the potential jetting of sludge to the areas beyond the containment boundary, baffle plates or suitably robust curtains should be considered.

There are several sludge containing tanks, including the digesters, located in the proximity of the site boundaries and proposed containment area (<20 m) and therefore jetting should also be assessed at Reading STW.

Figure 3.1 below details the method for determining the necessary height and distance of a bund wall from a given tank to prevent jetting.

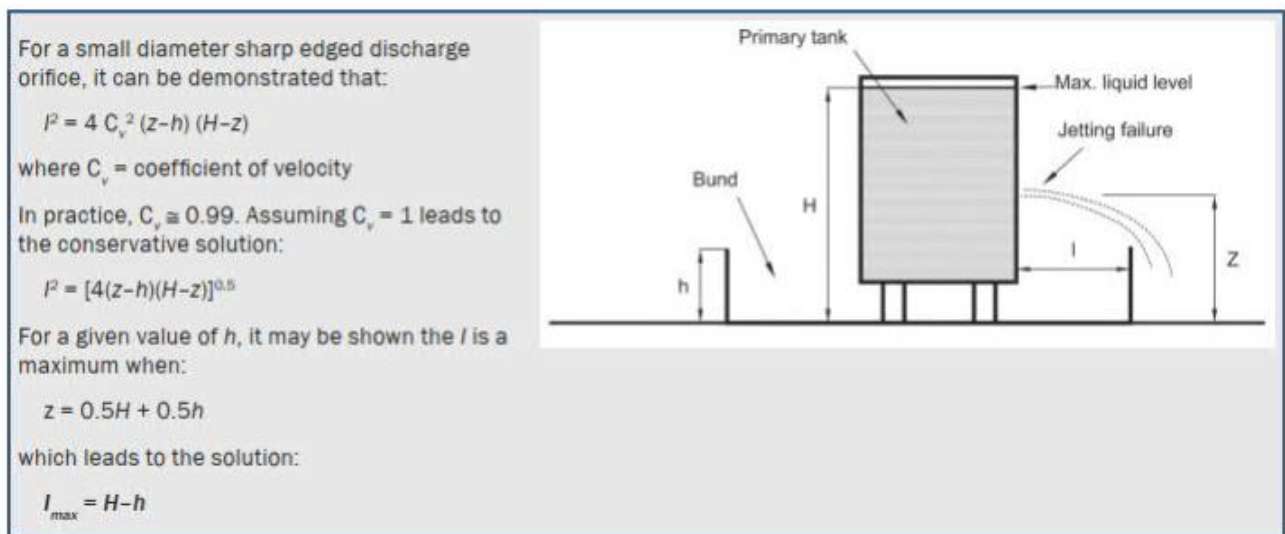
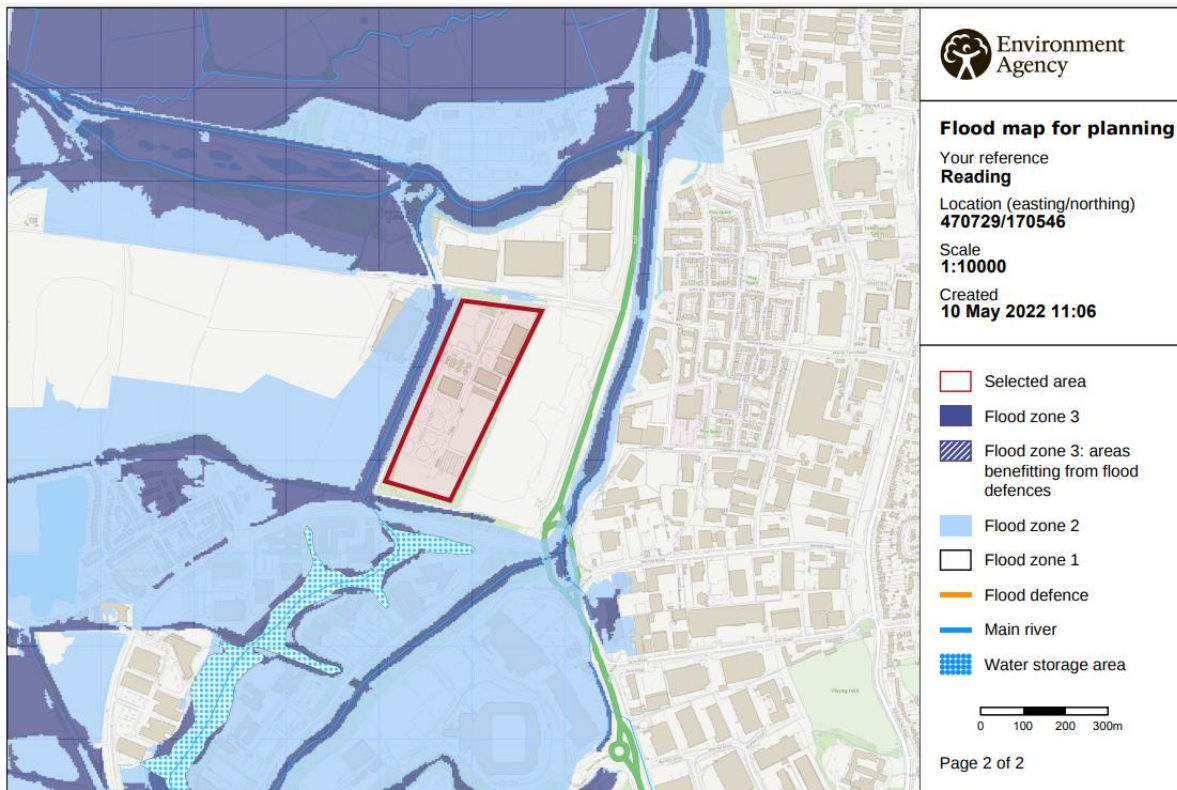


Figure 3.1 Method for calculating bund geometry to prevent jetting (CIRIA guidance document C736)

3.2 Flooding

According to the UK Government’s Flood Map for Planning, the sludge area is in Flood Zone 2, as shown in Figure 3.2. The Flood Zone definitions listed in Table 3.1 provide additional detail of the areas of concern, which in the case of Reading STW, have a 1 in 100 and 1 in 1000 annual probability of river flooding. The flood map shows that the River Kennet and the side stream that runs west of the STW would increase the risk of flooding in this area. Mitigation measures for fluvial flooding should be considered given that the probability of flooding in the area is medium. Given the close proximity of the sludge assets to the nearby receptor (Riven Kennet), a means of preventative measures might be required to prevent potential river flooding.

Additionally, in the Flood Risk Vulnerability Classification sewage works are classified as ‘less vulnerable’, if adequate measures to control pollution and manage sewage during flooding events are in place.



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Figure 3.2 Extent of Fluvial flooding in Reading due to extreme weather events

Table 3.1 Flood Zone Definitions from GOV.UK Flood Map for Planning

Flood Zone	Definition
Zone 1 Low Probability	Land having a less than 1 in 1,000 annual probability of river or sea flooding. (Shown as 'clear' on the Flood Map – all land outside Zones 2 and 3)
Zone 2 Medium Probability	Land having between a 1 in 100 and 1 in 1,000 annual probability of river flooding; or land having between a 1 in 200 and 1 in 1,000 annual probability of sea flooding. (Land shown in light blue on the Flood Map)
Zone 3a High Probability	Land having a 1 in 100 or greater annual probability of river flooding; or Land having a 1 in 200 or greater annual probability of sea flooding.(Land shown in dark blue on the Flood Map)

4. Potential Options

There are several options which need to be considered as part of the optioneering to deliver containment at the Reading Sludge Treatment Centre. This optioneering has not yet been carried out and hence some of the proposed options may not be appropriate for the site on a cost, engineering, space, or practicality basis, which is being programmed by TWUL, including consideration of future investment at the site and local ground conditions.

Some of these options are applicable across several sites, while others are site and location specific. It is possible that more than one option may be appropriate at a single site, on an asset specific basis, rather than using a single concept at the site.

The high-level containment options are tabulated below, followed by an overview of some of the options, with regards to their practicality at the specific site. Some options may not relate to specific tanks but involve the movement of other assets such as pumps, pipework, or the biogas systems to minimise the risk of damage to these in the event of a spill. This may involve relocating assets or raising them above their current level, which may alter available volumes close to tanks impacting upon bunding requirements with regards to location and height.

High Level Option	Details	Cost	Practicality	Applicability
Replacement of tanks	Existing tanks replaced by assets which are double skinned or integrally banded.	High	Low	Will depend upon the assessed current asset lifespan. Integral bunding practicality may be influenced by tank volume.
Replacement of tanks	Resizing of existing tanks to reduce either the overall number of tanks, or potential volume in a containment failure scenario.	Medium	Medium	Will depend upon the assessed current asset lifespan. May increase overall number of tanks on site. May reduce site resilience due to reduced storage volumes.
Installation of tank farm bunding	Bunding of tanks on either an individual basis or for a group of closely spaced tanks.	Low	Medium	May be used on all tanks, however, likely to involve changes to existing piperuns and pumping requirements, to reduce the requirement for bund penetrations by pipes. May impact on access to individual tanks. For some assets, may lead to potential confined space or DSEAR concerns.
Use of Secondary containment	Remote bunding of tanks, which may include use of existing assets to capture spillages, such as roadways or open space.	Low	High	Likely to be applicable to all sites. However, may lead to increased requirement for impermeable surfacing to reduce infiltration in designated spill containment areas. Will depend on existing site infrastructure and may lead to land sterilisation issues.

<p>Installation of increased diameter drains and wet wells</p>	<p>Installation of increased diameter drainage locally to capture more of a spillage, linked to wet wells to hold spillages, prior to return to works inlet.</p>	<p>High</p>	<p>Low</p>	<p>May be applicable for single or multiple tanks, but the larger the covered area, the greater the potential volume needed to account for rainwater.</p> <p>May be limited in use due to ground conditions and subsurface asset locations.</p> <p>May have carbon related impacts due to increase in pumping requirements</p>
<p>Construction of sumps</p>	<p>Construction of engineered, sealed, sumps, to increase storage capacity locally in the event of a loss of containment.</p>	<p>Medium</p>	<p>Medium</p>	<p>Likely to be applicable mainly for smaller tanks</p> <p>May be limited in use due to ground conditions and subsurface asset locations</p> <p>May create confined spaces or raise DSEAR concerns.</p>
<p>Tank construction</p>	<p>Change to asset standards to reduce the potential risk of tank failure.</p>	<p>High</p>	<p>Low</p>	<p>Will not remove need for containment, but may alter the failure mode, impacting on the speed of a spillage occurring and volume involved.</p> <p>Potential carbon related impacts.</p>

Reading STW Risk Identification and Containment Assessment Report

Process changes	Changes to process technology and techniques to reduce the requirement for post digestion storage duration to achieve the required pathogen kill level.	Medium	Low	<p>May reduce to the overall volume of sludge stored reducing containment requirements. However, may increase dewatering requirements and associated storage volumes.</p> <p>May have wider impact on works, such as changes to gas yield or requirement for liquor treatment.</p>
Movement or raising of ancillary assets	Movement of assets such as pumps, pipework and the biogas system in order to raise it above the potential spill level local to those assets.	Low	Medium	<p>Applicable to all assets which may be impacted by a loss of containment.</p> <p>May involve raising levels locally through installation of plinths or similar, altering the existing spill mapping.</p> <p>May have carbon related impacts due to increase in pumping requirements.</p>
Site closure	Closure of sludge assets, with transfer of sludge to alternative treatment location.	High	Low	<p>Will depend upon the assessed current asset lifespan.</p> <p>Requires sufficient capacity at alternative treatment location.</p> <p>Potential for carbon impact due to transfer of sludge</p>

5. Conclusions

This section summarises the findings of the site assessment at Reading STW for the event of a credible catastrophic failure of a primary digester tank.

Sludge spill modelling was undertaken to assess the impact of an uncontained sludge spill on Reading STW. The results of the modelling showed that the spill is not self-contained within the site and sludge would leave the site at the northern boundary onto Island Road which could potentially restrict access to Amazon and DHL warehouses and spread to the area near the RE3 Waste Management Site.

A hazard risk assessment for Reading STW, was also undertaken with the site hazard rating estimated to be High and the likelihood of a spillage was classed as Medium. Based on these risks, an overall site risk rating was determined to be High, meaning that class 3 containment is required.

Jetting effects should also be considered to better understand the flow paths for a potential spill. However, the focus of this assessment report is not to provide detailed solutions for containment. The sludge area is in Flood Zone 2 according to the UK Government's Flood Map for Planning and therefore some additional measures for flooding should be considered.

In the instance of a credible catastrophic failure of one of the digesters at Reading STW, to prevent sludge from entering the adjacent private properties and Lower Kennet, the provision of a secondary containment system should be considered.



J840 – STC IED Containment

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June 2022

Thames Water

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Document history and status

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1. Executive Summary

Thames Water is required by the Environment Agency to provide secondary containment to their sludge treatment centres to satisfy provisions of the Industrial Emissions Directive and to safeguard the operation of the adjacent sewage treatment works. Twenty-five sludge treatment centres have been identified where containment proposals are required. This report deals with the proposals for Reading.

Reading serves a population equivalent of 264,000 taking in sewage from Reading and surrounding area. The sludge treatment centre shares the same site as the sewage treatment works.

CIRIA Report 736 – Containment systems for the prevention of pollution sets out principles and direction. This report sets out options to apply the CIRIA 736 principles within the accepted constraints of a retrofitted solution.

Reading holds some 11,530m³ of liquid within the sludge treatment centre. The liquid sludge is stored in 12 tanks with individual volumes varying between 30 to 1775m³ and the majority of the tanks are concrete. The site is generally low lying and flat. The containment volume of 2883m³ is driven by the 25% rule (25% of total tank volumes which includes allowance for rainfall) rather than 110% (of the largest single tank) of the total tanks volume. The STW when constructed in early 2000's with a bund around the STW and this will act as tertiary containment.

Two wide area options for containment have been identified and reviewed with Operations to confirm that the working of the sewage treatment work is not compromised by proposals:

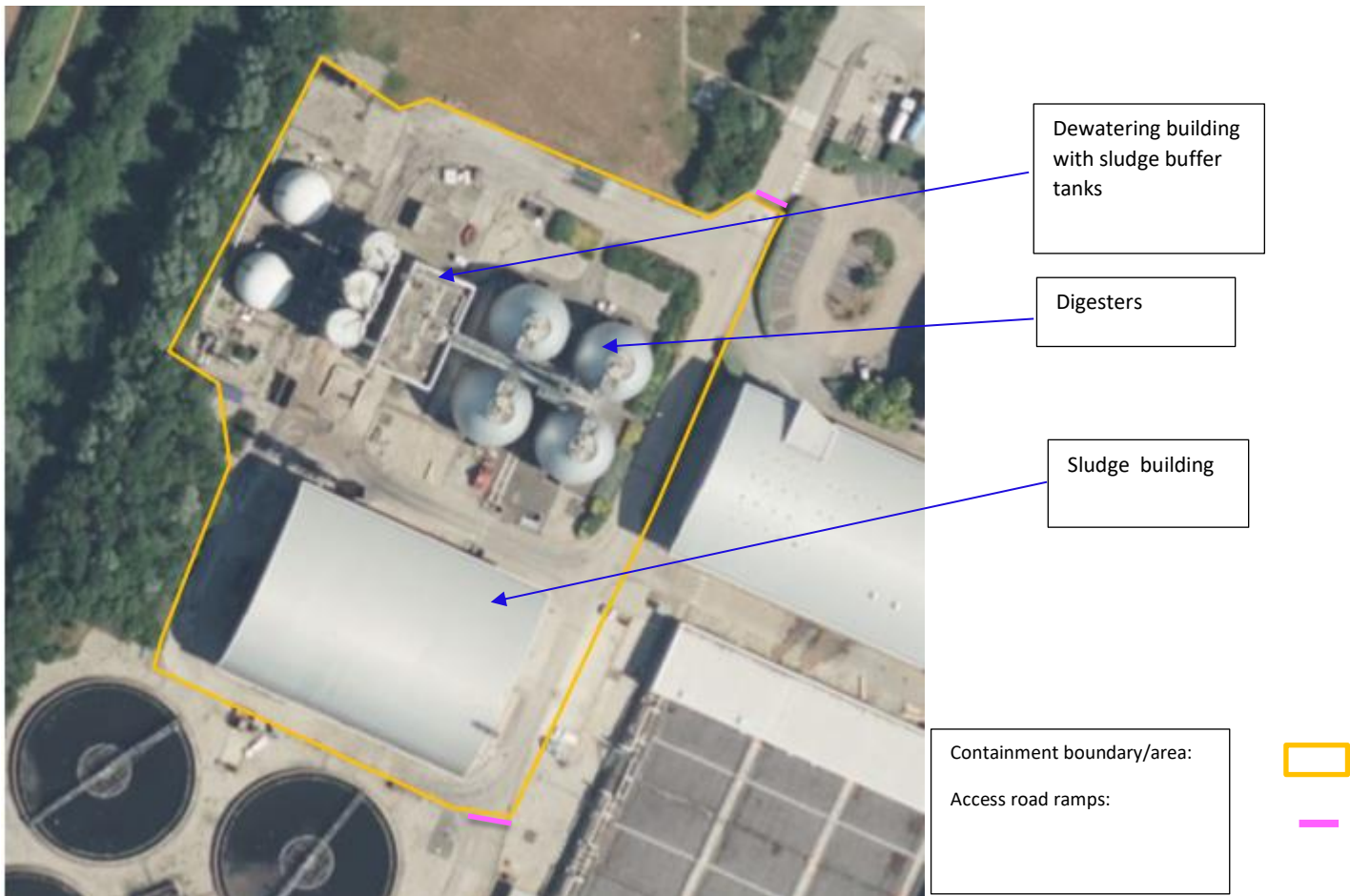
1. Wide area containment whereby the sludge tanks are contained within a bunded boundary with sufficient area to generate depth that does not deny emergency access to equipment when the spill has been contained.
2. Increased the wide area containment area utilising the available land on site, whereby the sludge tanks are contained within a bunded boundary with sufficient area to generate shallow depth that does not deny emergency access to equipment when the spill has been contained.

In addition to the creation of bunds, which due to space constraints are likely to be formed from concrete, existing grass or gravelled areas will be replaced with a bound impermeable material (high cement replacement concrete) to provide a surface that can be cleared of sludge to meet an eight-day recovery period. Vehicular access into the containment areas is by ramps (speed humps) restricted to nom 250-300mm in height; traffic movements on site make the use of permanent flood gates impracticable. Whilst the site is identified as requiring Class 2 containment (impermeable soil with a liner), the proposed solution is intending to concrete (with no liner) on the basis of the impermeability of the concrete, inherent strength and long-term mechanical resistance.

The containment volume identified reflects the potential escape volume from the tanks and the 1 in 10 year rainfall that could arrive during the clearing up period.

Bund heights are being set to provide freeboard considering both static conditions when the containment has been filled and during the transient condition at initial failure. There is the potential for some flow to overtop the access ramps during the conditions of the initial burst which is addressed by tertiary containment and conveyance to the site drainage system which discharges to the inlet works.

General layout of proposed Option



The modelling highlights that the design detailing may need to consider flood gates instead of ramps to access the containment area due to the standing depth of the sludge and height of the containment walls. The other consideration is any spill over the ramps will be contained onsite by the sites boundary bunds tertiary containment and conveyance to the site drainage network which discharges back to the head of works.

Grassed and gravel areas within the yellow area to be replaced by concrete. Some of the concrete roads in the yellow area may need to be replaced/repared to enable them to be impermeable.

2. Background

Following initial audits by the Environment Agency (EA) in 2019 that examined the primary, secondary, and tertiary containment provisions for Thames Water's anaerobic digestion (AD) process and associated tanks, the EA reported *"there is no provision of secondary containment for the AD process at any of Thames Water's sites. Catastrophic tank failure may impact nearby receptors and the operation of adjacent sewage treatment activities"*. Jacobs were appointed to assess site risks and outline the options available for providing remote secondary containment of a catastrophic tank or digester failure across 28 Thames Water sites. Based on CIRIA C736 and ABDA risk assessment tools this containment report addresses the site-specific risks at Reading and outlines the options available for providing remote secondary containment in the event of a catastrophic tank or digester failure.

The current assessment identified gaps between the existing conditions of the sludge assets in Reading STW and the requirements to meet the industrial standard (i.e., CIRIA C736 and The Anaerobic Digestion and Bioresources Association Limited (ADBA)). Site-specific risks, credible failure scenario and design containment volume for the Reading STW were identified through a desktop study, Light Detection and Ranging Analysis (LiDAR) analysis and a site visit.

Reading Sewage Treatment Works (STW) (Figures i-iii) is located south of the town of Reading, close to the A33 which links the town with the M4 motorway. To the south of the site, separated by a dual carriageway road, is the Green Park business park which consists of a few commercial office properties. To the west and south is agricultural land and to the west and north is a local council household waste and recycling centre, closed landfill, and local council waste transfer station. To the north is commercial properties consisting of large warehouse type premises. Immediately to the east of the site is derelict land and then the A33. The STW serves a population equivalent of 264,000 taking in sewage from Reading and surrounding area.

Figure iv shows the Boundary of the permitted IED area and the assets contained within Long Reach STW.

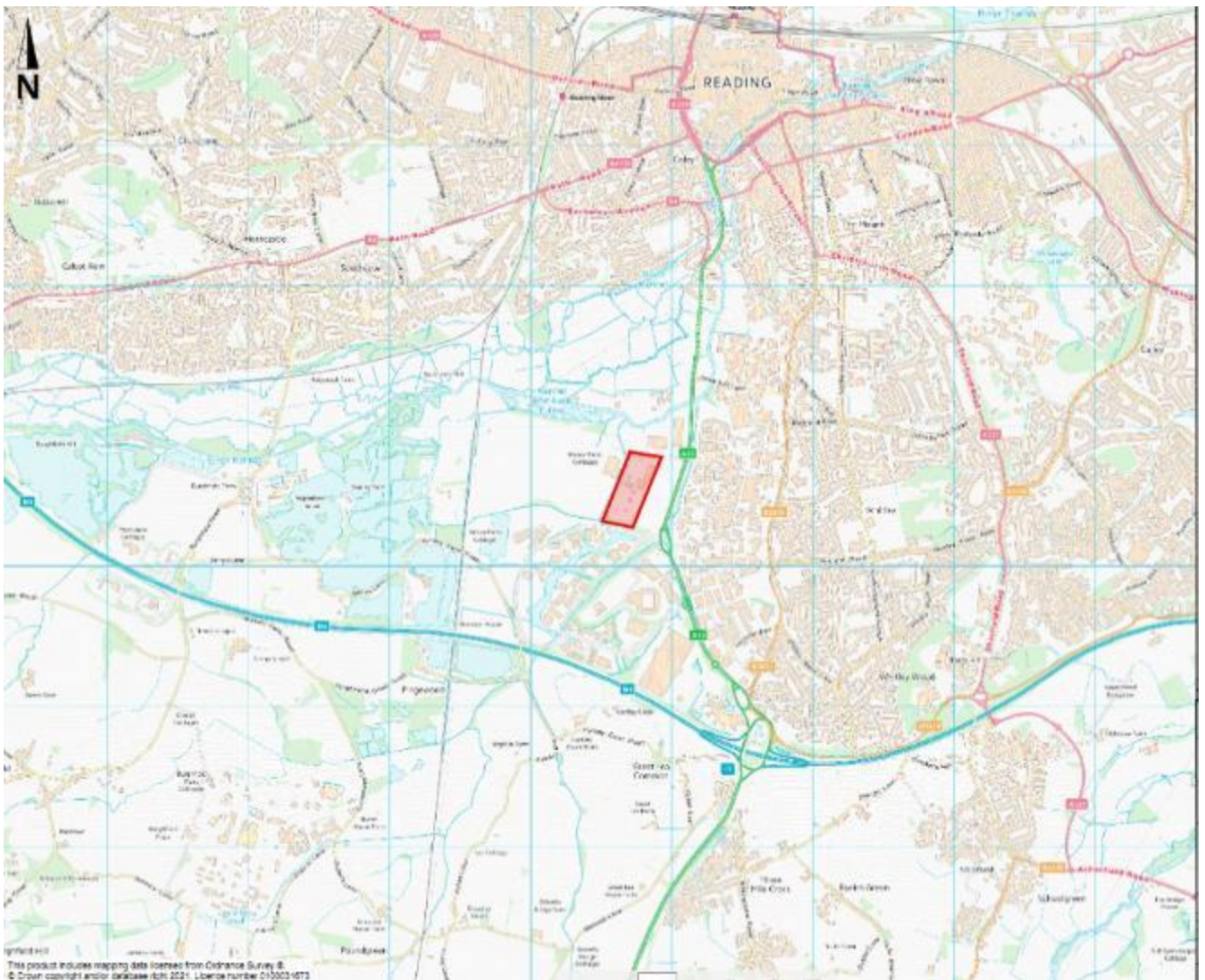


Figure i Location Plan Reading Sewage Treatment Works



Figure ii Satellite view of Reading Sewage Treatment Works

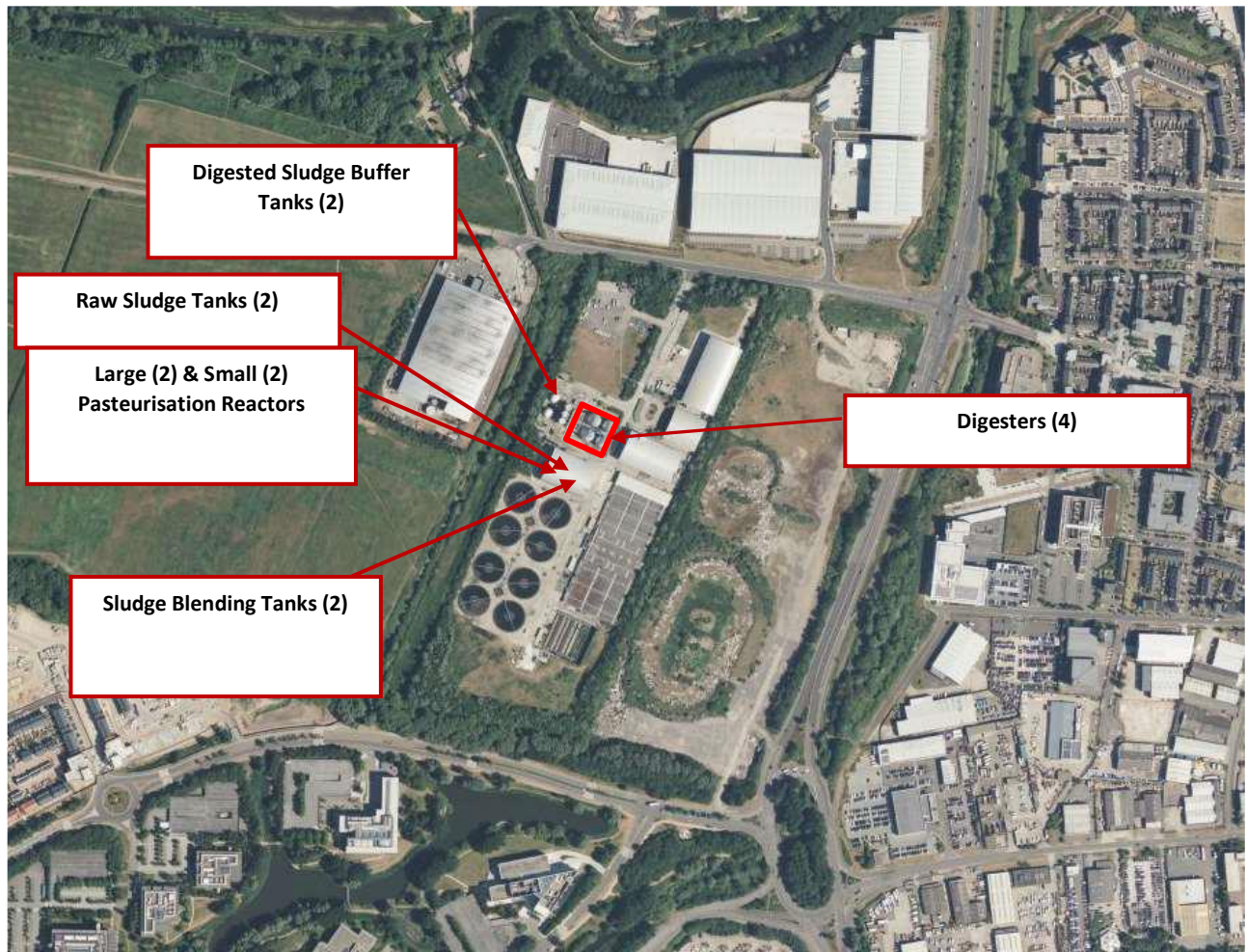


Figure iii Reading Sewage Treatment Works – Digester Area plan

This document should be read in conjunction with; Reading STW, Risk Identification and Containment Assessment Report, revision OA dated 09/05/2022. This report outlines the impact of an uncontained spill and the risk assessment completed.

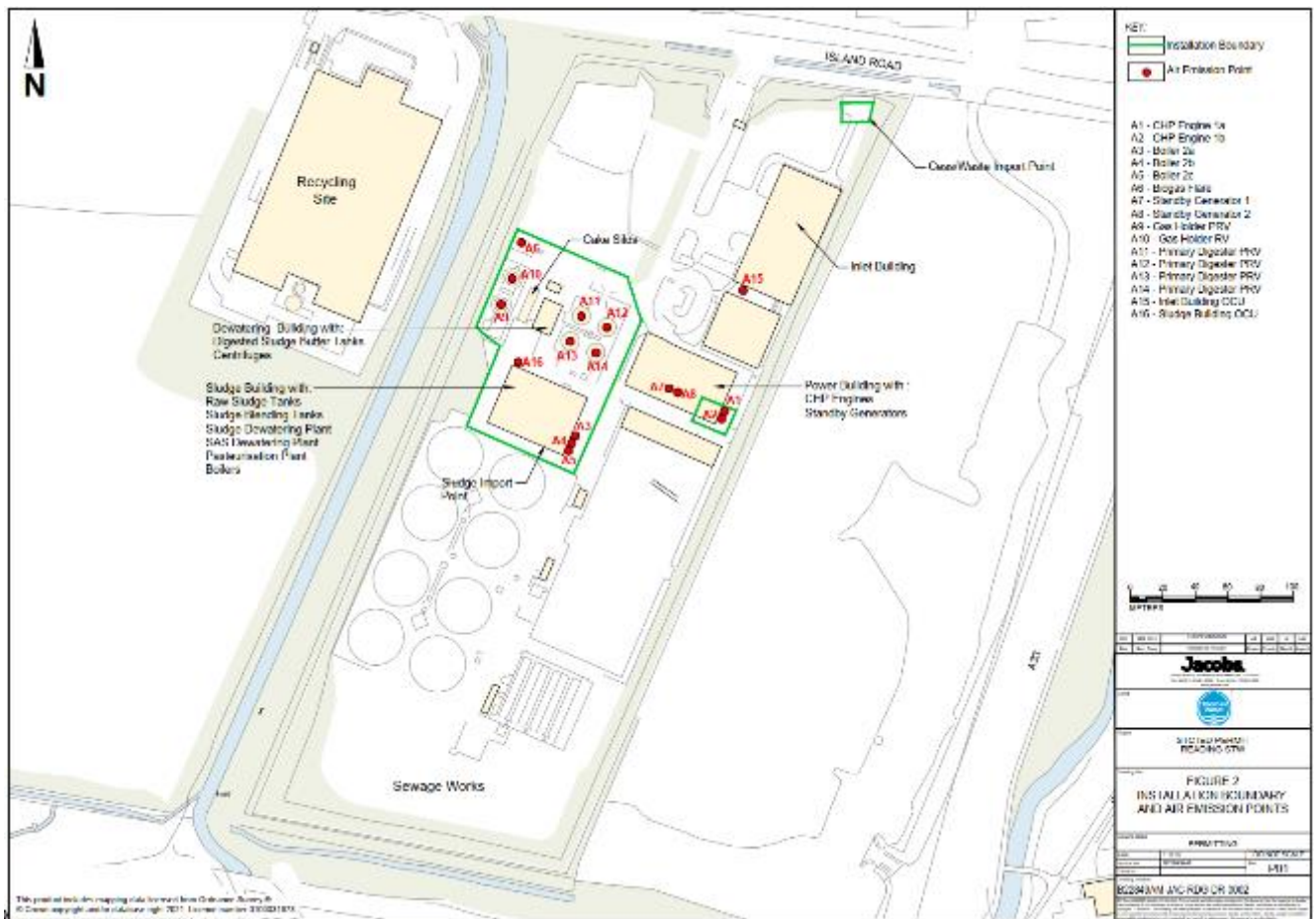


Figure iv Boundary of the permitted IED area and the assets contained within Reading STW.

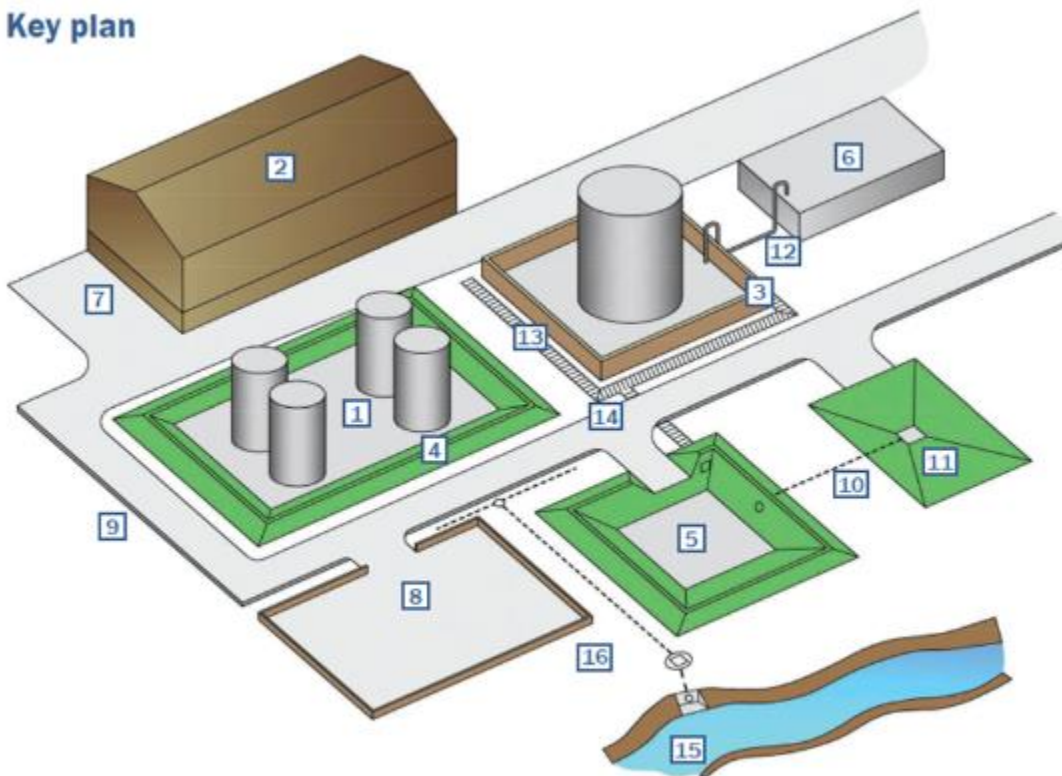
3. Proposed Containment at Reading STW

3.1 CIRIA C736

This containment option report has been prepared using CIRIA C736 as the basis of design and guidelines. Where a deviation from C736 has been recommended it is highlighted in the text.

CIRIA guidance document C736 (*Containment systems for the prevention of pollution – Secondary, tertiary, and other measures for industrial and commercial premises, 2014*) describes various options for containment of spillages from a credible failure scenario. It makes reference to a key plan, reproduced below;

Key plan



viii

CIRIA, C736

Figure 3.1 Diagram of primary, secondary and tertiary containment examples

-**Primary containment** is provided by the actual tank or vessel [1]

-**Secondary containment** is provided by a bund immediately surrounding the primary vessel e.g. [3] and [4], or by a lagoon [5] or tank [6]. If containment is provided away from the primary vessels this is known as **remote containment** and may be considered as either **remote secondary** or **tertiary containment**.

-**Tertiary containment** can be provided by a number of means including lagoons [5], or impermeable areas such as car parks [8]. Roadways with high kerbing of sufficient height [9] can also form part of a tertiary containment system, or the **transfer system** to the remote containment.

The distinction between *remote secondary* and *tertiary* containment is not always clear but, if properly designed, a combined system can be provided that is capable of providing the necessary degree of environmental protection. The overriding concern is not the terminology but the robustness and reliability of the system which depends on a number of factors such as;

- Its complexity – the more there is to go wrong, the greater the risk. Passive systems relying solely on gravity are more reliable than pumped.
- Whether manual intervention is relied on to make the system work or whether the system can be automated to include fail-safes and interlocks.
- The ease of maintenance and monitoring of the system's integrity, and repair of any defects.

During and after an incident any rainfall runoff from the remote secondary storage areas, from the spillage catchment areas and from the transfer systems must also be prevented from reaching any outfall(s) to surface water by closure of control valve(s).

3.2 Objectives of remote secondary containment

The objectives of the remote secondary containment measures proposed in this report are to safely contain spillages from credible failure scenarios and prevent them from:

- escaping off site
- entering surface waters
- percolating into groundwater
- being pumped back to the inlet of the sewage works in an uncontrolled manner.

The remote secondary containment will be provided by maximising the use of existing impermeable surfaced areas to provide a fail-safe passive system that relies on gravity rather than pumps. A means of leak detection that will automatically trigger isolation valves at key locations in the drainage system is also proposed.

3.2.1 Uncontained Spill modelling

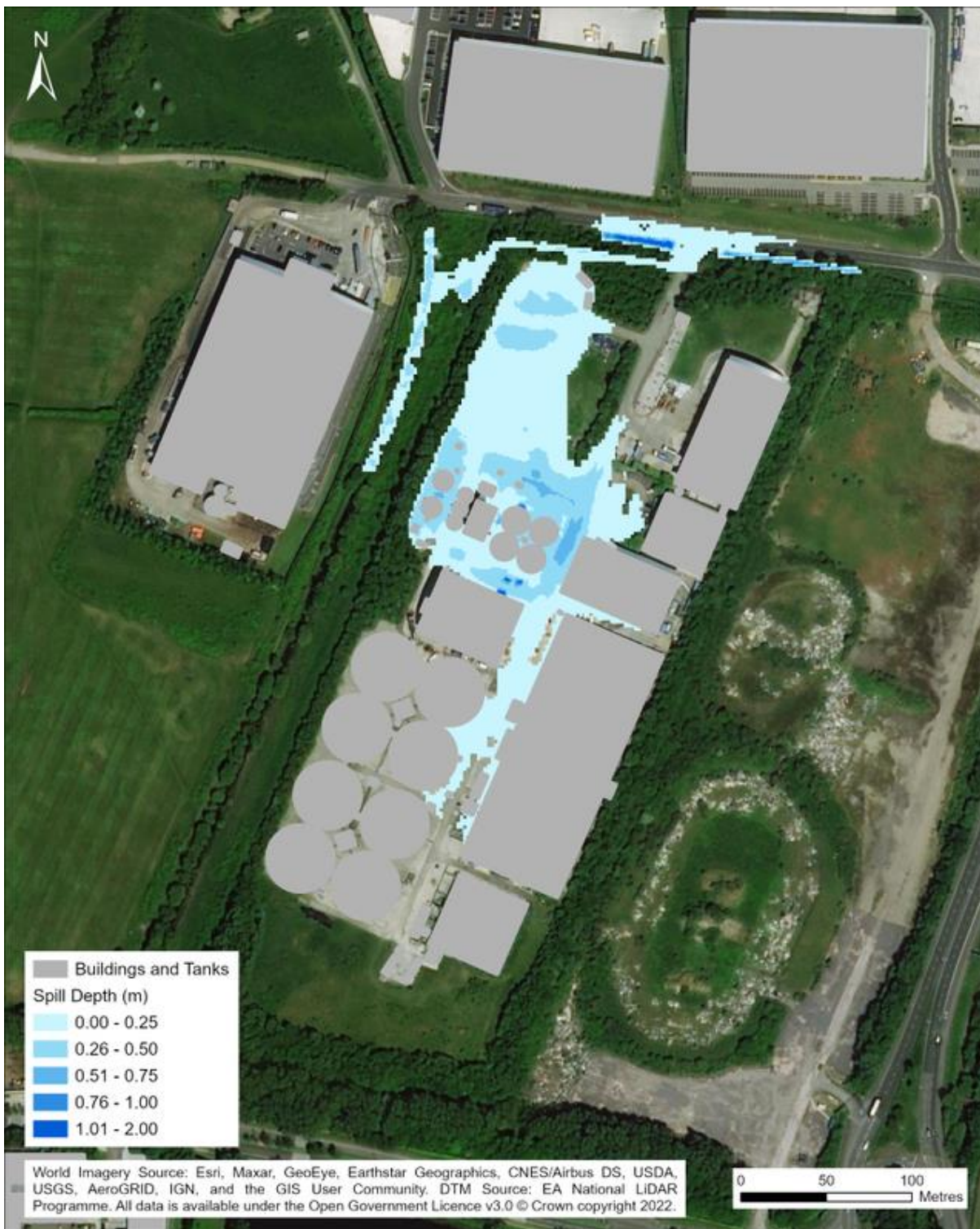


Figure 3.2 Uncontained Spill Model Results

As seen from Figure 3.2 the sludge spill mapping of an uncontained event in Reading STW showed that the potential sludge spill from one of the Digesters will not be self contained within the site and therefore passive containment needs to be implemented to safeguard the nearby receptors. According to the model the spill will leave the site boundary (the northwest site boundary) in approximately 15 minutes following failure of one of the digesters.

The sludge content will initially spread within the sludge and digester area including the Dewatering and Sludge Buildings and the Power building containing the Combined Heat and Power engines. It is expected that the flow will further travel north bound and overflow the site's carpark space some sludge will partially spill over to adjacent grassland next to RE3 Waste Management Site, northwest of the site boundary. Most of this sludge will then spread to the road entering the site and will eventually spill onto Island Road, north of the site boundary which could potentially prevent access to the nearby Amazon and DHL warehouses. The spill will also travel south of the digesters within the STW; however, this run-off will not spill over the southern site boundary and therefore will be contained within the southern side of the Reading STW.

3.3 Site Classification Reading

Based on the use of the ABDA risk assessment, considering the source, pathway and receptor risk Reading site hazard rating is deemed to be High. When considering the mitigated likelihood as low a class 2 secondary containment is required.

<u>Source Risk</u>	<u>Pathway Risk</u>	<u>Receptor Risk</u>	<u>Site Hazard Rating</u>	<u>Likelihood</u>	<u>Overall Site Risk Rating</u>
High	High	High	High	Low	Medium (Class 2)

Refer to appendix 1 for summary of the ABDA risk assessment tool.

3.3.1 Spill Volume Summary

There are two components that contribute to the required capacity of secondary containment, the source spill volume requiring containment and rainfall. Section 4 of CIRIA 736 forms the basis of this assessment. Section 4.2 reviews current industry practice relating to source spill volume, section 4.2.8 then summarises current industry practice relating to source spill volume in a tabular form. It can be seen from section 4.2.8 that sewage sludges and associated regulations / guidance are not listed.

Within section 4.2.1 there is detailed reference to the use of 110% of the largest tank or 25% of the total tank inventory volume, whichever is greater, and the rationale for this. CIRIA recognises that this approach is not quantitative or based on a risk assessment and are arbitrary methods. Section 4.3 and 4.4 provide guidance on a quantitative risk assessment methodology and this is what is being used for the calculation of the required capacity for containment in this report.

3.3.2 Total Spill Volumes

The containment volume has been checked against the 110 and 25% rule and the 25% rule applies.

The total design contained volume comprises 2883m³ (25% of the total volume of all tanks 11530m³ within the containment area including allowance for rainfall), compared to largest single tank failure of 1,775m³ and total

rainfall 892 m³ rainfall from Flood estimating handbook over catchment area, which giving a lesser volume 2882m³.

3.4 Reading STW Summary of Containment volumes and assets

3.4.1 Assets for Containment

The tanks for which containment is required are summarised below:

Tanks within containment area	No. of tanks	Total Tank Volume (m ³)
Raw sludge tanks	2	2400
Sludge blending tanks	2	1000
Small Pasteur reactor	1	30
Large Pasteur reactor	1	100
Digesters	4	7100
Digested buffer tanks	2	900
Total	12	11530
25% rule which includes allowance for rainfall		2883

3.4.2 Digital Terrain Model

The terrain model (Figure 3.3) shows that Reading STW was constructed to have an internal bund around the site, with the only low spot is at the entrance to the site.

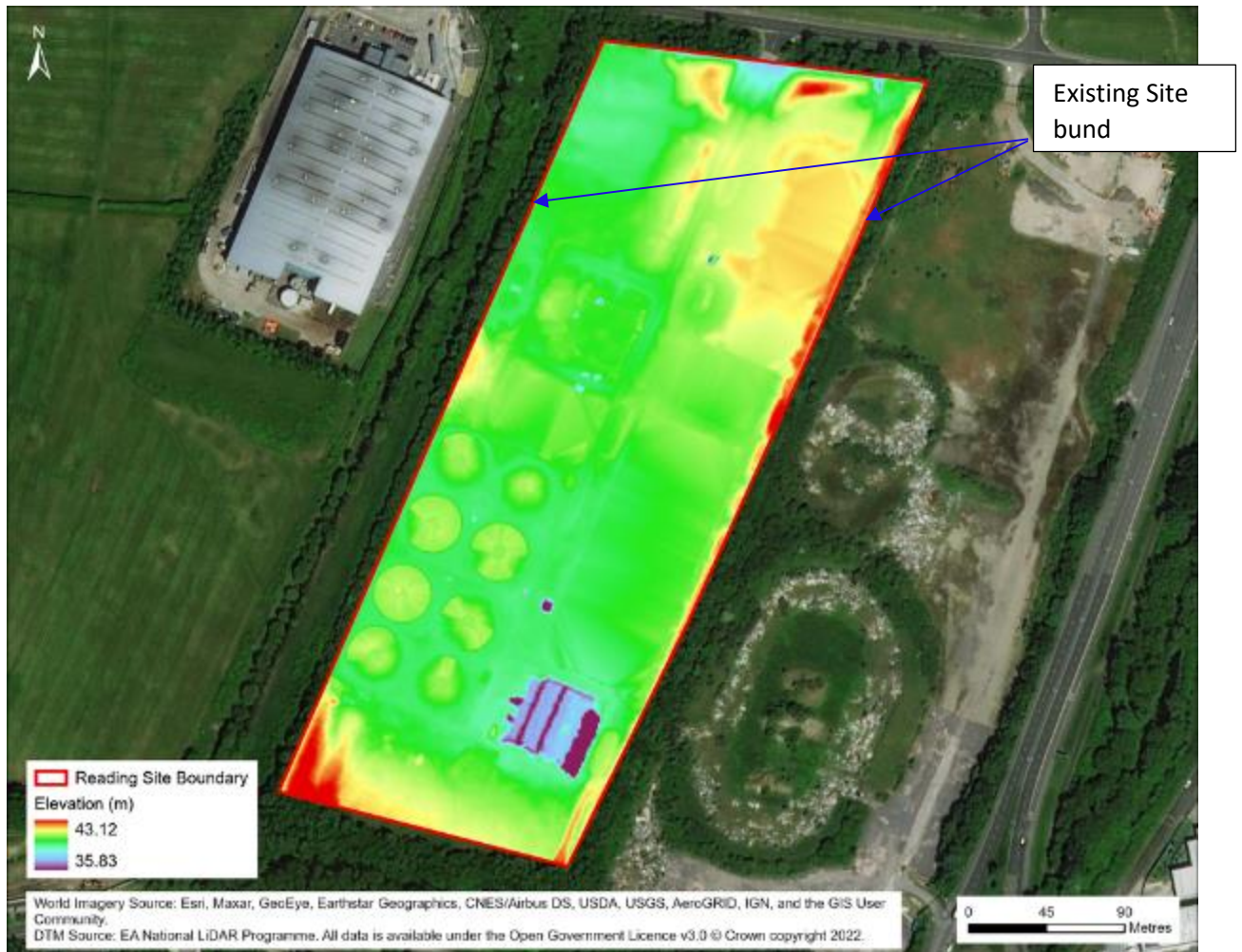


Figure 3.3 Digital Terrain Model of Reading Sewage Treatment Works

The contained model output is shown in Figure 3.4. This identifies the flow will be contained at a fairly uniform depth across the site. The containment model shows that for 100% volume loss the top water level will settle at 41.35m A.O.D. Therefore allowing for 250mm freeboard on the bund wall the bund height will vary between 0.5 – 1m with the higher bund wall along the northern and eastern sides of the containment area.

Figure 3.5 shows the contour plot for the containment area. Some of the potential depths at the northern limit of the containment area near the are in excess of that which ramps can hold. Final design development of the bunded area will consider the provision of floodgates instead of ramps.

3.4.3 Contained Model

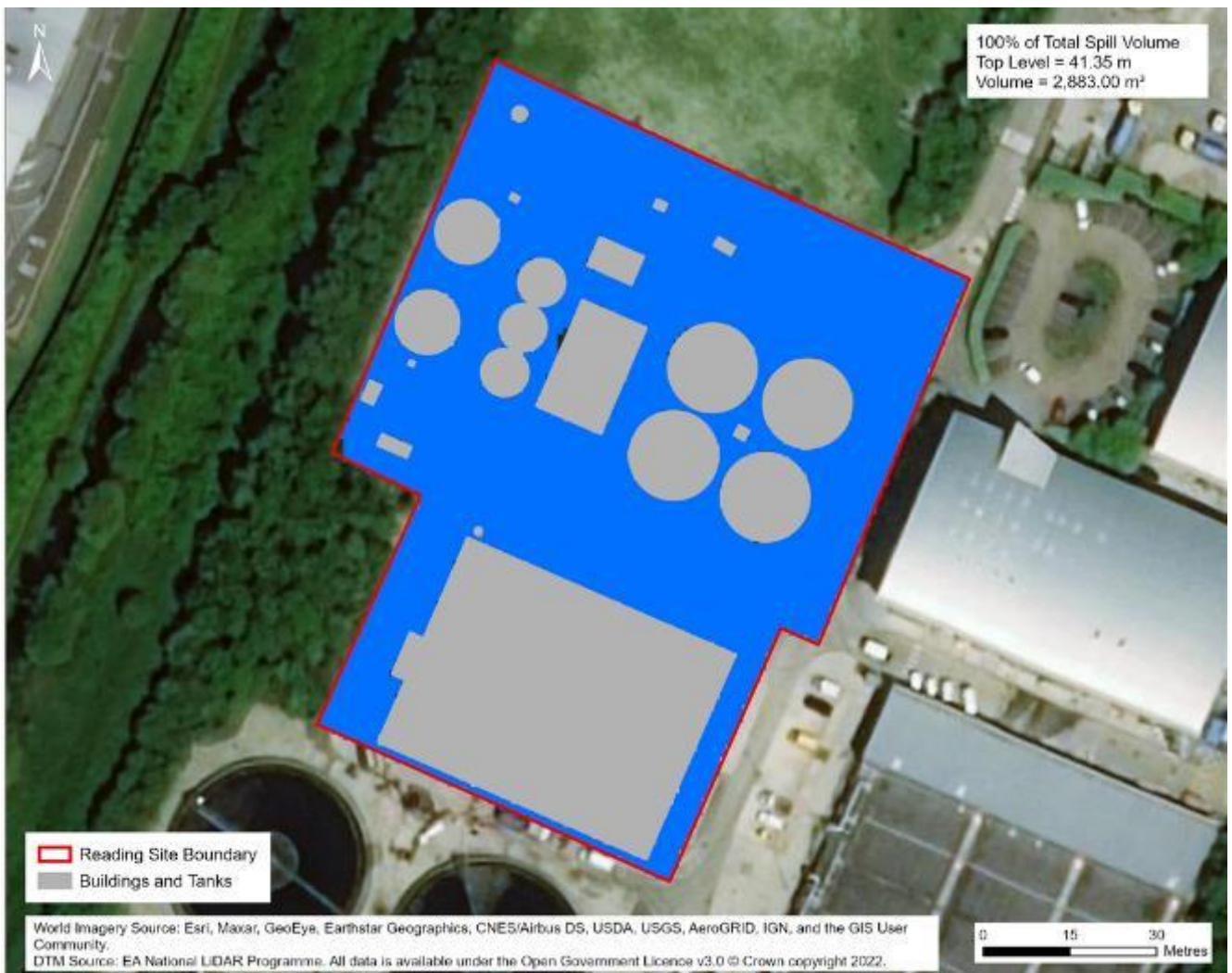


Figure 3.4 Containment spill model



Figure 3.5 contour map of the contained area

3.5 Identified Constraints

3.5.1 Operational constraints

The existing ground surfaces are mainly grass and gravel and this will need to be replaced with impermeable surface e.g. concrete from which sludge can be cleared up easily.

TW operations have stated that it would be difficult to clean up sludge from gravel areas as the gravel would also sucked up with the sludge.

The time to recovery and return site back to operation has been set at 8 days which aligns with the CIRIA guidance maximum as Thames Water operations state they cannot achieve this in a significantly shorter time, e.g. 48hrs.

3.5.2 Geotechnical and Environmental constraints

Ground conditions need to be considered during excavating and backfilling activities.

Regarding the construction works, there are no significant environmental constraints as these will all be completed within a Thames Water site.

The existing shrubbery within the containment area shall be removed and area infilled with concrete. To compensate for the loss of shrubbery, alternative areas shall be identified onsite for compensation planting or planting containers installed onsite.

3.5.3 Other constraints

None identified

3.6 Design allowance for rainfall

In addition to the maximum volume arising from a credible failure scenario, extra allowance for rainfall that may accumulate within the contained area before and after an incident has been made. The CIRIA guidance recommends that the containment volume should include an allowance for the total rainfall accumulated in response to a 1 in 10-year return period events for the 24 hours preceding an incident and for an eight-day period following an incident. The arising average rainfall depths for a 1 in 10-year storm over the event period for Reading is 91 mm. It should be noted that the rainfall depths for Reading have been estimated using the depth-duration-frequency rainfall model contained on the *Flood Estimation Handbook* (FEH), which provides location specific rainfall totals for given durations and return periods.

4. Secondary Containment

The constituent parts of secondary containment are;

- The contained area itself.
- The transfer system.
- Isolation of the drainage from both the contained area and from the transfer system.

For Reading, where possible, existing features of the site (e.g., building structures and impermeable surfaces) are used as much as possible to provide the remote secondary containment to reduce cost. The options considered, modifications and their functionality at Reading STW are listed below:

- Bund/walls to contain liquid. The heights of bund/walls given in Section 4.1 are the minimum heights required such that that top of the bund/wall is equal to the top water level plus a 250mm freeboard consideration for potential surge (to reflect the planned use of concrete walls with a recurved profile to return flow back on itself) in accordance with CIRIA. Containment ramps provide a barrier for the liquid on roads that still need to be accessible to vehicles for site operation. The maximum height of these will be 250-300mm to avoid issues with vehicle passage. The risk of spill at the ramps is mitigated by conveyance of the flow to site drainage and return to the head of the works.
- Local infill of grass/gravel to create an impermeable surface and facilitate containment and conveyance.
- Raised kerbs on roadways to channel spill to the remote containment area.
- All buildings within the containment and transfer areas must either have doors that lie above the top water levels detailed in Section 4.1 or any equipment inside must be raised off the ground to level above the top water level.

4.1 Containment Options

4.1.1 Containment Option 1 – wide area containment Approach

This option utilises containment surrounding the total containment permit area, providing secondary containment to the sludge processing facilities. The containment area is approximately 9825m² but the actual available containment area will be less than this as areas such as the tanks and sludge and dewatering buildings will not be included in the storage volume.

The containment volume has been checked against the 110 and 25% rule and the 25% rule applies.

The total design contained volume comprises 2883m³ (25% of the total volume of all tanks within the containment area which includes allowance for rainfall), LiDAR spill modelling calculated the top water level (TWL) when 2883m³ is contained in this area to be at 41.35AOD.

Summary of the recommended containment for Digestion area is described below and shown in Figure 4.1. For additional detail on the option refer to Appendix 3.

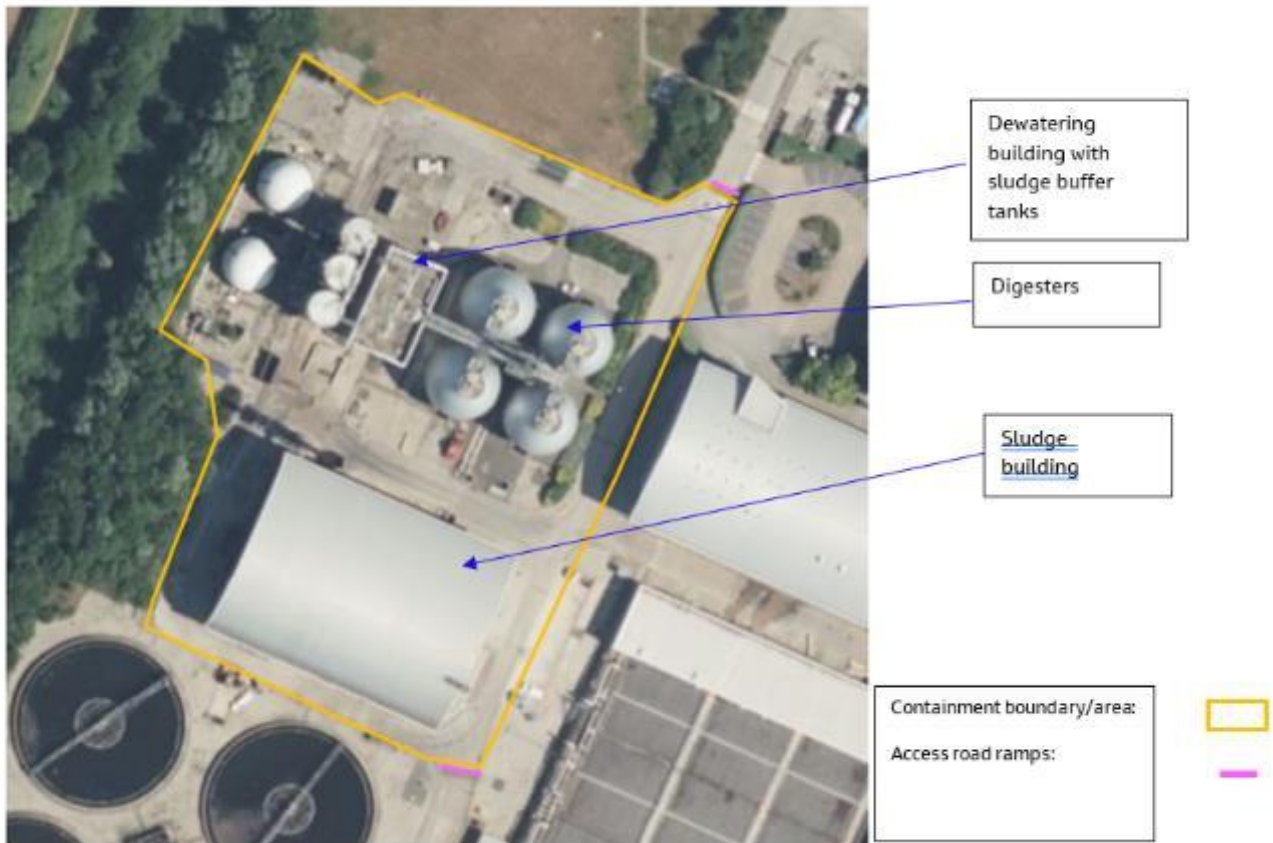


Figure 4.1 – Containment Option 1 – Wide area containment option

Bund will be utilised around containment boundary and ramps constructed across roads to enable vehicular access. Maximum height of ramps is 250mm and bunds between 500mm to 1000mm. All grass and gravel areas will be excavated and resurfaced with concrete (Figure 4.2) to mitigate seepage into the local ground and soil. This also aids cleaning procedures following a spill. There is the potential for some flow to overtop the access ramps during the conditions of the initial burst which is addressed by tertiary containment and conveyance to the site drainage system which discharges to the inlet works. The existing planted / grass within the containment area shall be removed and the area infilled with concrete.



Figure 4.2 – Planted area to be replaced with concrete

4.1.2 Containment Option 2

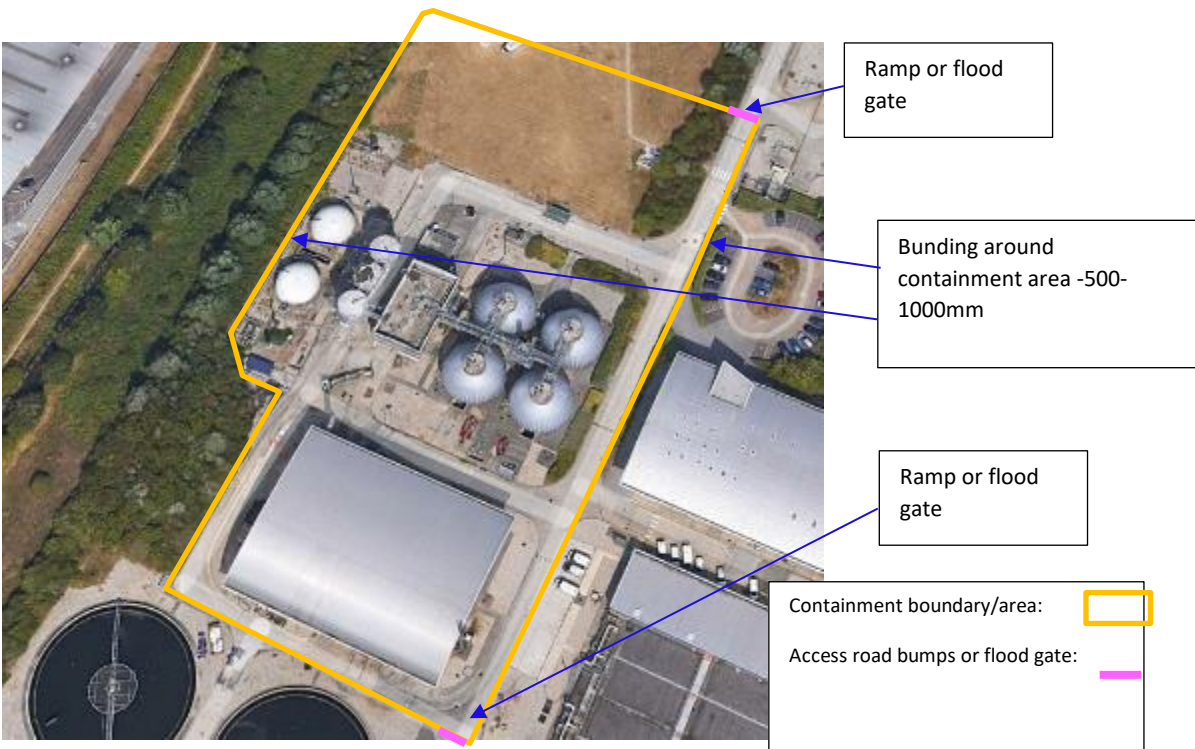


Figure 4.3 – Containment Option 2 – Wide area containment option

This option is similar to option 1 but with a larger containment area to utilise the open area to the north of the site (Figure 4.3).

Bunds will be utilised around containment boundary and ramps constructed across roads to enable vehicular access. Maximum height of ramps is 250mm and bunds 500- 1000mm. All grass and gravel areas (Figure 4.2) will be excavated and resurfaced with concrete to mitigate seepage into the local ground and soil. This also aids cleaning procedures following a spill. Any sludge that spills over the ramps will follow the road and end up in the site drainage and go back to the head of the works. The existing drainage network on site is pumped back to the head of the works, as per confirmation from TW Operations of Reading. The existing planting / grass area within the containment area shall be removed and the area infilled with concrete.

This option was discounted as Thames Water has confirmed the open area at the north of the proposed containment area has been ring fenced for future projects.

4.1.3 Tertiary Containment Option

Reading STW was constructed with a bund around the site, and this will be utilised to provide tertiary containment. The low spot on the site is around the site entrance (ref Figure 3.3) and the proposal is to install a ramp across the site 12m wide site access road.



Figure 4.4 – Road Ramp for tertiary containment

4.2 Mitigation of Site-Specific Risks

4.2.1 Jetting and Surge Flows

Due to the location of the tanks and their distance from the boundary of the containment area, there is no risk of contamination through jetting.

There is a low risk of jetting occurring as the majority of the digester tanks are concrete construction, for which catastrophic failure is deemed to be less of an issue. Failure is more likely to begin with major seeping from the tanks which would be spotted during routine site walkabout tours each day.

The natural topography of the site and the distance to the boundaries of the containment area results in a low risk of surge overwhelming the containment.

4.2.2 Flooding

According to the UK Government’s Flood Map for Planning, Reading STW is not within any potential flooding zone as shown in Figure 4.4 therefore, no modifications need to be made to Reading STW to accommodate this risk.

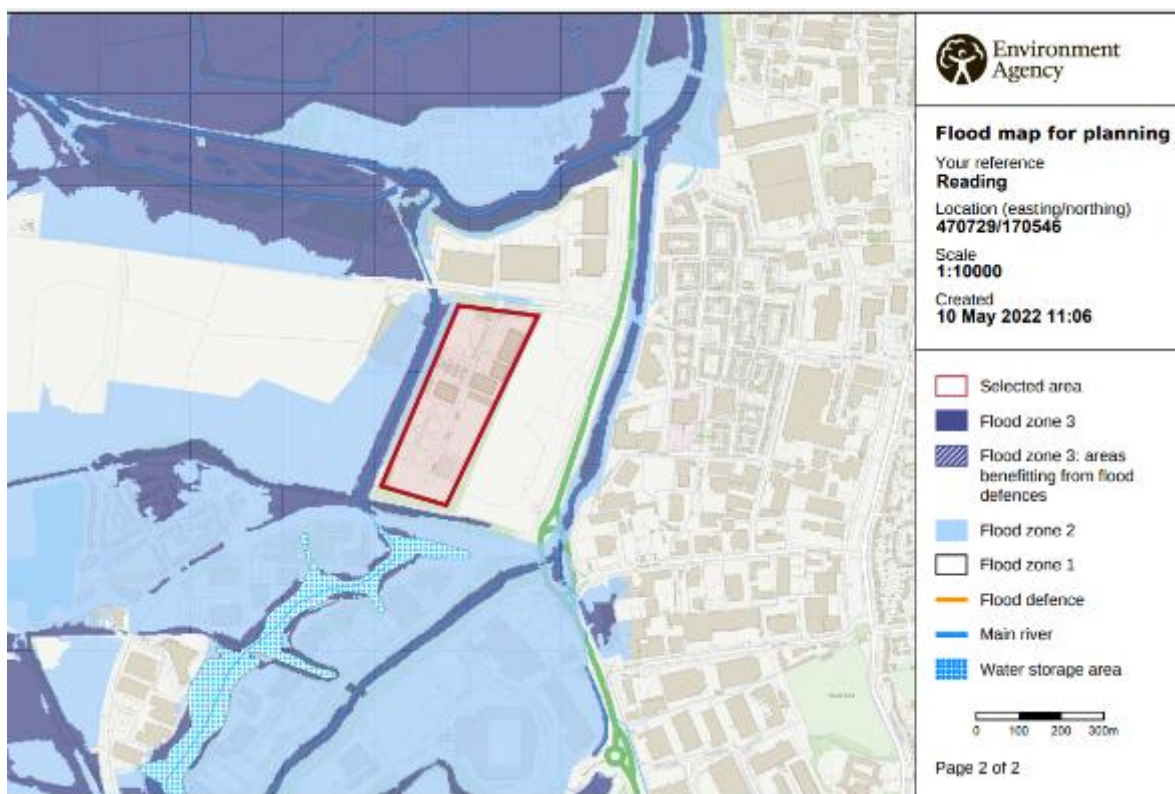


Figure 4.4 Extent of Fluvial flooding in Reading due to extreme weather events

4.3 Identification of Preferred Option

The preferred containment option is wide area containment option 1, constructing a low bund wall (500 - 1000mm high) around the wide containment area and constructing ramps at road crossings.

4.3.1 H&S and CDM risks

- Flood gates not suitable for areas of high traffic movement
- Cable ducts and fibre ducts act as conduit to transport sludge around site.

5. Site Drainage and liquor returns

5.1 Process flow diagram

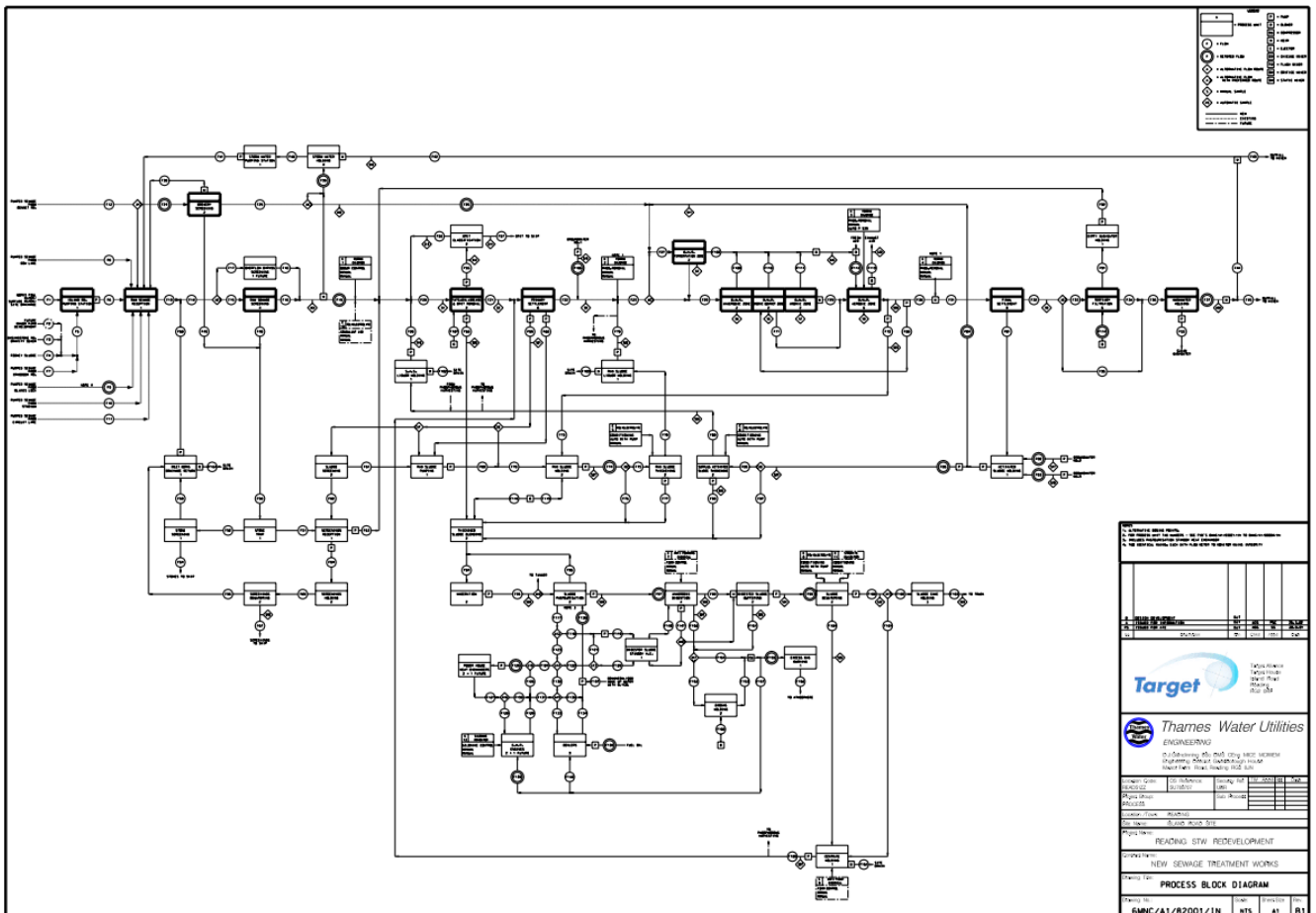


Figure 5.1 Process Flow Diagram

5.2 Foul, Process and Effluent Drainage

Site drainage assessments are based on Reading Sewage Works Layout Plan Drawing Numbers READS1ZZ-DPL-001

The Sewage Works Layout Plan for Reading shows all Foul/ Combined/ Process/ Effluent drainage pipes, indicated by green lines, go to the head of the works shown in Figure 5.3. In the event of sludge entering the head of the works, the shock load could adversely impact the sewage works treatment process. Therefore, in the event of a catastrophic loss of containment, this line should be isolated or pumping should be inhibited.

The surface water drains, shown as the orange lines, are also mixed with the process drains and go to the head of the works. As both systems combine, the surface water drains have been reviewed as part of this section.

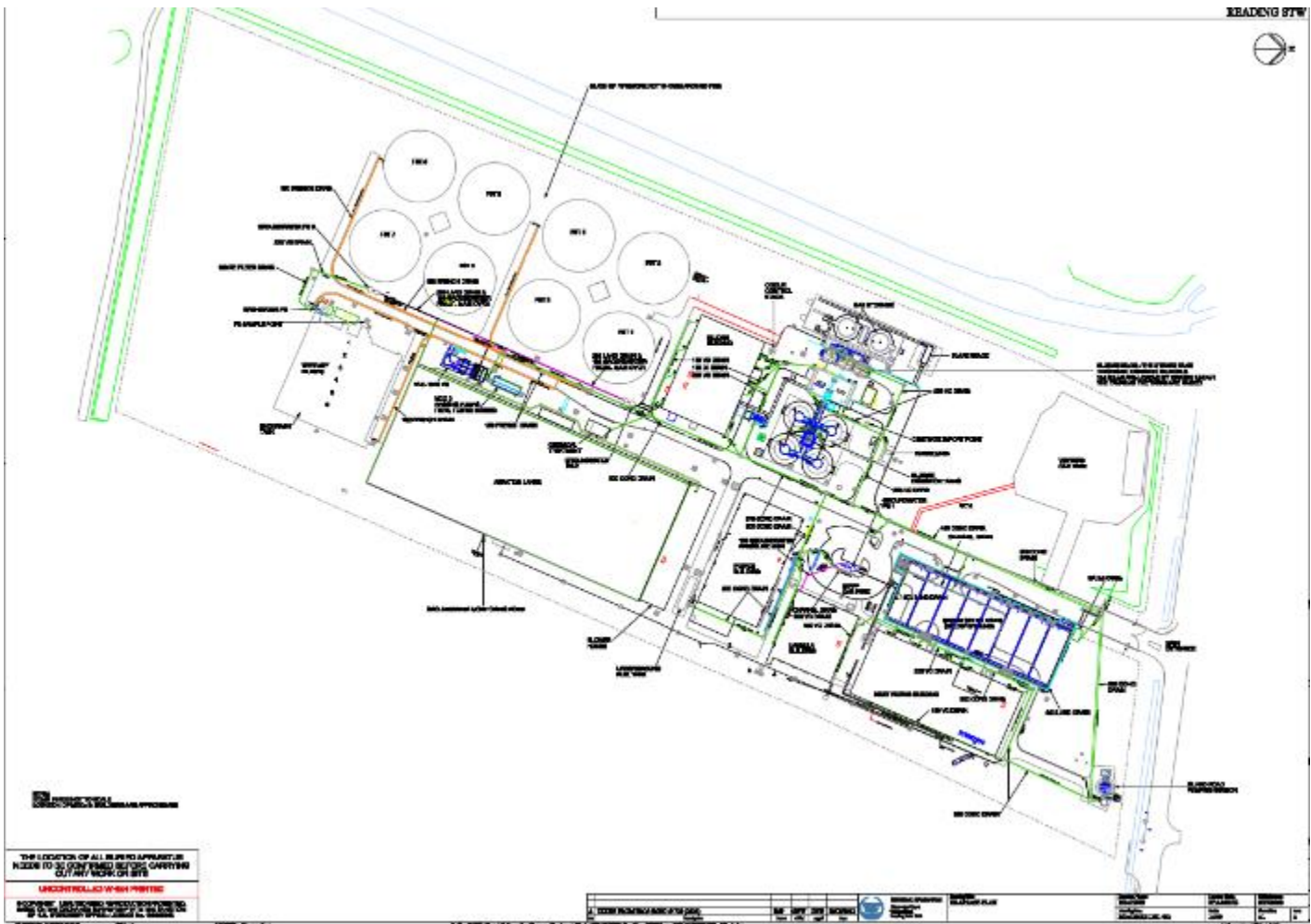


Figure 5.3 Drainage plans

5.3 Liquor Returns

The existing liquor return system is not being altered by the containment system, other than the control modifications proposed in 5.4.

Details of the liquor returns sampling are being developed outside of this report for incorporation within the permit submission.

5.4 Automatic Isolation Valves

For the catastrophic loss of containment scenarios for Digester area discussed, such a loss could be automatically detected by the level sensors in the tanks. A catastrophic failure would be identified by the rate of change in tank level being larger than expected at normal operation. The signal from the sensors would be used to automatically prevent any adverse impact on sewage treatment. There are two options for this;

- A. Level signal automatically isolates the at-risk pipes. This would prevent large flows of digestate from entering the drainage lines to the inlet channel or river. This option requires an automatically actuated isolation valve to be installed on each of these pipes.

- B. Level signal automatically inhibits sludge being returned back to the head of the i.e., allow catastrophic spillages to enter the inlet channel but prevent it from being pumped back to the head of the works. This option requires no hardware or infrastructure, only software modifications.

Option B is cheaper and easier to implement as it will use current equipment and require only software modifications only. However, operators on site should be consulted to further understand the surface water drainage system to explore any automatic isolation solutions that involve software modifications only.

The option of the level sensor signal from an abnormal rate of change triggering an alarm system for an operator has been considered. However, the response time, particularly for nights and weekends when operators may not be on site, was deemed too slow to manually close isolation vales in a timely manner to prevent pollution or sludge entering the head of the works having adverse consequences on its function. As such a separate level sensor to detect increasing level in the containment area will be provided.

Once the spillage has been stopped and contained, any sludge in the drainage system can be released back into the head of the work in a controlled manner therefore, not creating adverse effects at the inlet.

6. Conclusions

This section summarises the findings of the containment assessment options report for Reading Sewage Treatment Works.

In the Risk Identification Report for Reading a containment classification report was carried out. An overall site risk rating of Medium was determined meaning that class 2 containment is needed. The detailed requirements for class 2 containment have been outlined in the Risk Identification Report in section 3.3.

The assessment focuses on site-specific risks and outlines the options available for providing secondary containment of a catastrophic tank or digester failure.

The preferred option is option 1 – wide containment approach as outlined in section 4.1.1, to construct a 350m long bund wall (500 - 1000mm high) around the wide containment area. Containment ramps will be constructed across the road crossings. Tertiary containment to be provide by the existing site wide boundary bund and installation of a 250mm high ramp across the main site access road 12m length. In addition to the containment elements, isolation of the site drainage system linked to the containment area will be required to mitigate the risk of unmanaged flows impacting the sewage treatment works. Existing gravelled and grass areas within the containment will be replaced with concrete. Elements of the site roads will be replaced/repared to allow them to present an impermeable surface.

The results of the uncontained spill mapping show that a catastrophic spill will not be contained with the boundary.

The contained spill modelling retains the tank contents and associated rainfall within the site boundary and the flows can be managed by TW operations for return to treatment. Due to gradients across the site, water may pond to a depth of 300-500mm. The volume for containment is driven by the 25% rule.

Appendix 1 ABDA Site Hazard Risk assessment summary for Reading STW

ADBA Industry Guidance and CIRIA C736 state how the site hazard rating of the site risk and classification are to be calculated. A summary of the hazard risks for Reading STW are as follows:

Source – There are two sources that have been identified:

1. Domestic and trade effluent Wastewater sludges, both in a raw, semi treated and treated state.
2. Polyelectrolyte chemicals for sludge thickening.

The Source Hazard rating was determined as High.

Pathway – There are three pathways that have been identified:

1. The process and site drains take any liquid to the head of the works which would negatively impact the process stability on site and would eventually impact on the receiving watercourse.
2. There are several areas where a sludge spill could pass over permeable ground.
3. The river Kennet and Foudry Brook to the north and east can impact downstream.

The site inventory has a runoff time of 15 minutes if unconstrained.

Consequently, the Pathway Hazard rating was determined as High.

Receptor – There are several potential receptors which have been identified:

1. The site drainage system and the head of the works.
2. There is a “Medium-High” groundwater vulnerability in this location.
3. The River Kennet and its stream to the north and west of the site, at a lower elevation and Foundry Brook to the east, also at a lower elevation.
4. The A33 to the east at a lower elevation.
5. The Hilton hotel (commercial) and Kennet Island Housing (residential) across the A33.
6. The Amazon and DHL warehouse immediately north of the site.

The Receptor Hazard rating was determined as High.

Likelihood – For the purpose of this assessment the likelihood for mitigated and unmitigated risks was calculated based on the assumption that the likelihood hazard rating is low.

Pre-mitigation measures, operational failures were highlighted as a high risk, shortfalls in design (provision of alarms and monitoring) together with structural failure were highlighted as a medium risk.

Post-mitigation measures operational failures were re-scored as a low risk. Therefore, the final Likelihood Hazard rating was determined as low.

Based on the information above the overall site risk rating was calculated to be medium which means that Class 2 secondary containment is required.

Appendix 2 Tank Covering initial review

There are no open top tanks within the permit boundary at Reading STC.

Appendix 3 - Costings of preferred option

F909A: Capital Inputs

Study Estimating Template

Programme:

Study Name:

Study Ref:

Option Description:

Solution no

Total Capex (All-in Excl. DPG)

Complexity Factor

Overhead Factor

Confidence

Total Embodied Carbon tCO2e

WWNI Strategic STWs > 10k PE
Reading
0
Industrial Emissions Directive (IED's)
0
£ 379,307.88
40.7%
0.0%
> 35 - 50% Medium
219.32

Code: OTH-RISK

Code: OTH-OVERHEADS

Use for Presenting

TOTAL CAPEX COST (All-in Cost Excl. D&PG)	
£	533,776.10

£	154,468.23
---	------------

£	-
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Containment Area	Total Wall/Bund Lengths (m)	Wall/Bund Height (mm)	Ramps*
Secondary containment	350	500	
Additional Items	Location in containment area	Width (m)	Height (mm)
Concrete Ramp	North of containment area	5	250
Concrete Ramp	South of containment area	5	250
Concrete Ramp	Tertiary containment	12	250
Excavation/Infill	Area (m ²)	Depth (mm)	Volume (m ³)
Soil	360	300	11m ³
Concrete infill	360	300	11m ³



J840 – STC IED Containment
Reading STC – Containment Options Report
May 2023

Thames Water

Project No: J840
 Document Title: Reading STC – Containment Options Report

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 Project Manager: Harindra Gunasinghe
 Author: Maria Hernandez
 File Name: B22849AZ Reading STC – Containment Options Report

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Document history and status

Revision	Date	Description	Author	Checked	Reviewed	Approved
1.0	30/06/22	First Issue	JH	SMNS	SC	HG
2.0	08/07/2022	Submission to EA	JH	SMNS	SC	HG
3.0	30/03/2023	Updated following comments from EA	KG	SMNS	SC	HG
4.0	30/03/2023	Permitted IED Boundary Plan in Figure iv updated	KG	SMNS	SC	HG
5.0	18/5/2023	PFD updated	KG	SMNS	SC	HG
6.0	25/05/2023	PFD updated	MH	KG	SC	HG

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1. Executive Summary

Thames Water is required by the Environment Agency to provide secondary containment to their sludge treatment centres to satisfy provisions of the Industrial Emissions Directive and to safeguard the operation of the adjacent Sewage Treatment Works (STW) and any neighbouring receptor. Twenty-five Sludge Treatment Centres (STC) have been identified where containment proposals are required. This report deals with the proposals for Reading.

Reading STW serves a population equivalent of 264,000 taking in sewage from Reading and surrounding area. The sludge treatment centre shares the same site as the sewage treatment works.

CIRIA Report 736 – Containment systems for the prevention of pollution sets out principles and direction. This report sets out options to apply the CIRIA 736 principles within the accepted constraints of a retrofitted solution.

Reading STW holds some 11,660m³ of liquid within the sludge treatment centre. The liquid sludge is stored in 14 tanks with individual volumes varying between 15 to 1775m³, refer to section 3.4.1 for details of the tanks and volumes, the majority of the tanks are concrete. The site is generally low lying and flat. The containment volume of 2915m³ is driven by the 25% rule (25% of total tank volumes) rather than 110% (of the largest single tank) of the total tanks volume. The STW when constructed in early 2000's with a bund around the STW and this will act as tertiary containment.

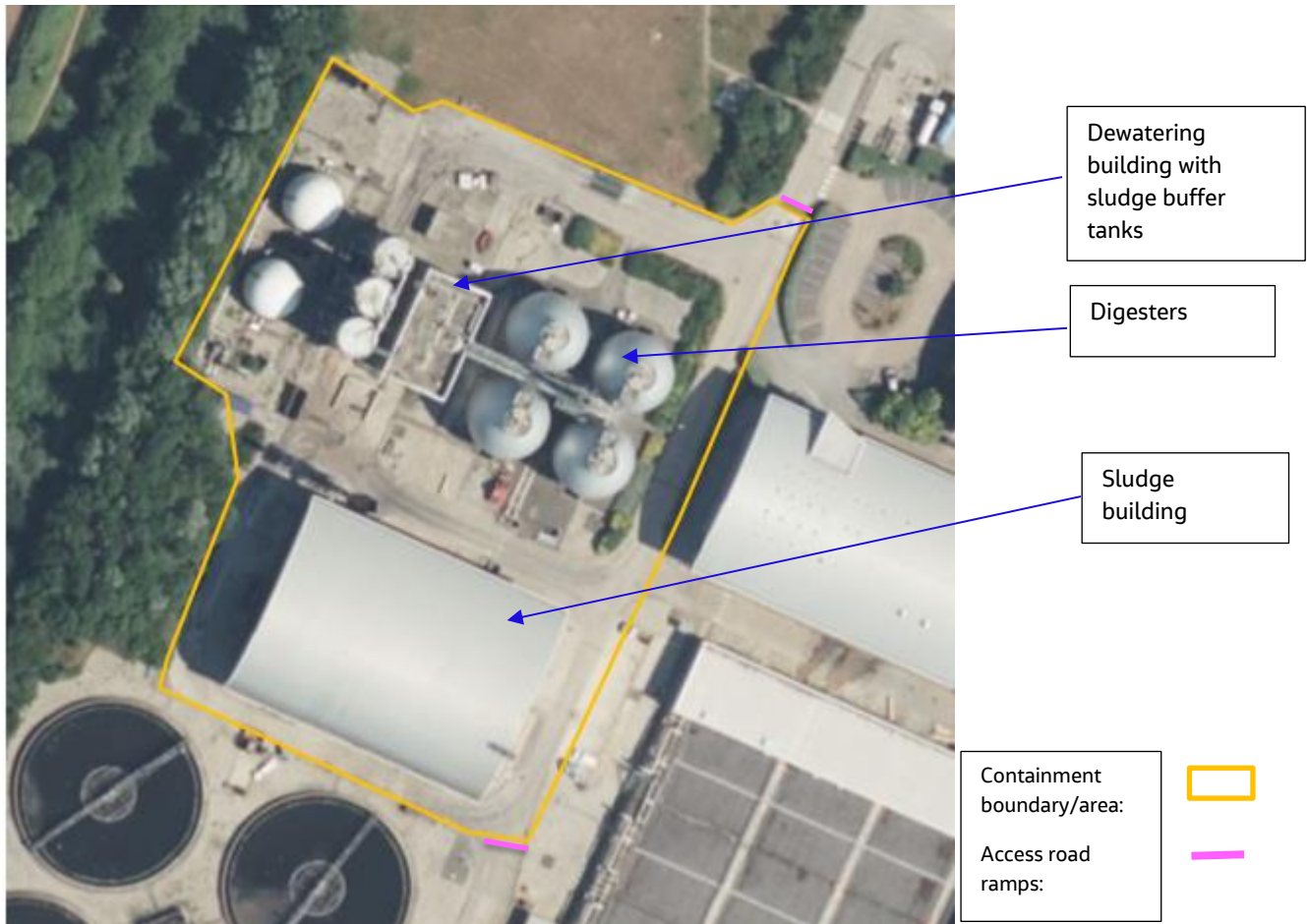
Two wide area options for containment have been identified and reviewed with Operations to confirm that the working of the sewage treatment work is not compromised by proposals, for details of the options refer to section 4.1 and section 4.3 for preferred option:

1. Wide area containment whereby the sludge tanks are contained within a bunded boundary with sufficient area to generate depth that does not deny emergency access to equipment when the spill has been contained.
2. Increased the wide area containment area utilising the available land on site, whereby the sludge tanks are contained within a bunded boundary with sufficient area to generate shallow depth that does not deny emergency access to equipment when the spill has been contained.

In addition to the creation of bunds, which due to space constraints are likely to be formed from concrete, existing grass or gravelled areas will be replaced with a bound impermeable material (high cement replacement concrete) to provide a surface that can be cleared of sludge to meet a 3-4 day recovery period. Vehicular access into the containment areas is by ramps (speed humps) restricted to nom 250-300mm in height; traffic movements on site make the use of permanent flood gates impracticable. Whilst the site is identified as requiring Class 2 containment (impermeable soil with a liner), the proposed solution is intending to concrete (with no liner) on the basis of the impermeability of the concrete, inherent strength and long-term mechanical resistance.

Bund heights are being set to provide freeboard considering both static conditions when the containment has been filled and during the transient condition at initial failure. There is the potential for some flow to overtop the access ramps during the conditions of the initial burst which is addressed by tertiary containment and conveyance to the site drainage system which discharges to the inlet works.

General layout of proposed Option



The modelling highlights that the design detailing may need to consider flood gates instead of ramps to access the containment area due to the standing depth of the sludge and height of the containment walls. The other consideration is any spill over the ramps will be contained onsite by the sites boundary bunds tertiary containment and conveyance to the site drainage network which discharges back to the head of works.

Grassed and gravel areas within the yellow area to be replaced by concrete. Some of the concrete roads in the yellow area may need to be replaced/repared to enable them to be impermeable.

2. Background

Following initial audits by the Environment Agency (EA) in 2019 that examined the primary, secondary, and tertiary containment provisions for Thames Water's anaerobic digestion (AD) process and associated tanks, the EA reported "*there is no provision of secondary containment for the AD process at any of Thames Water's sites*". Jacobs were appointed to assess site risks and outline the options available for providing remote secondary containment of a catastrophic tank or digester failure across 25 Thames Water sites. Based on CIRIA C736 and ABDA risk assessment tools this containment report addresses the site-specific risks at Reading STW and outlines the options available for providing remote secondary containment in the event of a catastrophic tank or digester failure.

The current assessment identified gaps between the existing conditions of the sludge assets in Reading STW and the requirements to meet the industrial standard (i.e., CIRIA C736 and The Anaerobic Digestion and Bioresources Association Limited (ADBA)). Site-specific risks, credible failure scenario and design containment volume for the Reading STW were identified through a desktop study, Light Detection and Ranging Analysis (LiDAR) analysis and a site visit.

Reading Sewage Treatment Works (STW) (Figures i-iv) is located south of the town of Reading, close to the A33 which links the town with the M4 motorway. To the south of the site, separated by a dual carriageway road, is the Green Park business park which consists of a few commercial office properties. To the west and south is agricultural land and to the west and north is a local council household waste and recycling centre, closed landfill, and local council waste transfer station. To the north is commercial properties consisting of large warehouse type premises. Immediately to the east of the site is derelict land and then the A33. The STW serves a population equivalent of 264,000 taking in sewage from Reading and surrounding area.

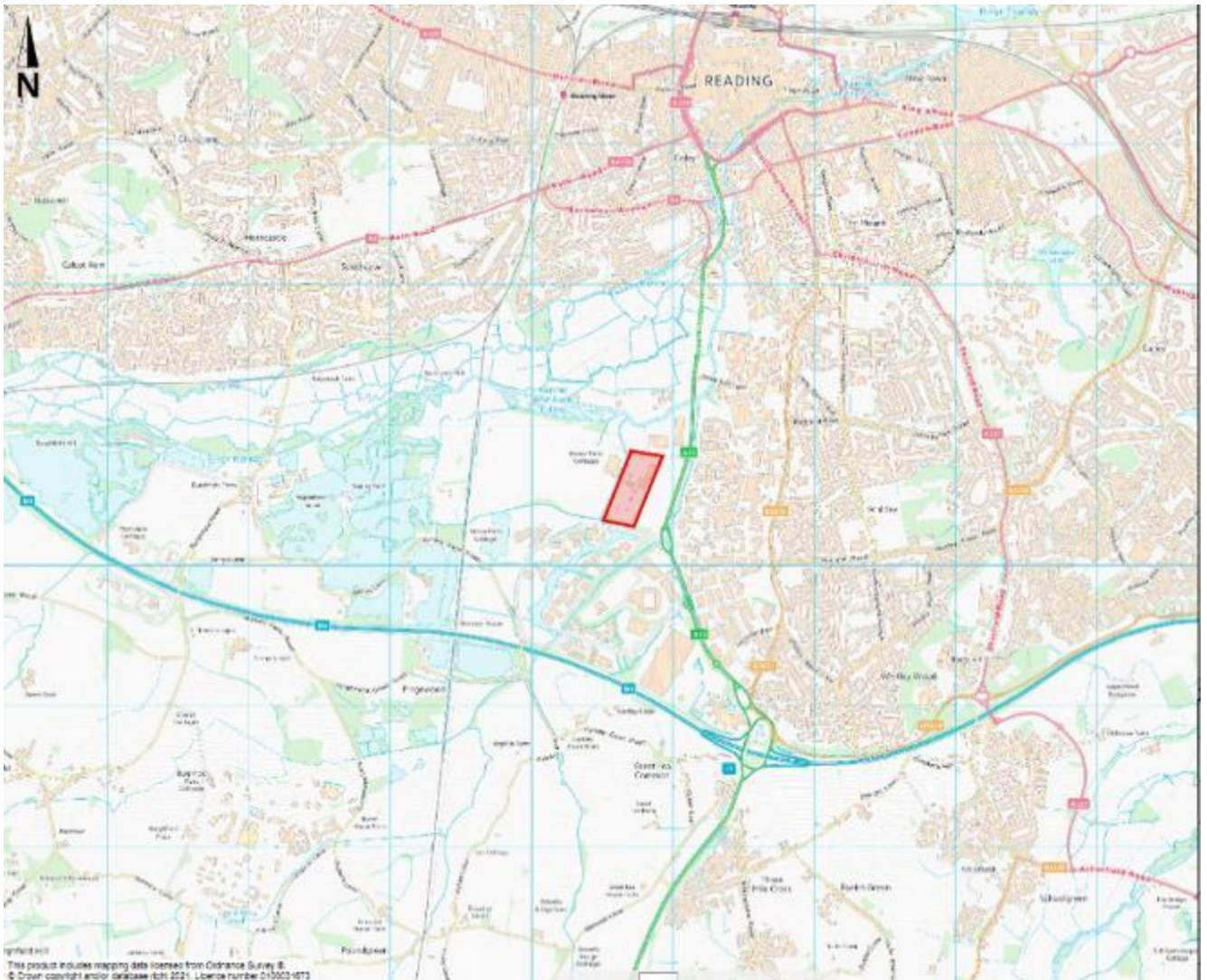


Figure i Location Plan Reading Sewage Treatment Works



Figure ii Satellite view of Reading Sewage Treatment Works

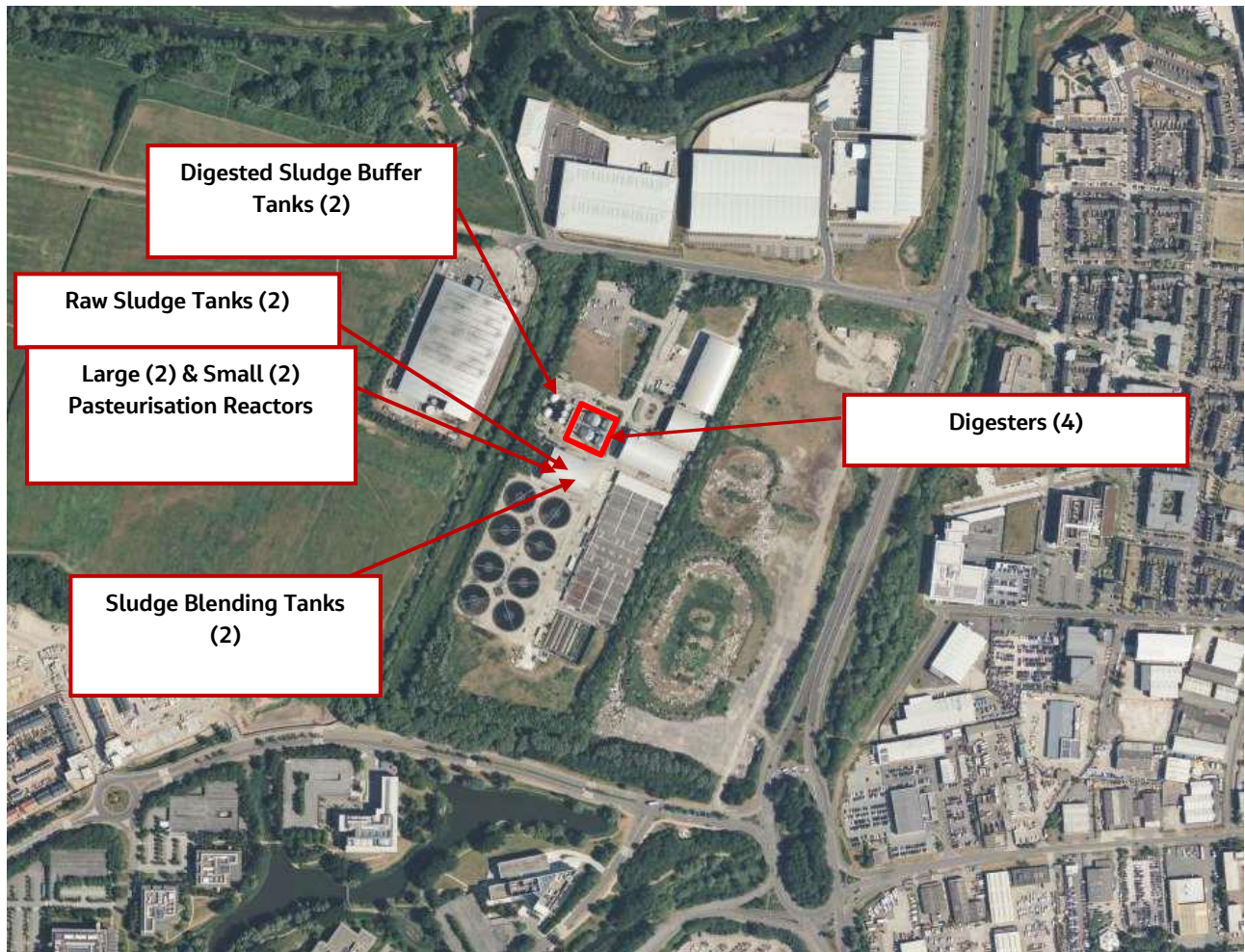


Figure iii Reading Sewage Treatment Works – Digester Area plan

This document should be read in conjunction with; Reading STW, Risk Identification and Containment Assessment Report, revision OA dated 09/05/2022. This report outlines the impact of an uncontained spill and the risk assessment completed.

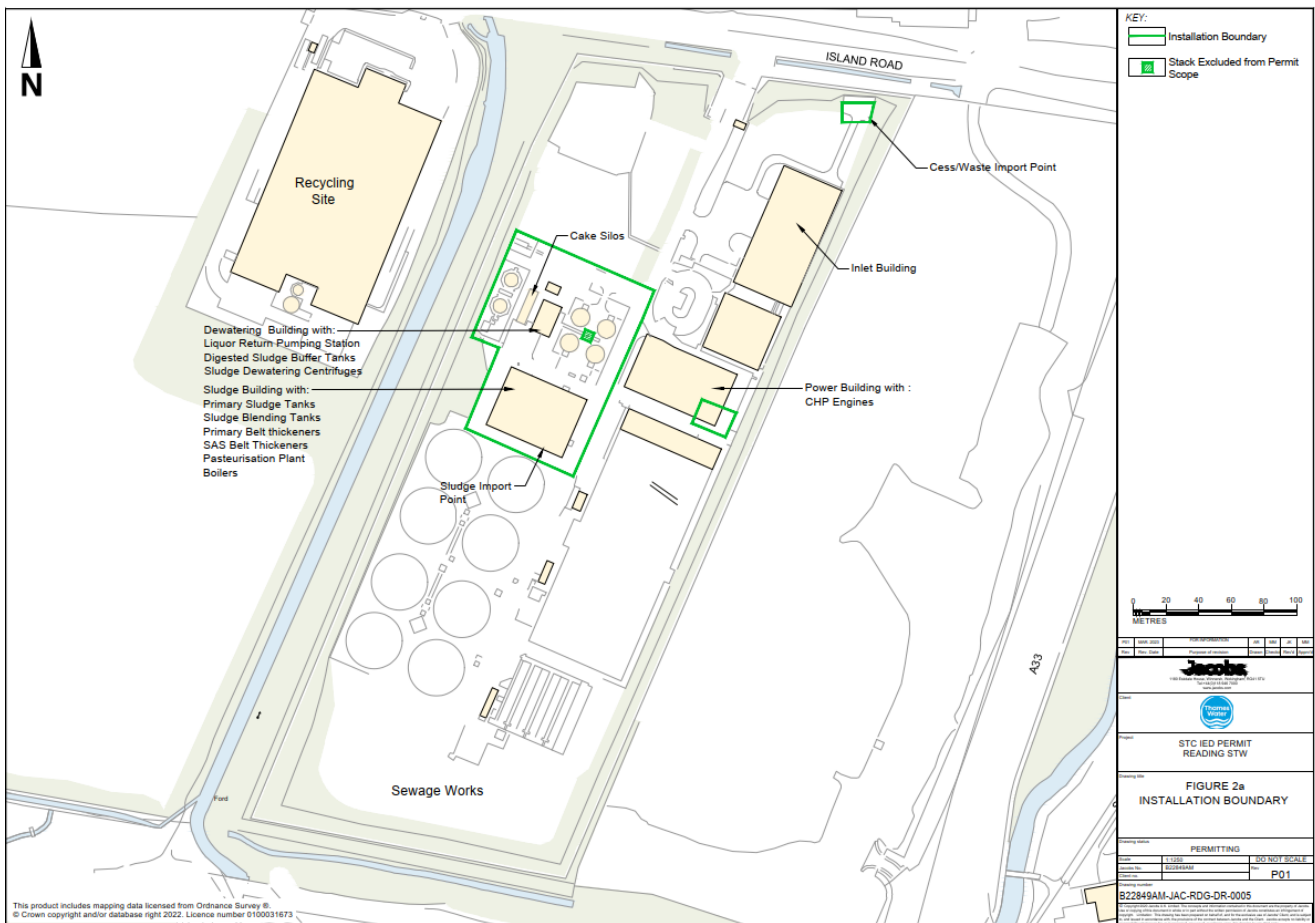


Figure iv Boundary of the permitted IED area and the assets contained within Reading STW.

This document has been developed from Reading STW, Risk Identification and Containment Assessment Report, which outlines the impact of an uncontained spill and the risk assessment completed.

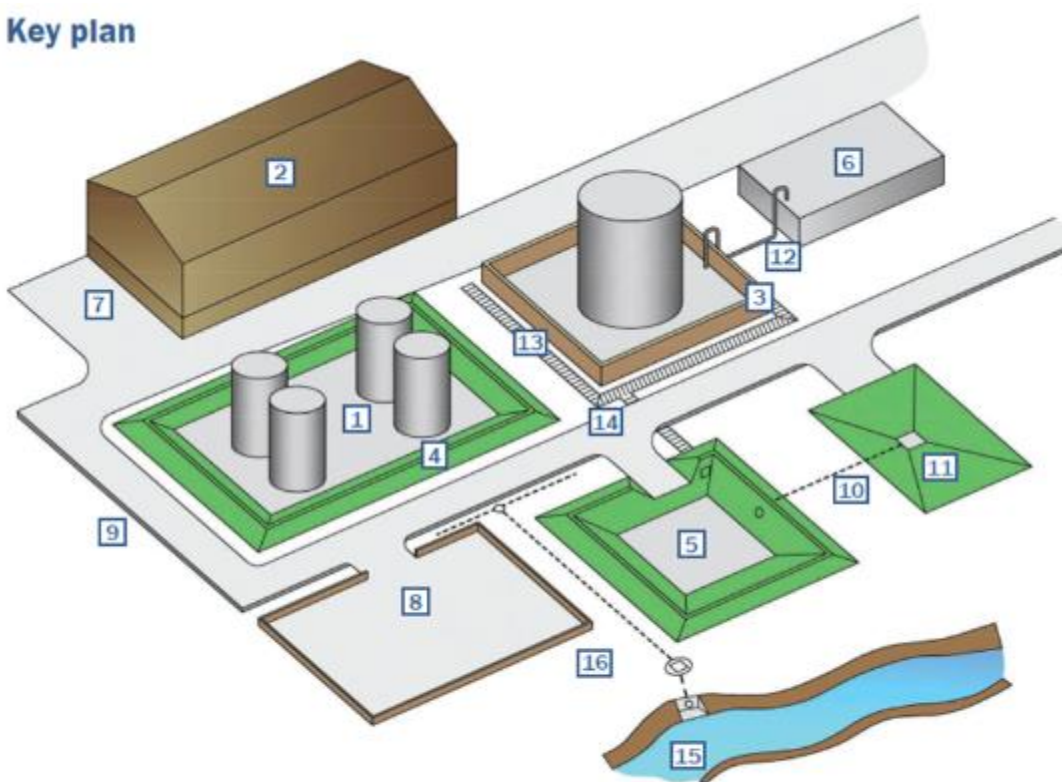
3. Proposed Containment at Reading STW

3.1 CIRIA C736

This containment option report has been prepared using CIRIA C736 as the basis of design and guidelines. Where a deviation from C736 has been recommended it is highlighted in the text.

CIRIA guidance document C736 (*Containment systems for the prevention of pollution – Secondary, tertiary, and other measures for industrial and commercial premises, 2014*) describes various options for containment of spillages from a credible failure scenario. It makes reference to a key plan, reproduced below;

Key plan



viii

CIRIA, C736

Figure 3.3-1 Diagram of primary, secondary and tertiary containment examples

-**Primary containment** is provided by the actual tank or vessel [1]

-**Secondary containment** is provided by a bund immediately surrounding the primary vessel e.g. [3] and [4], or by a lagoon [5] or tank [6]. If containment is provided away from the primary vessels this is known as **remote containment** and may be considered as either **remote secondary** or **tertiary containment**.

-**Tertiary containment** can be provided by a number of means including lagoons [5], or impermeable areas such as car parks [8]. Roadways with high kerbing of sufficient height [9] can also form part of a tertiary containment system, or the **transfer system** to the remote containment.

The distinction between *remote secondary* and *tertiary* containment is not always clear but, if properly designed, a combined system can be provided that is capable of providing the necessary degree of environmental protection. The overriding concern is not the terminology but the robustness and reliability of the system which depends on a number of factors such as;

- Its complexity – the more there is to go wrong, the greater the risk. Passive systems relying solely on gravity are more reliable than pumped.
- Whether manual intervention is relied on to make the system work or whether the system can be automated to include fail-safes and interlocks.
- The ease of maintenance and monitoring of the system's integrity, and repair of any defects.

During and after an incident any rainfall runoff from the remote secondary storage areas, from the spillage catchment areas and from the transfer systems must also be prevented from reaching any outfall(s) to surface water by closure of control valve(s).

3.2 Objectives of remote secondary containment

The objectives of the remote secondary containment measures proposed in this report are to safely contain spillages from credible failure scenarios and prevent them from:

- escaping off site
- entering surface waters
- percolating into groundwater
- being pumped back to the inlet of the sewage works in an uncontrolled manner.

The remote secondary containment will be provided by maximising the use of existing impermeable surfaced areas to provide a fail-safe passive system that relies on gravity rather than pumps. A means of leak detection that will automatically trigger isolation valves at key locations in the drainage system is also proposed.

3.2.1 Uncontained Spill modelling

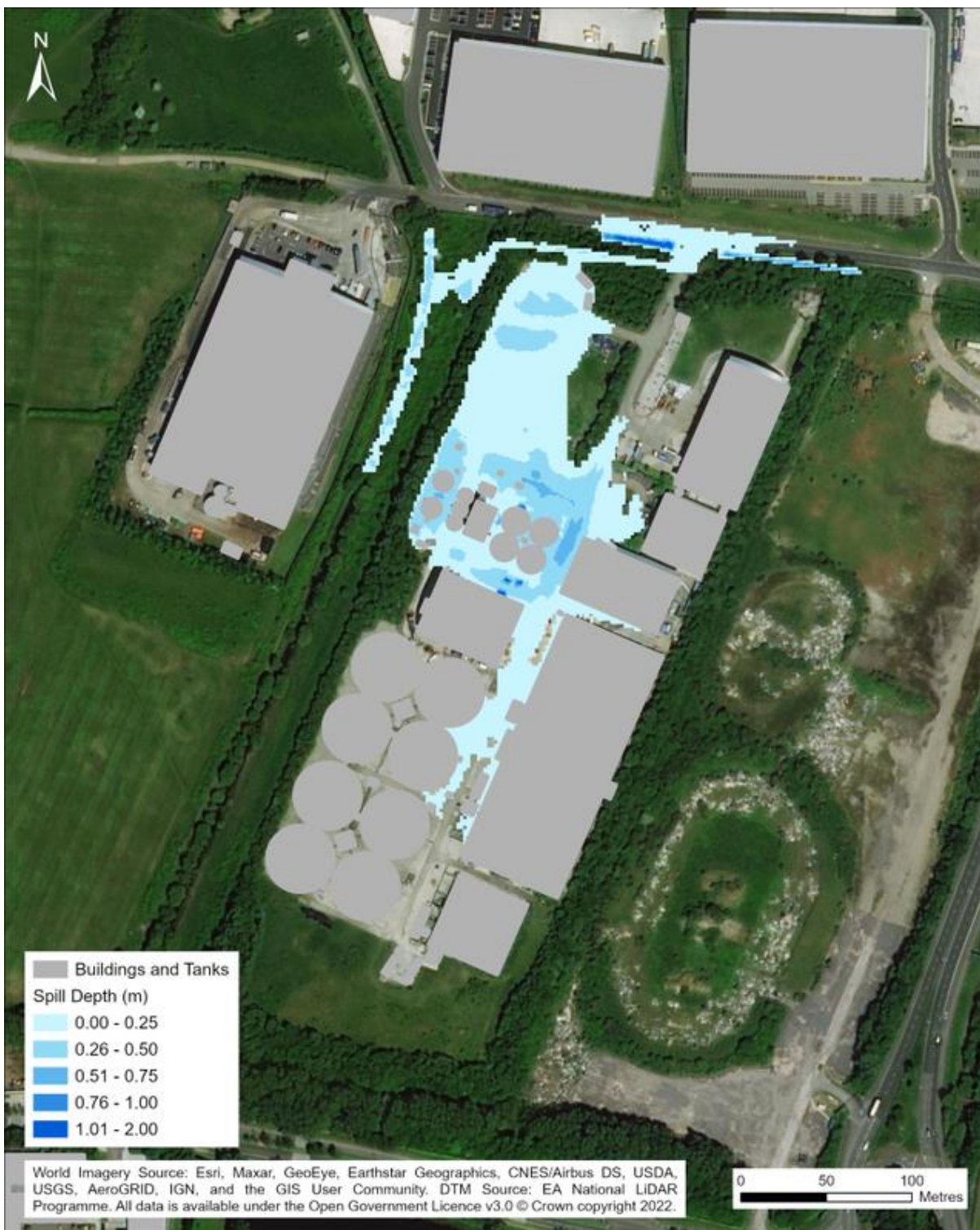


Figure 3.2 Uncontained Spill Model Results

As seen from Figure 3.2 the sludge spill mapping of an uncontained event in Reading STW showed that the potential sludge spill from one of the Digesters will not be self-contained within the site and therefore passive containment needs to be implemented to safeguard the nearby receptors. According to the model the spill will leave the site boundary (the northwest site boundary) in approximately 15 minutes following failure of one of the digesters.

The sludge content will initially spread within the sludge and digester area including the Dewatering and Sludge Buildings and the Power building containing the Combined Heat and Power engines. It is expected that the flow will further travel north bound and overflow the site's carpark space with some sludge partially spilling over to adjacent grassland next to RE3 Waste Management Site, northwest of the site boundary. Most of the sludge will then spread to the road entering the site and will eventually spill onto Island Road, north of the site boundary which could potentially prevent access to the nearby Amazon and DHL warehouses. The spill will also travel south of the digesters within the STW; however, this run-off will not spill over the southern site boundary and therefore will be contained within the southern side of the Reading STW.

3.3 Site Classification Reading

Based on the use of the ABDA risk assessment, considering the source, pathway and receptor risk, Reading site hazard rating is deemed to be High. When considering the mitigated likelihood as low a Class 2 secondary containment is required.

Source Risk	Pathway Risk	Receptor Risk	Site Hazard Rating	Likelihood	Overall Site Risk Rating
High	High	High	High	Low	Medium (Class 2)

Refer to Appendix 1 for summary of the ABDA risk assessment tool.

3.3.1 Spill Volume Summary

There are two components that contribute to the required capacity of secondary containment, the source spill volume requiring containment and rainfall. Section 4 of CIRIA 736 forms the basis of this assessment. Section 4.2 reviews current industry practice relating to source spill volume, section 4.2.8 then summarises current industry practice relating to source spill volume in a tabular form. This document has been developed from Reading STW, Risk Identification and Containment Assessment Report, which outlines the impact of an uncontained spill and the risk assessment completed.

Within Section 4.2.1, there is detailed reference to the use of 110% of the largest tank or 25% of the total tank inventory volume, whichever is greater, and the rationale for this. CIRIA recognises that this approach is not quantitative or based on a risk assessment and are arbitrary methods. Section 4.3 and 4.4 provide guidance on a quantitative risk assessment methodology and this is what is being used for the calculation of the required capacity for containment in this report.

3.3.2 Total Spill Volumes

The containment volume has been checked against the 110 and 25% rule and the 25% rule applies.

The total design contained volume is 2915m³ (25% of the total volume of all tanks (11660m³) within the containment area), compared to largest single tank failure of 1,775m³ and total rainfall 683 m³ rainfall from Flood estimating handbook over catchment area, which gives a lesser volume of 2458m³.

3.4 Reading STW Summary of Containment volumes and assets

3.4.1 Assets for Containment

The tanks for which containment is required are summarised below:

Tanks within containment area	No. of tanks	Effective Volume per Tank (m3)	Total Effective Volume (m3)
Raw sludge tanks	2	1200	2400
Sludge blending tanks	2	500	1000
Small Pasteur reactor	2	30	60
Large Pasteur reactor	2	100	200
Digesters	4	1775	7100
Digested buffer tanks	2	450	900
Total	14	-	11660
Rainfall (mm)			69.55
Catchment Area (m ²)			9825
Total Rainfall (m³)			683
Largest Tank plus Rainfall (m ³)			2458
110% of Largest Tank (m ³)			1953
25% of all tanks within containment area (m ³)			2915
Design Spill Volume (m³)			2915

3.4.2 Digital Terrain Model

The terrain model (Figure 3.3) shows that Reading STW was constructed to have an internal bund around the site, with the only low spot is at the entrance to the site.

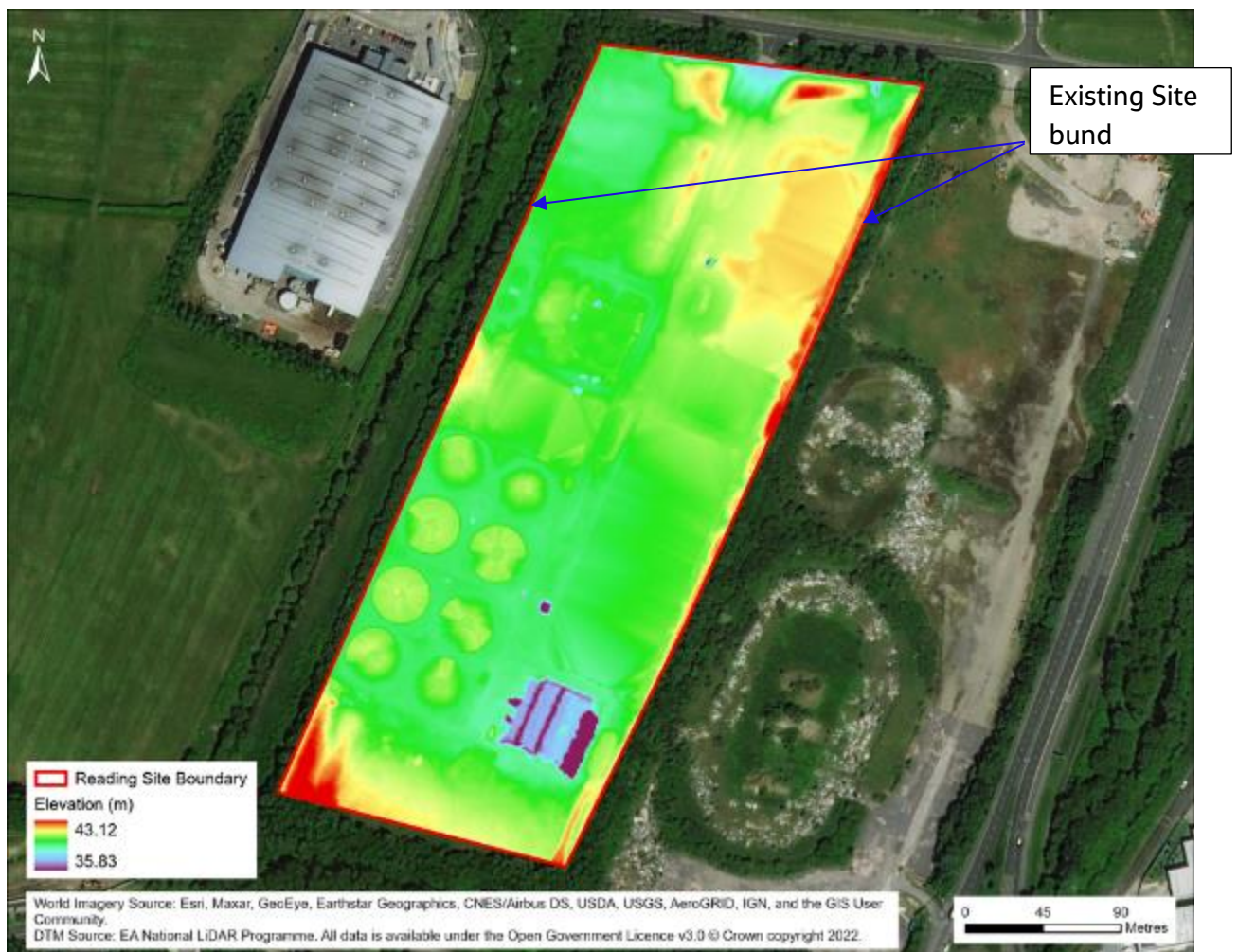


Figure 3.3 Digital Terrain Model of Reading Sewage Treatment Works

The contained model output is shown in Figure 3.4. This identifies the flow will be contained at a fairly uniform depth across the site. The containment model shows that for 100% volume loss the top water level will settle at 41.36m A.O.D. Therefore, allowing for 250mm freeboard on the bund wall the bund height will vary between 0.5 – 1m with the higher bund wall along the northern and eastern sides of the containment area.

Figure 3.5 shows the contour plot for the containment area. Some of the potential depths at the northern limit of the containment area are in excess of that which ramps can hold. Final design development of the bunded area will consider the provision of floodgates instead of ramps.

3.4.3 Contained Model

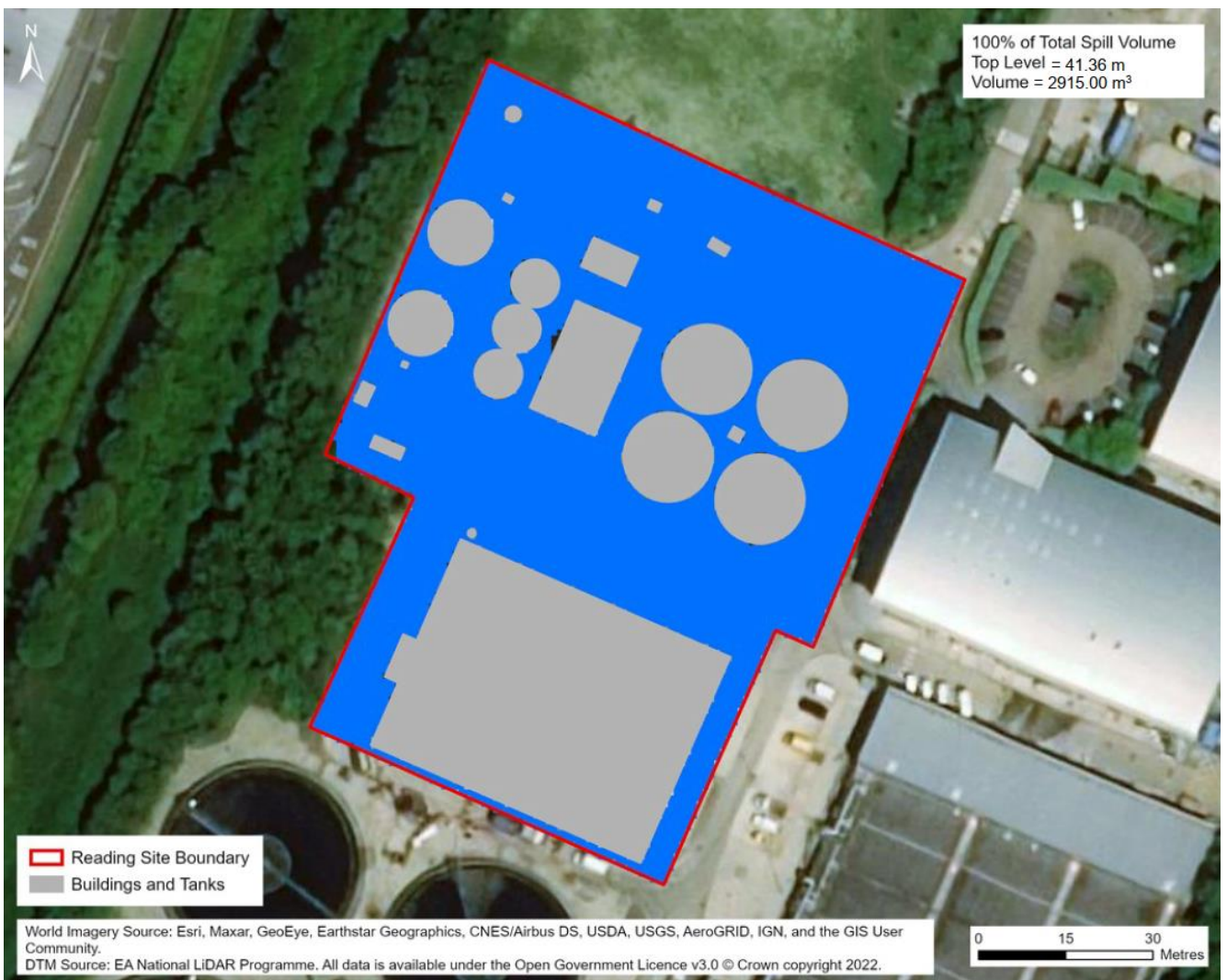


Figure 3.4 Containment spill model



Figure 3.5 contour map of the contained area

3.5 Identified Constraints

3.5.1 Operational constraints

The existing ground surfaces are mainly grass and gravel and this will need to be replaced with impermeable surface e.g. concrete from which sludge can be cleared up easily.

TW operations have stated that it would be difficult to clean up sludge from gravel areas as the gravel would also be sucked up with the sludge.

The time to recovery and return site back to operation has been set at 3-4 days following direction by Thames Water. The containment volume, when not dictated by the 110% or 25% containment rules allows for three days of rain during the recovery period and one day of rain immediately preceding an event.

3.5.2 Geotechnical and Environmental constraints

Ground conditions need to be considered during excavating and backfilling activities.

Regarding the construction works, there are no significant environmental constraints as these will all be completed within a Thames Water site.

The existing shrubbery within the containment area shall be removed and area infilled with concrete. To compensate for the loss of shrubbery, alternative areas shall be identified onsite for compensation planting or planting containers installed onsite.

3.5.3 Other constraints

None identified

3.6 Design allowance for rainfall

The containment volume, when not dictated by the 10% or 25% containment rules includes an extra allowance for rainfall that may accumulate within the contained area before and after an incident has been made. The CIRIA guidance recommends that the containment volume should include an allowance for the total rainfall accumulated in response to a 1 in 10-year return period events for the 24 hours preceding an incident and for an eight-day period following an incident or other time period as dictated by site specific assessment. Thames Water has indicated that the clean-up and return to operation is feasible in 3 to 4 days. Therefore, a three-day period following an incident has been allowed for in the design allowance for rainfall following the incident. The arising average rainfall depths for a 1 in 10-year storm over the event period for Reading is 69.55mm. It should be noted that the rainfall depths for Reading have been estimated using the depth-duration-frequency rainfall model contained on the *Flood Estimation Handbook* (FEH), which provides location specific rainfall totals for given durations and return periods.

4. Secondary Containment

The constituent parts of secondary containment are:

- The contained area itself.
- The transfer system.
- Isolation of the drainage from both the contained area and from the transfer system.

For Reading, where possible, existing features of the site (e.g., building structures and impermeable surfaces) are used as much as possible to provide the remote secondary containment to reduce cost. The options considered, modifications and their functionality at Reading STW are listed below:

- Bund/walls to contain liquid. The heights of bund/walls given in Section 4.1 are the minimum heights required such that that top of the bund/wall is equal to the top water level plus a 250mm freeboard consideration for potential surge (to reflect the planned use of concrete walls with a recurved profile to return flow back on itself) in accordance with CIRIA. Containment ramps provide a barrier for the liquid on roads that still need to be accessible to vehicles for site operation. The maximum height of these will be 250-300mm to avoid issues with vehicle passage. The risk of spill at the ramps is mitigated by conveyance of the flow to site drainage and return to the head of the works.
- Local infill of grass/gravel to create an impermeable surface and facilitate containment and conveyance.
- Raised kerbs on roadways to channel spill to the remote containment area.
- All buildings within the containment and transfer areas must either have doors that lie above the top water levels detailed in Section 4.1 or any equipment inside must be raised off the ground to level above the top water level.

4.1 Containment Options

4.1.1 Containment Option 1 – wide area containment Approach

This option utilises containment surrounding the total containment permit area, providing secondary containment to the sludge processing facilities. The containment area is approximately 9825m² but the actual available containment area will be less than this as areas such as the tanks and sludge and dewatering buildings will not be included in the storage volume.

The containment volume has been checked against the 110 and 25% rule and the 25% rule applies.

The total design contained volume comprises 2915m³ (25% of the total volume of all tanks within the containment area), LiDAR spill modelling calculated the top water level (TWL) when 2915m³ is contained in this area to be at 41.36AOD.

Summary of the recommended containment for Digestion area is described below and shown in Figure 4.1.

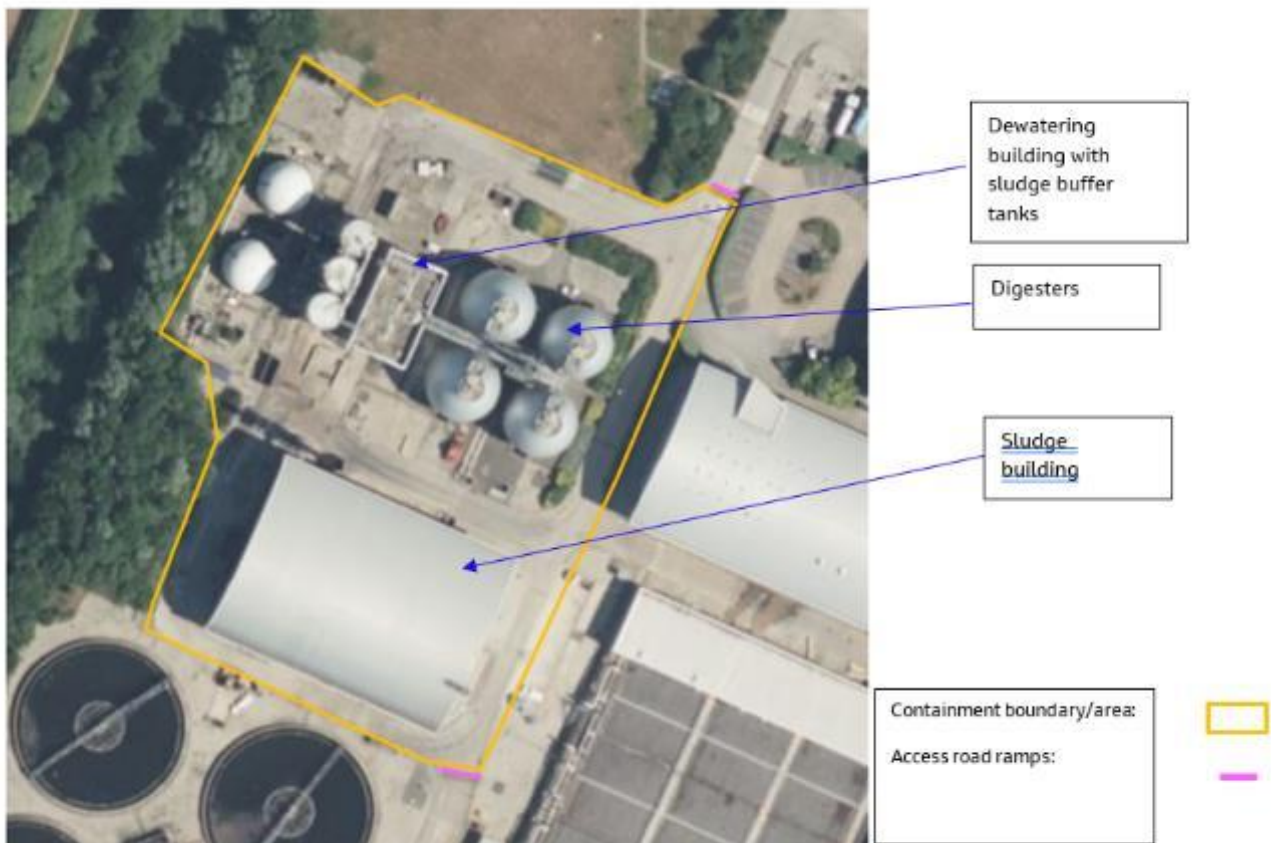


Figure 4.1 – Containment Option 1 – Wide area containment option

Bunds will be utilised around containment boundary and ramps constructed across roads to enable vehicular access. Maximum height of ramps is 300mm and bunds between 500mm to 1000mm. All grass and gravel areas will be excavated and resurfaced with concrete (Figure 4.2) to mitigate seepage into the local ground and soil. This also aids cleaning procedures following a spill. There is the potential for some flow to overtop the access ramps during the conditions of the initial burst which is addressed by tertiary containment and conveyance to the site drainage system which discharges to the inlet works. The existing planted / grass within the containment area shall be removed and the area infilled with concrete.



Figure 4.2 – Planted area to be replaced with concrete

4.1.2 Containment Option 2

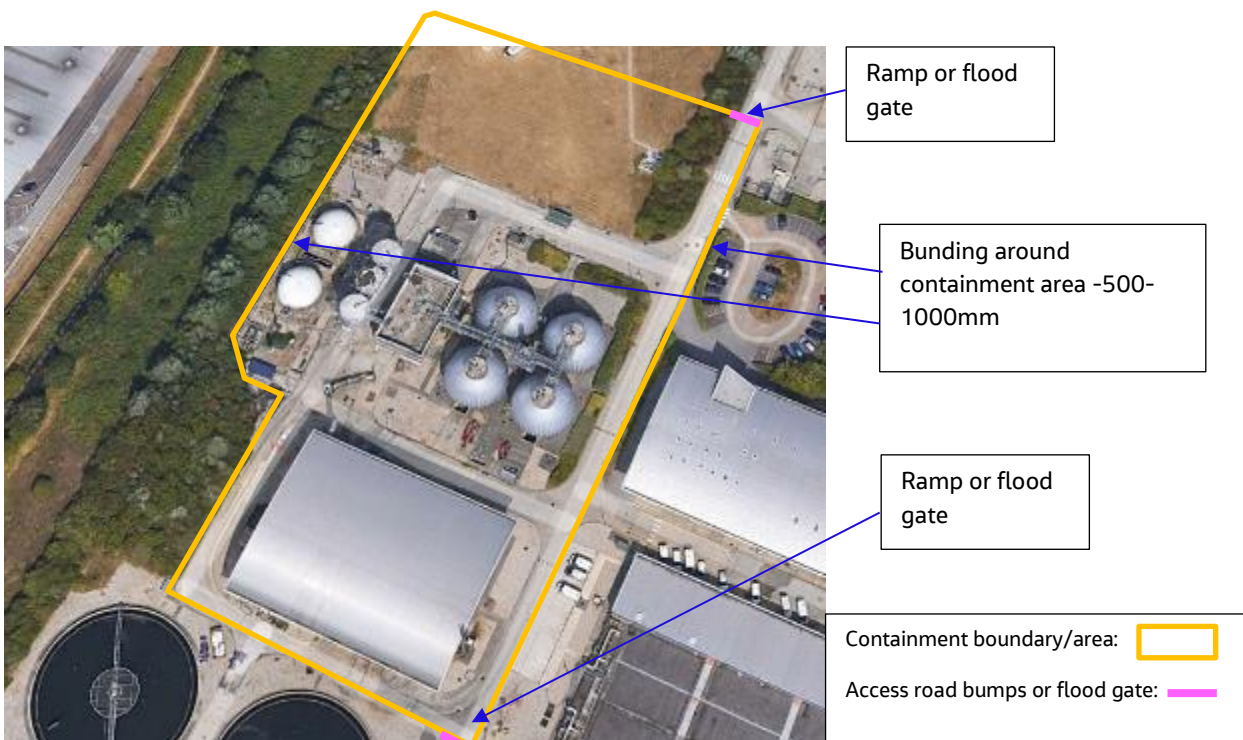


Figure 4.3 – Containment Option 2 – Wide area containment option

This option is similar to option 1 but with a larger containment area to utilise the open area to the north of the site (Figure 4.3).

Bunds will be utilised around containment boundary and ramps constructed across roads to enable vehicular access. Maximum height of ramps is 300mm and bunds 500- 1000mm. All grass and gravel areas will be excavated and resurfaced with concrete to mitigate seepage into the local ground and soil. This also aids cleaning procedures following a spill. Any sludge that spills over the ramps will follow the road and end up in the site drainage and go back to the head of the works. The existing drainage network on site is pumped back to the head of the works, as per confirmation from TW Operations of Reading. The existing planting / grass area within the containment area shall be removed and the area infilled with concrete.

This option was discounted as Thames Water has confirmed the open area at the north of the proposed containment area has been ring fenced for future projects.

4.1.3 Tertiary Containment Option

Reading STW was constructed with a bund around the site, and this will be utilised to provide tertiary containment. The low spot on the site is around the site entrance (ref Figure 3.3) and the proposal is to install a ramp across the site 12m wide site access road.



Figure 4.4 – Road Ramp for tertiary containment

4.2 Mitigation of Site-Specific Risks

4.2.1 Jetting and Surge Flows

Due to the location of the tanks and their distance from the boundary of the containment area, there is no risk of contamination through jetting.

There is a low risk of jetting occurring as the majority of the digester tanks are concrete construction, for which catastrophic failure is deemed to be less of an issue. Failure is more likely to begin with major seeping from the tanks which would be spotted during routine site walkabout tours each day.

The natural topography of the site and the distance to the boundaries of the containment area results in a low risk of surge overwhelming the containment.

4.2.2 Flooding

According to the UK Government's Flood Map for Planning, Reading STW is situated in Flood Zone 1 as shown in Figure 4.4. Areas situated in flood zone 1 have a low probability of flooding and have an annual probability of river flooding of less than 0.1%. Therefore, no modifications need to be made to Reading STW to accommodate this risk.

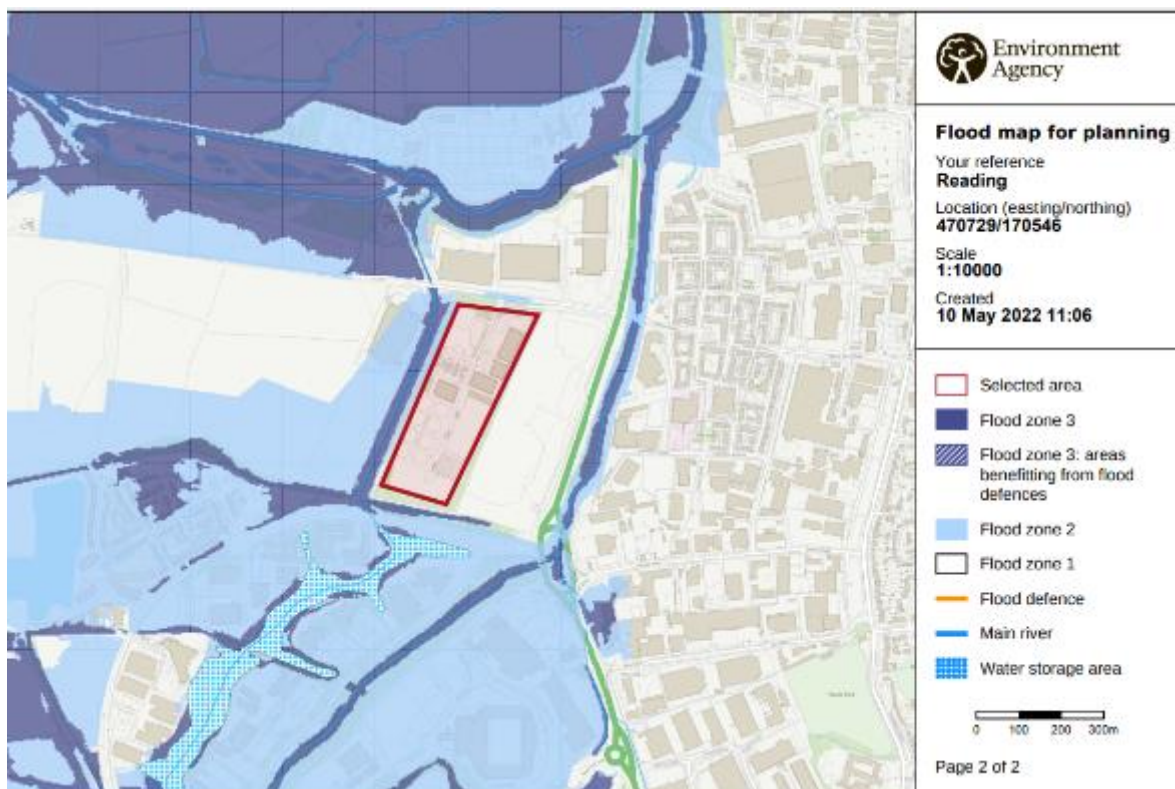


Figure 4.4 Extent of Fluvial flooding in Reading due to extreme weather events

4.3 Identification of Preferred Option

The preferred containment option is wide area containment option 1, constructing a low bund wall (500 - 1000mm high) around the wide containment area and constructing ramps at road crossings.

4.3.1 H&S and CDM risks

- Cable ducts and fibre ducts act as conduit to transport sludge around site.

5. Site Drainage and liquor returns

5.1 Process flow diagram

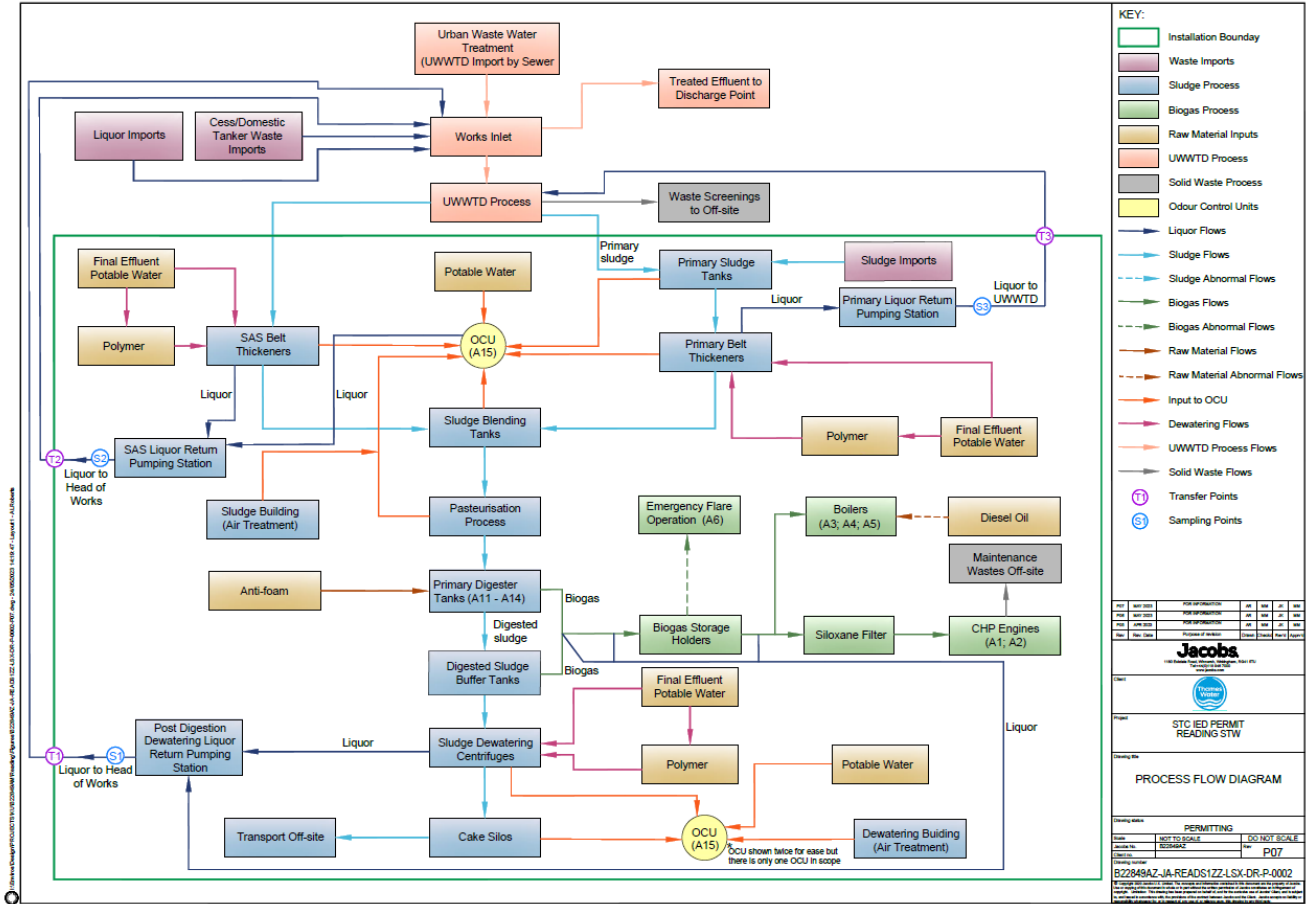


Figure 5-1 Process Flow Diagram

5.2 Foul, Process and Effluent Drainage

Site drainage assessments are based on Reading Sewage Works Layout Plan Drawing Numbers READS1ZZ-DPL-001

The Sewage Works Layout Plan for Reading shows all Foul/ Combined/ Process/ Effluent drainage pipes, indicated by green lines, go to the head of the works shown in Figure 5.3. In the event of sludge entering the head of the works, the shock load could adversely impact the sewage works treatment process. Therefore, in the event of a catastrophic loss of containment, this line should be isolated or pumping should be inhibited.

The surface water drains, shown as the orange lines, are also mixed with the process drains and go to the head of the works. As both systems combine, the surface water drains have been reviewed as part of this section.

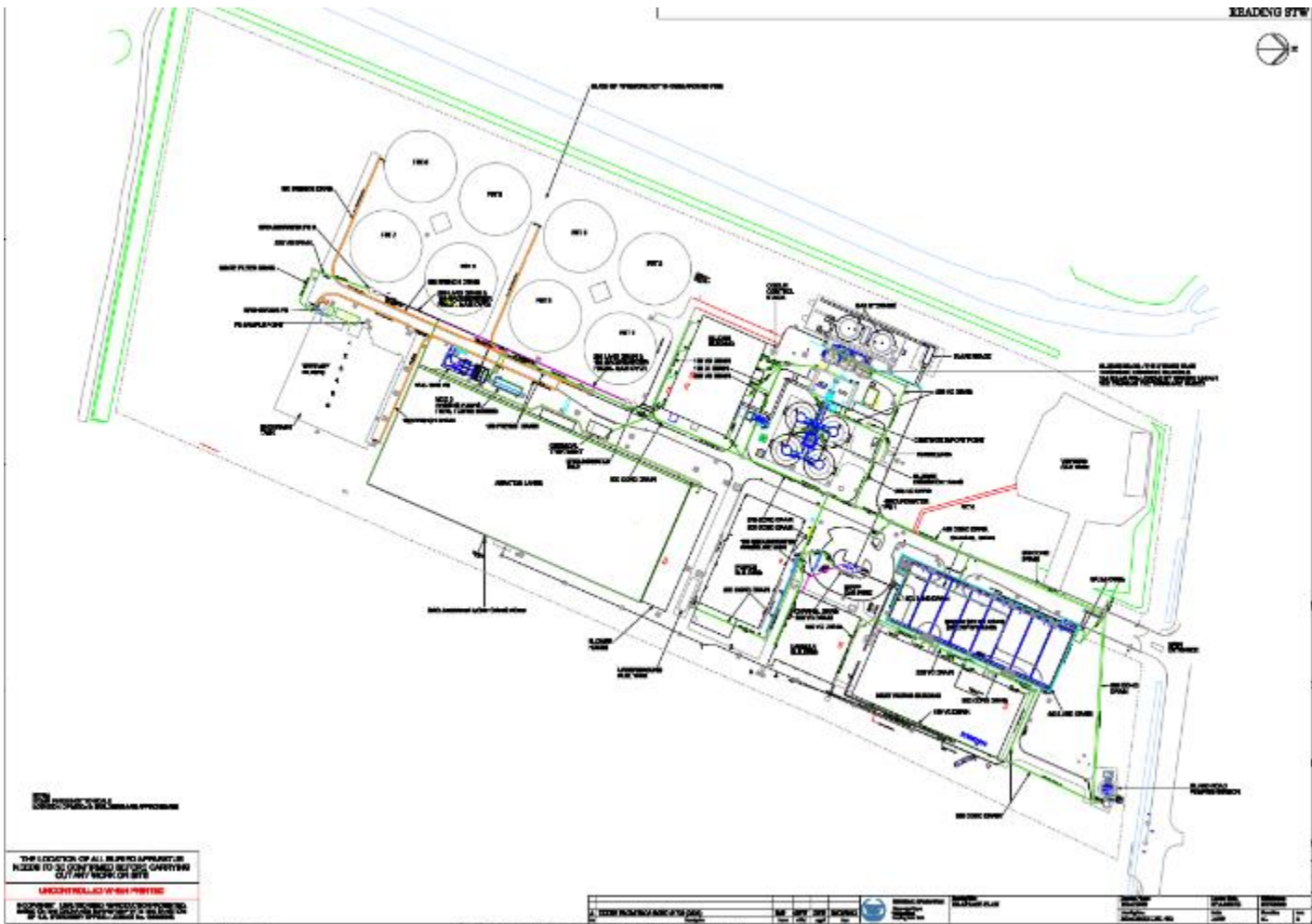


Figure 5.3 Drainage plans

5.3 Liquor Returns

The existing liquor return system is not being altered by the containment system, other than the control modifications proposed in 5.4.

Details of the liquor returns sampling are being developed outside of this report for incorporation within the permit submission.

5.4 Automatic Isolation Valves

For the catastrophic loss of containment scenarios for Digester area discussed, such a loss could be automatically detected by the level sensors in the tanks. A catastrophic failure would be identified by the rate of change in tank level being larger than expected at normal operation. The signal from the sensors would be used to automatically prevent any adverse impact on sewage treatment. There are two options for this;

- A. Level signal automatically isolates the at-risk pipes. This would prevent large flows of digestate from entering the drainage lines to the inlet channel or river. This option requires an automatically actuated isolation valve to be installed on each of these pipes.
- B. Level signal automatically inhibits sludge being returned back to the head of the i.e., allow catastrophic spillages to enter the inlet channel but prevent it from being pumped back to the head of the works. This option requires no hardware or infrastructure, only software modifications.

Option B is cheaper and easier to implement as it will use current equipment and require only software modifications only. However, operators on site should be consulted to further understand the surface water drainage system to explore any automatic isolation solutions that involve software modifications only.

The option of the level sensor signal from an abnormal rate of change triggering an alarm system for an operator has been considered.

Once the spillage has been stopped and contained, any sludge in the drainage system can be released back into the head of the work in a controlled manner therefore, not creating adverse effects at the inlet.

6. Conclusions

This section summarises the findings of the containment assessment options report for Reading Sewage Treatment Works.

In the Risk Identification Report for Reading a containment classification report was carried out. An overall site risk rating of Medium was determined meaning that Class 2 containment is needed. The detailed requirements for Class 2 containment have been outlined in the Risk Identification Report in section 3.3.

The assessment focuses on site-specific risks and outlines the options available for providing secondary containment of a catastrophic tank or digester failure.

The preferred option is option 1 – wide containment approach as outlined in section 4.1.1, to construct a 350m long bund wall (500 - 1000mm high) around the wide containment area. Containment ramps will be constructed across the road crossings. Tertiary containment to be provide by the existing site wide boundary bund and installation of a 250mm high ramp across the main site access road 12m length. In addition to the containment elements, isolation of the site drainage system linked to the containment area will be required to mitigate the risk of unmanaged flows impacting the sewage treatment works. Existing gravelled and grass areas within the containment will be replaced with concrete. Elements of the site roads will be replaced/repared to allow them to present an impermeable surface.

The results of the uncontained spill mapping show that a catastrophic spill will not be contained with the boundary.

The contained spill modelling retains the tank contents and associated rainfall within the site boundary and the flows can be managed by TW operations for return to treatment. Due to gradients across the site, water may pond to a depth of 300-500mm. The volume for containment is driven by the 25% rule.

Appendix 1 ABDA Site Hazard Risk assessment summary for Reading STW

ADBA Industry Guidance and CIRIA C736 state how the site hazard rating of the site risk and classification are to be calculated. A summary of the hazard risks for Reading STW are as follows:

Source – There are two sources that have been identified:

1. Domestic and trade effluent Wastewater sludges, both in a raw, semi treated and treated state.
2. Polyelectrolyte chemicals for sludge thickening.

The Source Hazard rating was determined as High.

Pathway – There are three pathways that have been identified:

1. The process and site drains take any liquid to the head of the works which would negatively impact the process stability on site and would eventually impact on the receiving watercourse.
2. There are several areas where a sludge spill could pass over permeable ground.
3. The river Kennet and Foundry Brook to the north and east can impact downstream.

The site inventory has a runoff time of 15 minutes if unconstrained.

Consequently, the Pathway Hazard rating was determined as High.

Receptor – There are several potential receptors which have been identified:

1. The site drainage system and the head of the works.
2. There is a "Medium-High" groundwater vulnerability in this location.
3. The River Kennet and its stream to the north and west of the site, at a lower elevation and Foundry Brook to the east, also at a lower elevation.
4. The A33 to the east at a lower elevation.
5. The Hilton hotel (commercial) and Kennet Island Housing (residential) across the A33.
6. The Amazon and DHL warehouse immediately north of the site.

The Receptor Hazard rating was determined as High.

Likelihood – For the purpose of this assessment the likelihood for mitigated and unmitigated risks was calculated based on the assumption that the likelihood hazard rating is low.

Pre-mitigation measures, operational failures were highlighted as a high risk, shortfalls in design (provision of alarms and monitoring) together with structural failure were highlighted as a medium risk.

Post-mitigation measures operational failures were re-scored as a low risk. Therefore, the final Likelihood Hazard rating was determined as low.

Based on the information above the overall site risk rating was calculated to be medium which means that Class 2 secondary containment is required.

Appendix 2 Tank Covering High Level Commitment

There are no open top tanks within the permit boundary at Reading STC.

Consultation on the transposition of the industrial emissions Directive in England and Wales

March 2012



Llywodraeth Cymru
Welsh Government



defra
Department for Environment
Food and Rural Affairs

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Scope of the consultation

Topic of this consultation:	Transposition of the industrial emissions Directive (2010/75/EU) through amendment of the Environmental Permitting (England and Wales) Regulations 2010
Scope of this consultation:	Several specific points about the Directive, notably how to use derogations and flexibilities which it makes available. Also the application of Directive requirements to activities which are not specified in the Directive but which appear in the current Regulations.
Geographical scope:	England and Wales. (The administrations in Scotland and Northern Ireland are making separate arrangements for transposition. Separate arrangements are being made by the Department of Energy and Climate Change in respect of UK offshore installations)
Impact Assessment:	A draft impact assessment accompanies this consultation paper: views on it are sought.

Basic Information

To:	Operators of industrial installations which are subject to the Directive, and anyone with an interest in how those installations are regulated.
Body/bodies responsible for the consultation:	Department for Environment, Food and Rural Affairs and the Welsh Government
Duration:	12 March to 6 June 2012

Enquiries:	David Demain – 020 7238 1687 - Control.Pollution@defra.gsi.gov.uk
How to respond:	By post to Defra, Area 5F Ergon House, 17 Smith Square, London SW1P 3JR. By E-mail to Control.Pollution@defra.gsi.gov.uk .
Additional ways to become involved:	As this is a largely technical issue with largely specialist interests, this is a written exercise, although we shall be happy to respond to any questions you may have about it.
After the consultation:	When this consultation ends, we intend to put a copy of the responses, subject to any for which confidentiality is justified, in the Defra library at Ergon House, London. The responses will help us draft the amending Regulations for which we shall seek Parliamentary approval in the autumn of 2012. The responses will also help us finalise the impact assessment and the draft guidance.

Introduction

1. The industrial emissions Directive¹ is a Recast² of seven existing Directives: those concerning integrated pollution prevention and control (2008/1/EC³), large combustion plants (2001/80/EC), waste incineration (2000/76/EC), solvent emissions (1999/13/EC) and three concerning waste from the titanium dioxide industry⁴. Material from those Directives is to be found in Chapters II to VI respectively of the industrial emissions Directive. All those Directives – the “component Directives” - are currently transposed in England and Wales through the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010. No. 675)⁵ – usually abbreviated in this consultation paper as “EPR”. In this paper and its accompanying material, the industrial emissions Directive is generally referred to simply as “the Directive”.
2. As much of the material in the recast Directive remains substantively unchanged from the component Directives, we consider that the EPR provide the most appropriate vehicle through which to transpose the industrial emissions Directive. Draft amending Regulations have therefore been drawn up and **the primary purpose of this consultation paper is to seek your views on particular points** which have arisen in doing so.
3. Please note that the Welsh Government is consulting⁶ on proposals to create a single environment body for Wales. The body will exercise a range of functions currently conferred on the Environment Agency, the Countryside Council for Wales and the Forestry Commission. These amendments to the EPR are proposed in the expectation that the new body will take over the Environment Agency's statutory duties in relation to the industrial emissions Directive at a future date.
4. **Please note that this consultation refers only to England and Wales.** The administrations in Scotland and Northern Ireland will be transposing the Directive separately. If you have interests there, please watch out for separate

¹ A short summary of the industrial emissions Directive, containing a link to the Directive itself, is at http://europa.eu/legislation_summaries/environment/air_pollution/ev0027_en.htm .

² The Recast was made under Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts (2002/C 77/01). This states that ‘recasting shall consist in the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The new legal act replaces and repeals the earlier act’.

³ Directive 2008/1/EC is a codified version of the original IPPC Directive, 96/61/EC.

⁴ Directives 78/176/EEC, 82/883/EEC and 92/112/EEC.

⁵ At <http://www.legislation.gov.uk/ukxi/2010/675/contents/made> .

⁶ See <http://wales.gov.uk/consultations/environmentandcountryside/singlebody/?lang=en> . The consultation period ends on 2 May 2012.

consultations. Please note also that the Directive applies to offshore installations. The Department of Energy and Climate Change will be consulting separately on UK transposition arrangements in respect of the limited range of Directive activities which are carried out at offshore oil or gas installations.

5. Although specific questions are put to you below, **please consider the draft amending Regulations as a whole and comment on any perceived deficiencies or uncertainties.** Please note that there are three main components to the draft amending Regulations:
 - amendments to the main body of the EPR – these are relatively few in number and arise from various features of the Directive;
 - amendments to Schedule 1 – these make quite extensive changes, in particular to Part 2 of the Schedule which describes the activities subject to integrated pollution prevention and control (“IPPC” hereinafter) – these are listed under Part A(1) and Part A(2). Some of these amendments are driven by changes to the coverage of the IPPC Directive, but more are driven by the consideration of “legacy” activities – that is to say, activity descriptions which are not to be found in Annex I of the industrial emissions Directive – see section 32 of this paper; and
 - amendments in respect of Schedules 7, 13, 14, 15 and 17 – all of these are needed to transpose Chapters II – VI of the industrial emissions Directive, just as the current versions of those Schedules transpose the component Directives, largely through reference to the various Articles of the industrial emissions Directive with which the regulator must ensure compliance. This “referential” system in effect transposes the exact words of the Articles.
6. The draft amending Regulations also contain a replacement Schedule 8 which concerns the regulation of emissions to air from activities described under Part B of Part 2 of Schedule 1. This system of regulation is unaffected by the industrial emissions Directive⁷, but the current Schedule 8 refers to Articles in the IPPC Directive which will be repealed by the industrial emissions Directive from 7 January 2014. It is therefore proposed to replace Schedule 8 as part of this set of amendments, in a way which preserves unchanged the provisions of the current Schedule 8. **Do you have any concerns about the proposed replacement Schedule 8?**
7. Other points to note about the effect of the draft amending Regulations are set out in Appendix A to this consultation paper.
8. In order to help your consideration of the draft amending Regulations, we have provided “marked up” versions of the main regulations and of Schedule 1 which accompany this consultation paper. Please note that the “base” material in these

⁷ Although the solvent emission activities covered by the Directive are currently listed as Part B in Section 7 of Part 2 of Schedule 1 to the EPR, the draft amending Regulations remove them to a separate listing in the proposed Schedule 14.

versions is that which would be in existence if the amending Regulations⁸ first proposed in late 2010 enter force from April 2012. The small amount of material which is dependent on that entry into force is clearly identified. However, the changes made by the proposed amending Regulations will in any case be unaffected.

9. For further background to the industrial emissions Directive, **you should read the draft impact assessment which accompanies this consultation paper.** To aid the preparation of the final impact assessment which will accompany the finalised amending Regulations, **you are particularly invited to respond to the questions which are contained in that draft** and which, for convenience, are listed in Section 34 of this consultation paper.
10. Also accompanying this consultation paper is draft guidance from Defra and the Welsh Government in respect of Part A installations. This builds on the current Part A guidance in the series of EPR guidance documents⁹. The draft guidance is included with this consultation because the changes made by the industrial emissions Directive are most extensive in relation to Part A activities. Draft revised guidance in respect of large combustion plants also accompanies this consultation, as an aid to understanding the changes made by the Directive. This draft guidance may aid your understanding of the context of the amending Regulations and of how particular provisions of them are proposed to be implemented. **We shall be grateful for comments on the form and content of that draft guidance.**
11. The current EPR guidance on waste incineration is much less affected by the industrial emissions Directive and arrangements will be made within the next few months for the necessary amendments. Revision of the current EPR guidance on activities using solvents will depend upon the outcome of this consultation (see sections 28 to 30 of this consultation paper) and so a draft of that revision will be proposed late in 2012 when the final form of the amending Regulations is known.
12. The remaining sections of this paper set out the particular points upon which Defra and Welsh Government would be particularly grateful to receive comments. The sections are ordered according to the Directive Article number to which they refer, with sections thereafter dealing with a few issues which are not immediately connected with the Directive.

Directive Chapter I – ‘Common Provisions’

13. Please note that Articles 1 to 9 of the Directive apply to the Directive as a whole. Sections 14 and 15 of this consultation paper highlight particular points amongst those Articles, but respondents – particularly those with installations not subject

⁸ See <http://archive.defra.gov.uk/corporate/consult/env-permitting-regs/>

⁹ EPR guidance is available through <http://archive.defra.gov.uk/environment/policy/permits/guidance.htm> .

to the IPPC provisions in the Directive's Chapter II - should examine Chapter I as a whole in some detail.

14. ***Permits for operators of parts of an installation***

14.1. Article 4(3) provides the option for a single permit to cover 'several parts of an installation operated by different operators', provided that the permit specifies the responsibilities of each operator.

14.2. Under the current EPR, a permit can only be granted to a person who is in control of the operation of the installation, or a part of the installation. So where there:

- is a sole operator of an entire installation, one permit is issued to that operator;
- are joint operators of an entire installation (*ie* more than one person operating in partnership or in some other form of joint enterprise), one permit for the entire installation is issued to the "person" of the joint operators as defined in the partnership or joint enterprise agreement; or where there
- are sole operators of different parts of an installation (for example, one person operates the main activity, another a directly associated activity forming part of the installation), a permit is issued to each of the sole operators in respect of the activity or activities they operate.

14.3. Thus the EPR already allow for the possibility of more than one operator of an installation. However, the EPR do not provide for a single permit to be issued to operators who are not acting in partnership or other form of joint enterprise. A permit covering the activities of more than one distinct operator would still need to make the responsibilities of each operator within the installation completely clear, so that appropriate conditions could be included and, in the event of non-compliance, enforcement action could be taken in the same way as would be the case if the permit covered only a single operator. Only in that way could environmental protection be satisfactorily provided. A permit covering different operators would be highly complex in terms both of its content and the processes needed in making and determining the application.

14.4. Defra and the Welsh Government are therefore currently not minded to amend the EPR so as to accommodate the option contained in Article 4(3) of the Directive. **Are you content with that? If not, can you demonstrate from a real example that allowing a permit to cover several parts of an installation operated by different operators will reduce overall regulatory burden whilst maintaining the environmental protection required by the Directive?**

15. *Incidents and accidents*

- 15.1. Article 7(c) requires the competent authority, in the event of any incident or accident significantly affecting the environment, to require 'the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents'. This Article applies to all activities covered by the industrial emissions Directive, not only those which are subject to IPPC.
- 15.2. Regulation 36 of the EPR already provides regulators with the power to serve an enforcement notice which can specify steps to be taken if an operator 'has contravened, is contravening, or is likely to contravene' a permit condition. Those steps may be directed towards limiting environmental consequences and the prevention of further incidents or accidents.
- 15.3. However, it is conceivable that an incident or accident significantly affecting the environment may arise in circumstances where there is no breach or likely breach of a permit condition. Regulation 15 of the draft amending Regulations therefore empowers the regulator to issue enforcement notices in those circumstances. **Do you agree with this approach. If not, why not?**

16. *Energy efficiency requirements upon installations in the EU-ETS*

- 16.1. Article 9(2) continues the provision in the IPPC Directive that energy efficiency requirements need not be applied in the case of installations which are also subject to the EU emissions trading system (EU-ETS). However, paragraph 5(2)(a) of Schedule 7 to the EPR currently instructs the regulator to ignore that provision, with the effect that energy efficiency requirements are applied to such installations, albeit in a less specific manner than employed in relation to other installations. The Environment Agency's current approach is set out in its draft Horizontal Guidance Note IPPC H2 on *Energy Efficiency*¹⁰.
- 16.2. The proposed Schedule 7 is drafted in such a way that regulators must exercise their relevant functions so as to comply with Article 9(2), meaning that, from the time that the proposed Schedule comes into force, they will be able exercise discretion on the application of energy efficiency requirements to EU-ETS installations. Before that time we shall develop guidance for the regulators on how to exercise that discretion. **Are you content with the proposed way of transposing Article 9(2)? What guidance do you consider Ministers should issue?**

¹⁰ At <http://www.environment-agency.gov.uk/static/documents/Business/interimenergy.pdf>.

- 16.3. It should be noted that Article 9(2) applies not only to Chapter II (IPPC) requirements but also to Chapters III, IV, V and VI. The relevant Schedules therefore contain the same provision, although its relevance may be limited.

Directive Chapter II – installations subject to IPPC

17. *Preamble*

- 17.1. Chapter II of the Directive contains requirements which apply to the conduct of any of the industrial activities listed in the Directive's Annex I. They are largely very similar to those in the current IPPC Directive, but some clarify or extend those existing requirements. We propose to transpose them mainly through the proposed Schedule 7 of the draft amending Regulations which, like the current Schedule 7, requires the regulator to exercise its functions so as to ensure compliance with specified Articles of the Directive.
- 17.2. Please note that the existing Schedule 7 will remain in force until 7 January 2014 so as to maintain the transposition of the current IPPC Directive to the date where it is repealed by the industrial emissions Directive. This is particularly relevant to existing installations subject to IPPC which, under Article 82(1) of the industrial emissions Directive, are not subject to Chapter II until that date. The replacement Schedule 7 will enter force from 7 January 2013 and be immediately applicable to any new installations. It will become applicable to existing IPPC installations from 7 January 2014, and to any existing installations in respect of the activities newly subject to IPPC listed in Article 82(2) (listed in paragraph A1.1 of Appendix A to this consultation paper) from 7 July 2015.

18. *Emission limit values*

- 18.1. Article 15(3) requires the competent authority to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT) as laid down in the decisions on BAT conclusions. Article 15(4) enables the competent authority, in specific cases, to set less strict emission limit values, but only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to (a) the geographical location or the local environmental conditions of the installation concerned; or (b) the technical characteristics of the installation concerned. Article 24(1)(c) applies public participation requirements to the exercise of the derogation provided by Article 15(4) and the reasons for the derogation have to be documented in an annex to the permit.
- 18.2. We propose to transpose the requirements of Article 15(3) and (4) through the proposed Schedule 7 which requires the regulator to exercise its functions so as to ensure compliance with them. To aid the regulator,

paragraphs 4.26 to 4.38 of the draft Part A guidance accompanying this consultation paper addresses these requirements. **Is that guidance clear and sufficient?** Note also that Annex A of the draft Impact Assessment accompanying this consultation paper provides further background.

- 18.3. Please note that Article 24(1)(c), requiring public participation in respect of the proposed application of Article 15(4), will be transposed through the requirement in the proposed Schedule 7 for the regulator to exercise its functions so as to meet the requirements of the whole of Article 24 and hence Annex IV of the Directive.

19. *General binding rules*

- 19.1. Taken together, Articles 3(8), Article 6 (unchanged) and Article 17 allow Member States to set “general binding rules” (GBRs). Defra and the Welsh Government consider that Chapter 4 of the EPR on “standard rules” already provides a framework which is consistent with these GBR provisions. It should be noted that Article 17(1) maintains the requirement of Article 9(8) of the IPPC Directive by requiring Member States to ‘ensure [through the use of GBRs] an integrated approach and a high level of environmental protection equivalent to that achievable with individual permit conditions’. **Do you consider that, in particular sectors, further use of this approach could be made?**

20. *Baseline reports and site closure*

- 20.1. Article 3(1)(f) of the IPPC Directive requires that installations are operated in such a way that ‘the necessary measures are taken upon definitive cessation of activities to avoid any pollution risk and return the site of operation to a satisfactory state’. The Environment Agency accordingly already requires a ‘site condition report’, on the basis that, without it, there would be no means of assessing whether the site of operation has been returned to a satisfactory state in compliance with that requirement of the current IPPC Directive. Article 11(h) of the industrial emissions Directive maintains that requirement and so in principle no change is brought about by the latter. However, that Article refers to ‘satisfactory state’ defined in accordance with Article 22.
- 20.2. Much of Article 22 reflects the already-established practice of the Environment Agency and local authorities. Article 22(2) explicitly requires the preparation of a “baseline report”, as defined in Article 3(19), but only where ‘the activity at the installation involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation’. That means that a baseline report will not necessarily be required for every installation subject to the IPPC requirements in Chapter II: even if ‘relevant hazardous

substances' are involved, the regulator has to take a view on whether they could actually cause contamination.

20.3. The site condition report, dating from the time the IPPC permit was first applied for, should generally remain valid even when the permit is subsequently updated. There should therefore be no need for submission of a completely new baseline report when an existing permit is updated for the first time after 7 January 2013. But it must be noted that Article 22(2) requires the baseline report to contain the information necessary to enable a quantified comparison to be made between the state of the site at cessation of activity and the baseline state. Regulators will need to check this when permits receive their first review under the requirements of Article 21. **Do you currently envisage it being necessary to strengthen existing site condition reports? If so, in what way or ways, and at what cost?** Operators should in any case bear in mind that it is in their interests to have a report which contains detail sufficient to minimise the risk of their being held responsible for contamination which in fact predated their permitted activity.

20.4. Guidance already exists from the Environment Agency¹¹ and in respect of local authorities¹² on site condition reports. It should be noted that the European Commission is obliged by Article 22(2) to establish guidance on baseline reports, but by the end of February 2012 no material had been produced. The regulators' guidance may need to be further revised in the light of the Commission's guidance.

21. *Emerging techniques*

21.1. Article 3(14) defines "emerging techniques" as 'a novel technique for an industrial activity that, if commercially developed, could provide either a higher general level of protection of the environment or at least the same level of protection of the environment and higher cost savings than existing best available techniques'. Article 27(1) requires Member States, where appropriate, to encourage the development and application of emerging techniques.

21.2. The proposed Schedule 7 would require regulators, where appropriate, to exercise their functions so as to encourage the application of emerging techniques, in particular for those identified in BAT reference documents. We consider that regulators can do this primarily through their dealings with operators who seek either new or varied permits for an activity in which an emerging technique is to be employed: regulators will note that Articles 14(5) and (6) provide the basis for their permitting decisions in such situations. **Do you have views on how regulators can encourage the development and application of emerging techniques?** The development and application of

¹¹ Guidance on site condition reports is at http://www.environment-agency.gov.uk/static/documents/Business/h5_scr_guidance_2099540.pdf .

¹² Guidance on site assessment is the Guidance Manual at <http://www.defra.gov.uk/publications/files/env-permitting-general-guidance-a.pdf>

emerging techniques is in line with the Coalition Government's wish to promote green industries¹³. Note also that Article 27(2) requires the European Commission to 'establish guidance to assist Member States' in that regard, but that no draft of such guidance had been issued by the Commission by the end of February 2012.

22. Waste management activities

- 22.1. Point 5.3(b) of the Directive's Annex I extends the coverage of non-hazardous waste management activities by IPPC to include specified recovery activities. Point 5.1 of that Annex specifies hazardous waste management activities by direct description rather than by reference to Annex II of what is now Directive 2008/98/EC on waste. These descriptions are in the proposed replacement Section 5.3 of Part 2 of EPR Schedule 1.
- 22.2. The Directive's definition of "waste" in Article 3(37) uses that in Article 3(1) of Directive 2008/98/EC on waste: "waste' means any substance or object which the holder discards or intends or is required to discard'. Please note that there is no reference to Article 2 of Directive 2008/98/EC which excludes certain specified wastes from the scope of that Directive: technical units treating any material which is waste according to Article 3(1) of 2008/98/EC are subject to IPPC if their capacity exceeds the relevant threshold, even if the material is covered by the waste Directive's exclusions. The wastes concerned are listed in paragraph A3.1 of Appendix A to this consultation paper.
- 22.3. The IPPC Directive contains a provision¹⁴ which has been interpreted in England and Wales as meaning that IPPC does not apply to any waste operation exempted from the permitting requirement of what is now Directive 2008/98/EC – that is to say, any waste operation registered as exempt under the provisions of regulations 4 and 5 and Schedules 2 and 3 of the EPR. That provision has not been included in the industrial emissions Directive, with the consequence that IPPC must be applied to installations conducting a waste management activity with a capacity above the relevant threshold of IPPC even if the unit is registered as an exempt waste operation. To clarify the situation, regulation 49 of the draft amending Regulations would amend EPR Schedule 3 to remove the waste exemption if the activity is one described in Chapter 5 of Part 2 of Schedule 1 to the EPR. It is expected that activities described in the exemptions listed below are most likely to be affected.

¹³ See, for example, https://online.businesslink.gov.uk/Horizontal_Services_files/Enabling_the_transition_to_a_Green_Economy_Main_D.pdf

¹⁴ At the head of Section 5 of Annex I of the IPPC Directive, listing waste treatment activities subject to the Directive: 'Without prejudice to Article 11 of Directive 2006/12/EC or Article 3 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste'.

Code	Description
T4	Preparatory treatments (baling, sorting, shredding etc.)
T9	Recovery of scrap metal
T11	Repair or refurbishment of waste electrical and electronic equipment
T12	Manual treatment of waste
T14	Crushing and emptying waste vehicle oil filters
T20	Treatment of waste at a water treatment works
T21	Recovery of waste at a water treatment works
T23	Aerobic composting and associated prior treatment
T24	Anaerobic digestion at premises used for agriculture and burning of resultant biogas
T25	Anaerobic digestion at premises not used for agriculture and burning of resultant biogas
S2	Storage of waste in a secure place

22.4. In view of what is described in paragraphs 22.1 ff, and also in the draft Impact Assessment, **do you have any uncertainties about which waste management activities are now subject to IPPC requirements? If so, how would you like them remedied?**

23. *Preservation of wood and wood products*

23.1. Point 6.10 of Annex I to the Directive adds wood preservation to the list of activities subject to IPPC. The draft amending Regulations which this consultation accompanies assign this activity to Part A(2) on the grounds that some 40 installations are already regulated by local authorities because they conduct a “timber activity” as described under Part B of Section 6.6 of EPR Schedule 1. **Do you agree with the assignment of the wood preservation activity as described in the Directive to local authorities?**

Directive Chapter IV – waste incineration

24. *Preamble*

24.1. With the small exception noted in Appendix A (paragraph A9) to this consultation paper, Chapter IV and Annex VI of the industrial emissions Directive maintain without generally significant change the requirements of the waste incineration Directive. The proposed replacement Schedule 13 to the EPR will transpose those requirements, largely through reference to the relevant Articles.

24.2. Note that, as under the current waste incineration Directive, the Chapter IV requirements apply to all waste incineration and co-incineration activities other than those specifically excluded by Article 42(2). There is no lower capacity threshold. Note also that the Chapter IV requirements are self-contained: they do not bring in any IPPC requirements from Chapter II. But activities above the relevant threshold in point 5.2 of Annex I of the industrial emissions Directive are additionally subject to IPPC and that may possibly drive more stringent permit conditions.

25. *Regulator for non-hazardous waste co-incineration activities*

25.1. The proposed replacement Schedule 13 simplifies the current prescription of regulator for waste incineration and co-incineration activities by making the relevant local authority the regulator for all such activities – irrespective of whether hazardous or non-hazardous waste is involved – which are below the relevant threshold¹⁵ for the IPPC requirements in Chapter II of the Directive, with the Environment Agency the regulator for all such activities above the threshold. **Do you have any comments about this assignment of regulator?** We are aware that some 10 plants may thus qualify for transfer to local authority regulation and we expect that to be addressed administratively by the regulators in discussion with the operators concerned.

26. *Removal of BAT requirements from incineration and co-incineration installations not subject to IPPC*

26.1. Activities subject to the current waste incineration Directive are all currently assigned to Part A in Part 2 of Schedule 1 to the EPR, thus subjecting them to IPPC even if the installation's capacity is below the IPPC threshold. There are some 10 installations in that position. However, the amended Part 2 of Schedule 1 will apply only to installations above the relevant thresholds¹⁶ in Annex I of the industrial emissions Directive. The proposed Schedule 13 requires the regulator to apply only the requirements of Chapter IV and Annex VI of the industrial emissions Directive (which are almost entirely unchanged from the corresponding material in the current waste incineration Directive) to installations with capacities below the IPPC

¹⁵ The IPPC capacity thresholds for incineration/co-incineration activities are 3 tonnes per hour for non-hazardous waste and 10 tonnes per day for hazardous waste.

¹⁶ See footnote 15.

thresholds. **Do you agree with this proposal? What environmental consequences and compliance cost savings may arise?**

27. PCB and PAH monitoring

- 27.1. Paragraph 2.1(c) of Part 6 of Annex VI of the Directive maintains the requirement of Article 11(2)(c) of the waste incineration Directive in respect of monitoring for heavy metals and furans. However, in transposing the waste incineration Directive, the words “dioxin-like polychlorinated biphenyls and poly-cyclic aromatic hydrocarbons” were added to this requirement and that remains the position under the current Schedule 13 to the EPR.
- 27.2. For all except the very small waste incineration or waste co-incineration plants not subject to IPPC requirements, it is in any case for the Environment Agency (as proposed sole regulator of such plants) to take a view on what pollutants are likely to be emitted in significant quantities and to set permit and monitoring conditions accordingly. In order to remove the possibility of environmentally unjustified monitoring requirements, particularly from installations with an already demonstrably sustained low emissions of these substances, the proposed Schedule 13 therefore contains no explicit requirement in respect of monitoring for dioxin-like polychlorinated biphenyls and poly-cyclic aromatic hydrocarbons. **Do you agree with this proposal? If not, why not?**

Directive Chapter V – activities using solvents

28. Preamble

- 28.1. Chapter V and Annex VII of the Directive maintain without significant change the requirements of the current “solvent emissions” Directive. The proposed replacement Schedule 14 to the EPR will transpose those requirements, largely through reference to the relevant Articles.
- 28.2. Please note that the Chapter V requirements are self-contained: they do not bring in any IPPC requirements from Chapter II. But where activities using solvents – even if they lie below the solvent consumption thresholds in Part 2 of Annex VII - are also covered by an activity description in Annex I of the industrial emissions Directive, the resulting IPPC requirements may possibly drive more stringent permit conditions.
- 28.3. So as better to reflect the self-contained nature of the Chapter requirements, the listing of activities, consumption thresholds and emission limit values are copied from the industrial emissions Directive into the proposed Schedule 14, thus removing them from their current designation as “Part B” activities within Part 2 of Schedule 1. This also facilitates the proposed removal of BAT and other requirements which currently apply to them additionally (see section 30).

29. Registration option for solvent activities

- 29.1. Article 4(1) of the Directive maintains an option available in the solvent emissions Directive by stating that ‘by way of derogation from the first subparagraph, Member States may set a procedure for the registration of installations covered only by Chapter V’. That Chapter contains the provisions of the current solvent emissions Directive virtually unchanged.
- 29.2. Solvent activities currently need a permit from the regulator, which in nearly all cases is the relevant local authority. Annual permit subsistence charges range from £76 pa for a dry cleaning installation assessed as “low risk” to £1,672 pa for a “high risk” standard installation.
- 29.3. We need to consider whether it would be any less onerous for operators and regulators if the current permitting system for solvent activities were to be replaced by a registration system, and what the implications would be for checking compliance. Part 3 of Schedule 14 of the draft amending Regulations sets out provisions for the registration system. With a few exceptions, it would be available in respect of all installations at which solvent use is the only activity carried on – that is to say, it would not be available where any activity listed in Part 2 of Schedule 1 is also carried on. Appendix B to this consultation paper explains how this would work in detail,
- 29.4. We propose that the operator of a new activity using solvents would merely have to notify the local authority regulator of their name and address and basic information about the type of activity to be registered. There would be no application process. There might be a small registration fee to cover administrative costs. We envisage that, for new registrations, regulators may decide subsequently to visit the installation to verify the registration information and to collect information hitherto provided in a permit application. For existing operators, the registration system as proposed would deem their permits to be registrations unless the operator notified the regulator of a wish to remain permitted rather than registered.
- 29.5. Through the amendments made to EPR Schedule 2 by the draft amending Regulations, registered solvent activities would become “exempt facilities” meaning that they would need an environmental permit. The proposed paragraph 3A of that Schedule would establish, mainly by reference to the proposed Schedule 14, that exempt solvent emission activities must meet the requirements set out in Chapter V of the Directive. Failure to comply with any of those requirements would mean that the activity could no longer be regarded as exempt, and would thus become an unpermitted regulated facility. Continued operation would therefore amount to the regulation 38(1) offence of operating a regulated facility without a permit. We consider that, as now, the regulator would undertake a risk-based level of supervision and inspection of registered activities on a continuing basis, although regulators will bear in mind that, like the solvent emissions Directive, Chapter V of the Directive does not contain any explicit requirements regarding inspections.

- 29.6. With these considerations in mind, it is not clear whether the introduction of a registration system would enable, in either the short or longer term, any savings to be made in regulators' costs and so allow annual charges to be lower than those under the current permitting system. For the registration of new installations, it is possible that charges might be somewhat higher in the first year to reflect the possible need for verification of registration details, although operators would clearly be spared the costs associated with a permit application. And a registration system would reduce the possibility of costs arising from the need for permit variation if the nature of the operation changed substantially.
- 29.7. If introduced, all qualifying existing permits would be deemed, through a provision which would be inserted in the finalised amending Regulations, to be registrations from 1 April 2014 unless the permit holder notifies the regulator of a wish to retain the permit. There would be powers for local authorities to charge for new registrations and to make annual charges to cover the costs of checking compliance.
- 29.8. **Do you consider that the introduction of a registration system for solvent activities would be worthwhile in the short and longer term? Can you suggest any alternative form of registration?**
- 29.9. Please note that the activity descriptions in Part B of Sections 6.4 (coating activities etc.) and 6.5 (Manufacture of dyestuffs, printing ink and coating materials) of Part 2 of EPR Schedule 1 are expressed in terms of solvent usage. There is no direct linkage between these and the solvent activities listed in the industrial emissions Directive but, if a registration system is introduced, we could extend it to those Part B activities.

30. *Removal of BAT requirement from solvent activities*

- 30.1. Solvent activities are currently regulated as a "Part B" activity, meaning that they are subject to BAT-based requirements in respect of any emissions to air which are likely to be significant, whether or not they are of volatile organic compounds (VOCs). This goes beyond what is required by the current solvent emissions Directive and also by Chapter V of the industrial emissions Directive: the use of BAT is mentioned only in relation to item 19 of the table in Part 2 of Annex VII of the Directive and in the context of the derogations provided by Article 59(2) and (3) of the Directive.
- 30.2. Initial indications from operators and regulators are that, in general, the BAT requirement does not add much or anything by way of compliance costs which would not in any case be necessary to meet the relevant solvent emission limit values. For the some 3,460 dry cleaning installations, plainly likely to have no other significant emissions to air than VOCs, the BAT requirement adds nothing. Amongst some 2,400 other installations, the BAT requirement is assessed to cost some £550,000 pa. Further details are in Annex C of the draft impact assessment which accompanies this consultation paper. The removal of the BAT requirement could result in

businesses taking less care in controlling emissions of some pollutants (mainly particulate matter, oxides of nitrogen, and carbon monoxide) other than solvents from the installations in question.

- 30.3. The proposed draft amending regulations would therefore remove BAT requirements from installations carrying out nothing but solvent activities. **Do you agree with this proposal? What are your views on the environmental consequences and compliance cost savings which may arise?**

Directive Chapter VII - transitional arrangements

31. *Timetable for permit applications*

- 31.1. Operators of installations carrying out activities newly subject to IPPC need to be operating in compliance with a permit by 7 July 2015. Those activities are tabulated in Appendix A to this consultation paper (section A1) and installations carrying them out are referred to as “2015 installations”.
- 31.2. Whilst it is unlikely that any single local authority will receive more than a single figure number of applications, the Environment Agency may have to deal with some 500 applications and so we have to consider what can be done to avoid the Agency becoming overwhelmed by last minute applications. But we are reluctant to impose a statutory timetable for submission of applications (as was done when IPPC was first introduced over the years 2000 to 2007).
- 31.3. If a “2015 installation” has not received a permit by that date, then its continued operation would constitute an offence under regulation 38(1) of the EPR. But the amending Regulations would insert into regulation 40 a defence in any proceedings under that regulation that a duly made application for a permit was submitted to the regulator by 24 November 2014. In that way, there would be some incentive (if any should be needed) upon the regulator to determine all permit applications received by 24 November 2014, because it would be unlikely to succeed in carrying through enforcement action against “2015 installation” operators for operation without a permit after 7 July 2015 until it had done so. Similarly, there would be some incentive for operators to apply by 24 November 2014. But please note that, even with this incentive, operators should make every effort to make permit applications considerably before November 2014. **Have you any comments upon this proposed means of incentivising permit applications in respect of new IPPC activities? Can you suggest any non-regulatory means by which the flow of permit applications to the Environment Agency can be spread?**
- 31.4. Operators should note that new or varied permits granted in respect of “2015 installations” will be brought into effect only from 7 July 2015 (or thereafter), even though the majority of applications will have been determined before that date. Similarly, the expectation is that permit charges will commence only from that date, although that and any other permit

charging provision in respect of such activities will be the subject of separate consultation on the permit charging schemes operated by the Environment Agency and by local authorities.

Activities not subject to the industrial emissions Directive

32. “Legacy” activities

- 32.1. Part 2 of Schedule 1 to the EPR lists industrial activities, with those in Part A subject to IPPC whilst those in Part B are subject only to controls upon emissions to air. As well as covering all the activities specified in Annex I of the Directive, Part A also includes 62 activity descriptions which have no foundation in EU requirements. They originate from the system of integrated pollution control which was set up under the Environmental Protection Act 1990 (and which was influential upon the making of the IPPC Directive in 1996). For the purposes of this consultation they are referred to as “**legacy activities**”
- 32.2. An assessment of these legacy activities has been carried out. In summary, four categories have been identified:
- 32.2.1. There are 15 instances of “moribund” descriptions” meaning that no extant Part A permits contain them and that it is considered very unlikely that any instances of these activities un-associated with other Directive Annex I activities will arise in future. These descriptions are tabulated in Appendix C.
- 32.2.2. There are 27 instances of descriptions which are superfluous because they are in fact covered by Directive Annex I activities for which a permit is needed in any case. These descriptions are separately tabulated in Appendix C.
- 32.2.3. In 13 cases, involving 137 permits, the activities are not covered in Directive Annex I, but there are considered to be sound environmental protection reasons for **maintaining** Part A regulation. These descriptions, together with a short justification for retention, are listed in Appendix D. The justifications for retention are informed by the Environment Agency, drawing upon its regulatory experience and concerns about the risks which might arise if Part A regulation ceased. It is of course not possible to quantify what would happen if that regulation were removed.
- 32.2.4. There may be a case for **removal** of controls under EPR Schedule 1 Part A from seven activity descriptions, currently accounting for 25 permits. These descriptions, together with a short commentary, are listed in Appendix E.
- 32.3. The draft amending Regulations therefore contain amendments which would remove the descriptions tabulated in Appendix C, and which would

adjust the descriptions tabulated in Appendix E . > **Do you consider that any of the descriptions proposed for deletion or adjustment should in fact be retained? If so, please provide reasons.** Please note that, if consultation responses support deletions of activity descriptions which are included in extant “Part A” permits, it will be for the regulator to determine, in consultation with the operators concerned on an individual basis, whether permits need to be varied or revoked by the same regulator or transferred between regulators (as could happen if the installation continues to operate a Part B activity). It would be for the regulator and operator to agree a reasonable period of time, necessarily starting from the date that the amended Schedule 1 enters force, in which to make necessary changes to permits.

32.4. Please note that the Climate Change Agreement (CCA) scheme¹⁷ relies upon the current Part A activity descriptions for defining the industry sectors for which CCAs are available. There are 40 sectors whose eligibility for Climate Change Agreements (CCAs) is based on such processes. Our analysis suggests that, on this basis, the proposals to delete descriptions set out above would result in one sector (slag grinders – described in Section 3.1 A(2) (a) and (b)) no longer remaining eligible for a CCA and associated climate change levy discount. Additionally, there may be a number of facilities holding CCAs in a small number of sectors which may be at risk of losing eligibility. If these facilities do not also undertake another Part A activity, they would not be able to hold a Climate Change Agreement in the future.

32.5. The draft amending Regulations are such that the descriptions tabulated in Appendix D would be retained within Part A regulation. > **Do you agree that the retention of the “legacy” descriptions tabulated in Appendix D is justified? Have you any evidence which either supports or refutes the need for retention?**

33. Mobile plant

33.1. The EPR currently require the application of IPPC to any mobile plant carrying out Part A activities. But the industrial emissions Directive applies only to installations which, by the definition in its Article 3(3), are stationary. The draft amending Regulations therefore contain amendments which would remove mobile plant from IPPC. In practice, instances of mobile plant “Part A” permits are numbered in single figures. > **>Do you agree with the proposal to end IPPC requirements for mobile plant?**

¹⁷ See <http://www.decc.gov.uk/en/content/cms/emissions/ccas/ccas.aspx>

34. Consultation questions

- 34.1. Listed below are all the specific questions raised in this consultation paper and in the accompanying draft impact assessment. We would be grateful for responses to any or all of the questions, preferably supported by evidence drawn from practical experience. We would also be grateful to receive any more general questions or comments on the proposed transposition arrangements.
- 34.2. Please consider the draft amending Regulations as a whole and comment on any perceived deficiencies or uncertainties. (See paragraph 5.)
- 34.3. Do you have any concerns about the proposed replacement Schedule 8? (See paragraph 6.)
- 34.4. We shall be grateful for comments on the form and content of the draft guidance which accompanies this consultation. (See paragraph 10.)
- 34.5. Are you content with the proposal not to transpose the option for a single permit to cover several parts of an installation operated by different operators? If not, can you demonstrate from a real example that allowing a permit to cover several parts of an installation operated by different operators will reduce overall regulatory burden whilst maintaining the environmental protection required by the Directive? (See paragraph 14.4.)
- 34.6. Do you agree with our proposed transposition of Article 7(c) concerning incidents and accidents? If not, why not? (See paragraph 15.3.)
- 34.7. Are you content with the proposed way of transposing the Article 9(2) option not to apply energy efficiency requirements to EU-ETS installations? What guidance on that issue do you consider Ministers should issue? (See paragraph 16.2.)
- 34.8. Is the “Part A” guidance concerning Articles 15(3) and(4) (setting emission limit values where there are BAT conclusions and derogation from that requirement) clear and sufficient? (See paragraph 18.2.)
- 34.9. Do you consider that, in particular sectors, further use of standard rules could be made? (See paragraph 19.1.)
- 34.10. Do you currently envisage it being necessary to strengthen existing site condition reports? If so, in what way or ways, and at what cost? (See paragraph 20.3.)
- 34.11. Do you have views on how regulators can encourage the development and application of emerging techniques? (See paragraph 21.2.)
- 34.12. Do you have any uncertainties about which waste management activities are now subject to IPPC requirements? If so, how would you like them remedied? (See paragraph 22.4.)

- 34.13. Do you agree with the assignment of the wood preservation activity as described in the Directive to local authorities? (See paragraph 23.1.)
- 34.14. Do you have any comments about the assignment of local authorities as regulators for all waste incineration and co-incineration activities which are below the capacity thresholds in Annex I of the Directive? (See paragraph 25.1.)
- 34.15. Do you agree with the proposal to remove BAT requirements from incineration and co-incineration installations not subject to IPPC? What environmental consequences and compliance cost savings may arise? (See paragraph 26.1.)
- 34.16. Do you agree with the proposal to remove obligatory PCB and PAH monitoring from WI? If not, why not? (See paragraph 27.2.)
- 34.17. Do you consider that the introduction of a registration system for solvent activities would be worthwhile in the short and longer term? Can you suggest any alternative form of registration? (See paragraph 29.8.)
- 34.18. Do you agree with the proposal to remove BAT requirements from solvent activities? In What are your views on the environmental consequences and compliance cost savings which may arise? (See paragraph 30.3.)
- 34.19. Have you any comments upon the proposed means of incentivising permit applications in respect of “2015 installations”? Can you suggest any non-regulatory means by which the flow of permit applications to the Environment Agency can be spread? See paragraph 31.3.)
- 34.20. Do you consider that any of the “legacy” activity descriptions proposed in Appendices C and E for deletion or adjustment should in fact be retained? If so, please provide reasons. (See paragraph 32.3.)
- 34.21. Do you agree that the retention of the “legacy” descriptions tabulated in Appendix D is justified? Have you any evidence which either supports or refutes the need for retention? (See paragraph 32.5.)
- 34.22. Do you agree with the proposal to end IPPC requirements for mobile plant? (See paragraph 33.1.)
- 34.23. You are invited to respond to the questions which are contained in the draft impact assessment which accompanies this consultation. For convenience these are:
- 34.23.1. Please present any information you may have in respect of the impact of the inclusion of more waste management activities in IPPC on the delivery of waste policy (draft IA paragraph 17, and see also section 22 of this paper).
- 34.23.2. Please comment on the assessment of the impact upon the industry sector(s) in which you are interested of the substantive changes

discussed in the draft impact assessment, and of any other changes which you consider potentially significant. In all cases, quantified information on costs and information, quantified if possible, on benefits would be particularly welcome (draft IA paragraph 20).

34.23.3. Please submit any quantified information on impacts you may have already identified as arising from the recent adoption¹⁸ of BAT Conclusions for the glass and the iron & steel sectors (draft IA paragraph 21).

34.23.4. Please consider in detail the impact of the components added in Option 2 described in paragraph 39 of the draft impact assessment. Quantified information on changes in costs to operators changes which would result from the proposals within this option would be particularly welcome (draft IA paragraph 40).

¹⁸ BAT conclusions for these sectors were adopted at a meeting on 21 November 2011 and are expected to be published by the European Commission in the early spring of 2012.

APPENDIX A - Other points to note about the Directive

A1. *Activities newly subject to IPPC – the “2015 installations”*

A1.1. As noted in paragraph 17.2, Article 82(2) lists, by reference to the Directive’s Annex I, activities which need to be permitted only from 7 July 2015 if they are carried out at installations which were in operation before 7 January 2013. Such installations are referred to here as the “2015 installations”. The activity descriptions concerned would be, in Part 2 of Schedule 1 to the EPR as proposed to be amended, as follows:

Directive Annex I point:	EPR Part 2 of Schedule 1 (as amended), Section:	Affecting installations carrying out:
1.4(b)	1.2 Part A(1) (d)	gasification insofar as fuels other than coal are concerned
4.1-4.6	4.1 – 4.4 and 4.6	chemical production but only insofar as any biological processing activities are not already permitted.
5.1	5.3 Part A(1) (a)(i)-(iv) and (xi)	only recovery operations involving one or more of the following treatments of hazardous waste: biological treatment; physico-chemical treatment; blending or mixing or repackaging prior to submission to any of the other activities listed in Section 5.3 Part A(1)(a) or in Part A(1) of Section 5.1; or surface impoundment.
5.2	5.1	waste incineration or co-incineration above the relevant thresholds if not already permitted.
5.3(a)(iii) to (v)	5.4 Part A(1) (a)(iii) to (v)	only one or more of the following disposal activities for non-hazardous waste: pre-treatment waste for incineration or co-incineration; treatment of slags and ashes; and treatment in shredders of metal waste.
5.3(b)	5.4 Part A(1) (b)	recovery or a mix of recovery and disposal of non-hazardous waste with a capacity exceeding 75 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving one or more of the following activities and excluding activities covered by Directive 91/271/EEC: biological treatment; pre-treatment of waste for incineration or co-incineration; treatment of slags and ashes; or treatment in shredders of metal waste.
5.5	5.5 Part A(1) (a)-	temporary storage of hazardous waste with capacity above 50 tonnes (excluding on the site where the waste is generated).

Directive Annex I point:	EPR Part 2 of Schedule 1 (as amended), Section:	Affecting installations carrying out:
5.6	5.5 Part A(1) (b)	underground storage of hazardous waste with a total capacity exceeding 50 tonnes.
6.1(c)	6.1 Part A(2) (a)	manufacturing board if not already permitted.
6.4(b)	6.8 Part A(1)(d)(iii)	food production from mixed animal and vegetable materials if not already permitted.
6.10	6.6 Part A(2)(a)	wood preservation.
6.11	5.6 Part A(1) (a)	independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation carrying out any other Part A(1) or A(2) activity.

A1.2. Note that, for several of the activities tabulated above, some installations may already have IPPC permits as a result of interpretations already in place within England and Wales, or because the installations concerned are already carrying out other Part A activities.

A2. IPPC “general principle” on waste prevention

A2.1. Article 11(e) modifies the IPPC Directive’s general principle concerning waste from IPPC installations so as to align with Directive 2008/98/EC. Whereas they previously had to be operated such that

‘where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment’,

under the industrial emissions Directive, installations must be operated such that

‘where waste is generated, it is, in order of priority and in accordance with Directive 2008/98/EC, prepared for re use, recycled, recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment’.

A3. Wastes not excluded from subsection to the Directive

A3.1. As described in paragraph 22.1 of this document, wastes excluded from the scope of the waste Directive (2008/98/EC) by its Article 2 are not

excluded from the relevant requirements of the industrial emissions Directive. Those requirements are in Chapter II – through the inclusion of waste management activities in Annex I – and in Chapter IV on waste incineration and co-incineration. The wastes concerned are:

- In all cases:
 - (a) gaseous effluents emitted into the atmosphere;
 - (b) land (in situ) including unexcavated contaminated soil and buildings permanently connected with land;
 - (c) uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated;
 - (d) radioactive waste;
 - (e) decommissioned explosives; and
 - (f) faecal matter, if not covered by paragraph (b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.
- To the extent that they are covered by other EU legislation:
 - (a) waste waters;
 - (b) animal by-products including processed products covered by Regulation (EC) No 1069/2009, except those which are destined for incineration, landfilling or use in a biogas or composting plant;
 - (c) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation(EC) No 1069/2009; and
 - (d) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC on the management of waste from extractive industries.
- Without prejudice to obligations under other relevant Community legislation, sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation if it is proved that the sediments are non-hazardous.

A4. Site closure

A4.1. Article 22(3) requires the operator to remediate contamination identified as such by reference to the baseline report, although no deadline for remediation is given. Article 22(4) applies where the operator has not been required to produce a baseline report (for example, because the activity was deemed not to involve relevant hazardous substances) and similarly requires remediation to deal with contamination resulting from the permitted activities.

A4.2. These Article 22(3) and (4) requirements are already embodied in current regulatory practice in England and Wales. Regulation 25(2) of the EPR states that ‘by application to the regulator, an operator may surrender an environmental permit, or that part of a permit, to which this regulation applies’. Paragraph 14 of Schedule 5 applies in respect of the application and states that ‘the regulator must accept an application for the surrender of an environmental permit in whole or in part under regulation 25(2) if it is satisfied that the necessary measures have been taken (a) to avoid a pollution risk resulting from the operation of the regulated facility; and (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation’. So the permit remains in force – and with it the enforceable obligation to comply with all its conditions and to pay annual subsistence charges – until the regulator is satisfied that any necessary remediation is complete. We therefore consider that the current provisions in regulation 25 and Schedule 5 of the EPR effectively transpose Article 22.

A5. Chemical industry – production on an ‘industrial scale’

A5.1. Chapter 4 of Part 2 of Schedule 1 to the EPR currently has an interpretation that “‘producing” means producing in a chemical plant by chemical processing for commercial purposes substances or groups of substances listed [in Chapter 4]’. The draft Regulations omit this in favour of direct copy out of the corresponding interpretation at the head of Point 4 in Annex I of the Directive: ‘production means the production on an industrial scale by chemical or biological processing of substances or groups of substances listed [in Point 4].’ Existing guidance¹⁹ from the European Commission on the interpretation of “production on an industrial scale” remains relevant.

A6. Disposal or recovery of non-hazardous waste – exclusion of activities covered by the urban waste water treatment Directive

A6.1. Point 5.3(a) and (b) of Annex I of the industrial emissions Directive each exclude activities covered by the urban waste water treatment

¹⁹ At http://ec.europa.eu/environment/air/pollutants/stationary/ippc/general_guidance.htm#5

Directive²⁰. Our view is that this excludes all activities conducted at sewage works for the treatment of ‘domestic waste water or the mixture of domestic waste water with industrial waste water and/or run-off rain water²¹’ and ‘residual sludge, whether treated or untreated, from urban waste water treatment plants²²’ so long as they are dedicated to that treatment. Anaerobic digestion plants used for sludge treatment will therefore be covered by the exclusion, unless those plants also treat other waste material not derived from the sewage treatment process. However, the European Commission may express a view on this issue.

A7. *Installations producing foodstuffs with both animal and vegetable ingredients*

A7.1. Point 6.4(b) of Annex I clarifies how the threshold for such installations must be determined. What is prescribed is very similar to the approach the Environment Agency already takes. The draft impact assessment addresses the consequences.

A8. *Definition of poultry*

A8.1. Under Article 3(23) of the industrial emissions Directive, “poultry” is defined, by reference to other EU legislation²³, as ‘fowl, turkeys, guinea fowl, ducks, geese, quails, pigeons, pheasants and partridges reared or kept in captivity for breeding, the production of meat or eggs for consumption, or re-stocking supplies of game’. The inclusion of that definition plainly has no consequences for the current application of IPPC to the rearing of chicken laying hens and broilers, turkeys, ducks or Guinea fowls, where there are more than 40,000 places in a technical unit. But it is necessary to consider whether the game birds mentioned in this definition are subject to IPPC through point 6.6(a) of Annex I of the industrial emissions Directive.

A8.2. Initial investigations indicate that in most instances of the rearing of game, a combination of an exceptionally short season (typically some seven weeks in late spring/early summer), stocking densities that are significantly lower than any covered by animal welfare recommendations, and limited access to housing which is in nearly all cases only temporary in nature, make it unlikely that any significant environmental pollution would result. Defra and the Welsh Government therefore take the view that only

²⁰ 91/271/EEC .

²¹ The definition of “urban waste water” in Article 2(1) of the urban waste water treatment Directive.

²² The definition of “sludge” in Article 2(10) of the urban waste water treatment Directive.

²³ Point 1 of Article 2 of Council Directive 90/539/EEC.

those game bird farms which are similar in nature (in terms of length of rearing season, stocking density, and nature of housing) to poultry farms already regulated by the Environment Agency as Part A installations, may become subject to the industrial emissions Directive. Defra and the Welsh Government understand that very few game bird farms are of such similar nature.

A9. *Waste incineration provisions*

A9.1. Article 42(1) removes the waste incineration provisions from gasification and pyrolysis plants ‘if the gases resulting from this thermal treatment of waste are purified to such an extent that they are no longer a waste prior to their incineration and they can cause emissions no higher than those resulting from the burning of natural gas’. It should be noted that such plants may still be subject to the IPPC requirements in Chapter II of the industrial emissions Directive if the activity they carry out falls within Annex I – for example, point 1.1 (combustion with a rated thermal input of 50 MW or more), 1.4(b) (gasification in an installation with a rated thermal input of 20 MW or more) or points 5.1(a) or 5.3(a)(ii) (physico-chemical treatment of waste).

A10. *Large combustion plants – transitional national plan*

A10.1. The establishment of a transitional national plan for the United Kingdom is being taken forward separately by Defra²⁴, in consultation with the devolved administrations in Wales, Northern Ireland and Scotland.

A11. *Large combustion plants – limited life time derogation*

A11.1. Operators of existing large combustion plants which qualify for the derogation provided by Article 33 are reminded that they have until 1 January 2014 to provide a written declaration to the Environment Agency of their intention to take it.

A12. *Large combustion plants – aggregation rules*

A12.1. Article 29(3) changes the aggregation rules so that plants with a rated thermal input below 15 MW shall not be considered when calculating the total rated thermal input of a candidate large combustion plant. However, it should be noted that such plants will still need to be taken into account by the

²⁴ A letter to operators participating in the current National Emission Reduction Plan and to representatives of other large combustion plant interests was sent by Defra on 28 December 2011. This is available at <http://www.defra.gov.uk/environment/quality/industrial/eu-international/lcpd/> under the heading “Recent developments”.

regulator when determining the aggregate rated thermal input to establish whether a combustion plant has a rated thermal input of 50 MW or more and so subject to the IPPC requirements of Chapter II of the Directive, in accordance with the first introductory sentence to Annex I.

A13. Transitional arrangements

- A13.1. Much of the material in the industrial emissions Directive is substantively unchanged from that in the component Directives. Nevertheless, Article 80 of the Directive lists an array of Articles and parts of Annexes which, for various reasons, have to be transposed (or confirmed as already transposed) by Member States. The transposition deadline is 7 January 2013 and the transposed material has to be applied from the same date. The draft amending Regulations, taken with the relevant unchanged material in the EPR, are considered to achieve that.
- A13.2. The Directive recognises the need for a period of transition for installations already in existence²⁵ at 7 January 2013. Under Article 82(1), existing installations carrying out any of the activities listed in Annex I of the IPPC Directive – that is to say, those (other than “legacy” activities) described in Part A of Part 2 of EPR Schedule 1 – have until 7 January 2014 to meet any new requirements arising from the transposition.
- A13.3. Defra and the Welsh Government, advised by the Environment Agency, consider that few, if any, changes to current permits and regulatory practice will be needed within that transition period. The periodic reconsideration of permits which will be required under Article 21 of the industrial emissions Directive will in any case provide a means of identifying the need for and making any adjustments. If the regulator identifies any particular cases which need more urgent attention, the existing EPR provisions in respect of permit variation will be sufficient to deal with them.
- A13.4. A consequence of the transitional arrangements for existing IPPC installations is that the current EPR Schedule 7, with its references to Articles of the IPPC Directive – will need to remain in force until 7 January 2014 to cover the transitional period. But a replacement is needed from 7 January 2013 to achieve transposition and to cover installations which are new after that date. For that reason, the draft amending Regulations propose a new Schedule 7 which, under regulation 2 of the draft amending Regulations, would come into force from 7 January 2013 for new installations and from a year later for existing installations.
- A13.5. Article 82(2) of the Directive deals with the additional activities which it has placed under IPPC through inclusion in Annex I of the Directive. These are tabulated in paragraph A1 of this Appendix, Installations which were in

²⁵ That is to say, already in operation by 7 January 2013 or for which a permit application has been made by that date, provided the installation is put into operation within a year of that date.

operation before 7 January 2013²⁶ - referred to in this consultation paper and the draft amending Regulations as “2015 installations” - have until 7 July 2015 to be operating in accordance with a permit for which the operator will need to apply according to the procedure in the current EPR. Section 31 above seeks views on ways of incentivising the making of applications sufficient early to avoid the Environment Agency becoming overwhelmed in the run-up to that date.

A13.6. Article 82(3) provides that the requirements of Chapter III apply to existing large combustion plants only from 1 January 2016. For that reason, the current EPR Schedule 15 will remain in force until that date, when it is replaced by the proposed Schedule 15A (which will have been in force from 7 January 2013 for new plants). However, it should be noted that all those plants are also subject to IPPC under the provisions of Chapter II and that any changed IPPC requirements will therefore need to be met from 7 January 2014.

A13.7. Article 82(4) applies Chapter III from 7 January 2013 to any large combustion plant not in operation or the subject of a permit application by that date – hence the proposed Schedule 15A will apply from that date. It should be noted that Chapter II requirements will apply also.

A14. *Review of the Regulations*

A14.1. A guiding principle of the Government’s approach to transposition of EU Directives is that there should be a statutory duty for ministerial review of the transposition every five years.

A14.2. Subject to the will of Parliament, amendments to the EPR are likely to take effect in April 2012 which will insert requirements within the EPR for the EPR as a whole (i) to be reviewed and a report published by 6 April 2017, and (ii) for review reports thereafter to be published at intervals not exceeding five years. Through being done by amendment of the EPR, the transposition of the industrial emissions Directive will thus be subject to those requirements.

²⁶ Note that there is no provision in Article 82(2) for installations for which a permit has been applied for before that date.

APPENDIX B – registration system for solvent activities

B1. The registration option would:

- be available only for installations at which nothing other than a solvent activity (currently specified in Section 7 of Part 2 of Schedule 1 of EPR but proposed to be moved to the replacement Schedule 14) is carried out;
- not be available to any operator which considers itself likely to make use of either of the derogations set out in Article 59(2) and Article 59(3) of the industrial emissions Directive;
- not be available in the specific case of an operator carrying out vegetable oil extraction or refining activities on individual batches of seeds and vegetable matter other than those specifically listed in item 19 of Part 2 of Annex VII of the industrial emissions Directive (because the regulator has to set emission limit values on the basis of BAT);
- compel the operator to notify the regulator (the local authority in all cases) of an intention to operate an installation at which a solvent activity is to be carried out, with the notification containing:
 - the name, address and post code of the installation where the solvent activity is to be carried out;
 - the name, address and post code of the operator if different from that of the installation itself;
 - the details of which of the solvent activities (as listed in Table 1 of the replacement Schedule 14) are to be carried out there;
 - a statement of which of the alternative means of complying with its obligations (see paragraph B5) the operator will use.

B2. The local authority would be given, by amendment of EPR Schedule 2, the duty to maintain a publicly-available register of all the registered solvent activities for which it is the regulator. The existing provisions of Schedule 2 in respect of the register would apply .

B3. A registered operator would be required to comply with Article 7(a) and (b) of the Directive in respect of incidents and accidents. The regulator would be empowered to serve a notice upon a registered operator to secure compliance with Article 7(c). The operator would have the right of appeal if aggrieved by the notice. Failure to comply with the notice would constitute an offence and attract the enforcement provisions of regulation 36.

- B4. The operator would be obliged to meet Article 58 requirements for the replacement of certain particularly hazardous classes of solvent. .
- B5. Under Article 59, a registered operator of a solvent activity would be obliged either:
- to ensure that the emission of volatile organic compounds from installations does not exceed the emission limit values in waste gases and the fugitive emission limit values, or the total emission limit values, and other requirements laid down in Parts 2 and 3 of Annex VII of the Directive; or
 - to comply with the requirements of the reduction scheme set out in Part 5 of Annex VII provided that an equivalent emission reduction is achieved compared to that achieved through the application of the emission limit values referred to in point (a).
- B6. A registered operator of a solvent activity would also be obliged:
- to take all appropriate precautions to minimise emissions of volatile organic compounds during start-up and shut-down operations; and
 - as relevant, to comply with the requirements of Article 59(5) and Article 59(6).
- B7. A registered operator of a solvent activity would be obliged either to:
- measure its emissions in accordance with Part 6 of Annex VII of the Directive; or
 - to supply the competent authority, on request, with data enabling the competent authority to verify compliance with either of the following:
 - emission limit values in waste gases, fugitive emission limit values and total emission limit values; or
 - the requirements of the reduction scheme under Part 5 of Annex VII.
- B8. The data supplied by the registered operator for compliance verification may include a solvent management plan prepared in accordance with Part 7 of Annex VII. An information notice provision would enable the regulator to require a plan if one is not provided by the operator.
- B9. An operator of a registered solvent activity would be obliged to report to the regulator any substantial change to the installation, where “substantial change” is defined as set out in Article 63(1) of the Directive.

- B10. Failure to meet the obligations upon the operator of a registered solvent activity would become an offence through regulation 38(1), with the provisions as regards penalties and defences in regulations 39 and 40 thus applying.
- B11. Each registration would remain in place until the operator notifies the regulator that it is no longer required, or until revoked by the regulator. The regulator would have the power to require a permit application from any operator which does not comply with its obligations under registration.
- B12. Existing permits for installations carrying out only a solvent activity would be regarded as registrations with effect from 1 April 2014, with permit conditions not required under the proposed amended EPR Schedule 14 not applicable from that date, unless the operator informs the regulator by that date of a wish to retain permitted, rather than registered, status.
- B13. EPR regulation 65 would be amended to provide local authorities with the power to prescribe fees payable for (i) the registration of a solvent activity, and (ii) the subsistence of a registration. The actual prescription of fees for the former and, if required, the latter, would be the subject of a separate consultation. An annual subsistence charge is likely to be required in order to cover reasonable costs of local authorities in checking compliance with registration conditions and in handling annual emission reports from registered operators, and may therefore be very similar to those currently applied to permits covering only solvent activities. However, the scope for reduction would be kept under review.

APPENDIX C – legacy activities – “moribund and superfluous”

The activity descriptions tabulated here are proposed to be removed from Part A in the amended Part 2 of Schedule 1 to the EPR because the activities are (i) not practiced and are considered unlikely to be (“moribund”), or (ii) in practice covered by other Part A activity descriptions (“superfluous”).

EPR Sch. 1, Part 2, Section...	“Moribund” activities - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
	[15 activity descriptions]
1.2 A(1) (e)	<i>Gasification, liquefaction and Refining</i> - producing gas from oil or other carbonaceous material.
1.2 A(1) (h)(iii)	<i>Gasification, liquefaction and Refining</i> - loading/storage/treatment etc of crude shale oil.
1.2 A(1) (h)(v)	<i>Gasification, liquefaction and Refining</i> - loading/storage/treatment etc of emulsified hydrocarbons intended for use as a fuel.
1.2 A(1) (i)	<i>Gasification, liquefaction and Refining</i> - further refining or conversion.
2.2 A(1) (g)	<i>Non-Ferrous Metals</i> - mining zinc or tin-bearing ores where the activity may result in the release into water of cadmium or any compound of cadmium in a concentration which is greater than the background concentration.
3.2 A(1) (c)	<i>Activities Involving Asbestos</i> - destroying a railway vehicle by burning.
4.1 A(1) (f)(i)	<i>Organic Chemicals</i> - recovering carbon disulphide.
4.2 A(1) (g)(i)	<i>Organic Chemicals</i> – recovering etc. sulphuric acid.
4.2 A(1) (g)(ii)	<i>Organic Chemicals</i> – recovering etc. nitric acid.
4.2 A(1) (i)	<i>Inorganic Chemicals</i> - recovering ammonia.

EPR Sch. 1, Part 2, Section...	“Moribund” activities - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
4.2 A(1) (j)	<i>Inorganic Chemicals</i> - extracting any magnesium compound from sea water.
4.5 A(1) (b)	<i>Pharmaceutical Production</i> - formulating if there may be releases of specified substances to water.
5.1 A(1) (d)	<i>Incineration and Co-incineration of Waste</i> – incineration of hazardous waste in a plant that is not an incinerator.
5.1 A(1) (e)	<i>Incineration and Co-incineration of Waste</i> – incineration of non-hazardous waste in a plant that is not an incinerator.
6.3 A(1) (a)(ii)	<i>Tar and Bitumen Activities</i> – manufacture of electrodes or carbon-based refractory materials.

EPR Sch. 1, Part 2, Section...	“Superfluous” activities - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
	[27 activity descriptions]
1.1 A(1) (b)(i)	<i>Combustion activities</i> – burning waste oil.
1.1 A(1) (b)(ii)	<i>Combustion activities</i> – burning recovered oil.
1.1 A(1) (b)(iii)	<i>Combustion activities</i> – burning fuel manufactured from or comprising waste.
1.2 A(1) (b)	<i>Gasification, liquefaction and Refining</i> - reforming natural gas.
1.2 A(1) (f)	<i>Gasification, liquefaction and Refining</i> - purifying or refining products.
1.2 A(1) (h)(iv)	<i>Gasification, liquefaction and Refining</i> - handling etc. any gas or condensate associated with crude oil etc..

EPR Sch. 1, Part 2, Section...	“Superfluous” activities - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
1.2 A(1) (k)	<i>Gasification, liquefaction and Refining</i> - odorising gas where related to a Part A activity.
2.2 A(1) (c)	<i>Non-Ferrous Metals</i> – refining any non-ferrous metal, other than copper.
2.2 A(1) (d)	<i>Non-Ferrous Metals</i> – melting etc. lead.
2.2 A(1) (e)	<i>Non-Ferrous Metals</i> – recovering gallium <i>et al.</i> .
2.2 A(1) (h)	<i>Non-Ferrous Metals</i> - use of beryllium or selenium.
2.2 A(1) (i)	<i>Non-Ferrous Metals</i> –pelletising etc. any non-ferrous metal ore.
3.1 A(1) (b)(ii)	<i>Production of Cement And Lime</i> - producing lime with input >5,000 tonnes in 12 months.
4.1 A(1) (b)	<i>Organic Chemicals</i> - producing any other organic compounds not described in paragraph (a).
4.1 A(1) (c)	<i>Organic Chemicals</i> - polymerising etc. unsaturated hydrocarbons.
4.1 A(1) (d)	<i>Organic Chemicals</i> – use of toluene di-isocyanate.
4.1 A(1) (f)(ii)	<i>Organic Chemicals</i> - recovering pyridines.
4.1 A(1) (g)	<i>Organic Chemicals</i> - recovering or purifying acrylic acids.
4.2 A(1) (c)	<i>Inorganic Chemicals</i> - using hydrogen cyanide or hydrogen sulphide.
4.2 A(1) (g)(iii)	<i>Inorganic Chemicals</i> - purifying phosphoric acid.
4.3 A(1) (b)	<i>Chemical Fertiliser Production</i> - converting into granules.
4.7 A(1) a)	<i>Manufacturing Activities Involving Carbon Disulphide Or Ammonia</i> – use of carbon disulphide.
5.4 A(1) (b)	<i>Recovery Of Waste</i> ; cleaning/regenerating carbon <i>et al.</i> .
5.5 A(1) (a)	<i>The Production of Fuel From Waste</i> - making solid fuel from waste by using heat.

EPR Sch. 1, Part 2, Section...	“Superfluous” activities - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
6.1 A(1) (c)	<i>Paper, Pulp And Board Manufacturing Activities</i> - making paper with possible release of scheduled substances to water.
6.4 A(1) (c)	<i>Coating Activities, Printing and Textile Treatments</i> – treating textiles with possible release of scheduled substances to water.
6.8 A(1) (f)	<i>The Treatment of Animal and Vegetable Matter and Food Industries</i> - processing, storing or drying.

APPENDIX D – legacy activities – environmentally justified

The activity descriptions tabulated here are proposed to be retained in the amended Part 2 of Schedule 1 to the EPR.

EPR Sch. 1, Part 2, Section...	Environmentally justified activities (The section heading under which the activity is listed is quoted in <i>italics</i> . Justification for retention is given in <i>bold italics</i> after each description.)
	[13 activity descriptions]
1.2 A(1) (h)(i)	<p><i>Gasification, Liquefaction and Refining Activities</i> – loading, unloading, handling or storage, or the physical, chemical or thermal treatment of crude oil.</p> <p><i>37 permits – significant releases of methane, non-methane volatile organic compounds and other organic compounds to air, and of toluene and benzene to water. Obvious potential for environmental damage if not regulated.</i></p>
1.2 A(1) (h)(ii)	<p><i>Gasification, Liquefaction and Refining Activities</i> – loading, unloading, handling or storage, or the physical, chemical or thermal treatment of stabilised crude petroleum.</p> <p><i>2 permits – activity very similar to that involving crude oil</i></p>
1.2 A(1) (j)	<p><i>Gasification, Liquefaction and Refining Activities</i> – pyrolysis, carbonisation, distillation, liquefaction, gasification, partial oxidation or other heat treatment of coal, oil or other carbonaceous material.</p> <p><i>8 permits – potentially polluting in view both of the raw material and the intensive treatment applied to it.</i></p>
2.1 A(1) (d)	<p><i>Ferrous Metals</i> – loading, unloading or otherwise handling or storing more than 500,000 tonnes in any 12-month period of iron ore.</p> <p><i>3 permits – the activity has given rise to considerable local concern.</i></p>

<p>EPR Sch. 1, Part 2, Section...</p>	<p>Environmentally justified activities</p> <p>(The section heading under which the activity is listed is quoted in <i>italics</i>. Justification for retention is given in <i>bold italics</i> after each description.)</p>
<p>2.2 A(1) (f)</p>	<p><i>Non-Ferrous Metals</i> – producing, melting or recovering cadmium or mercury or any alloy containing more than 0.05% of either metal or of both in aggregate.</p> <p><i>7 permits – significant releases of cadmium to air. There is no other suitable environmental control upon these activities which use very notorious pollutants.</i></p>
<p>3.2 A(1) (b)</p>	<p><i>Activities Involving Asbestos</i> – stripping asbestos from railway vehicles</p> <p><i>2 permits – no other suitable means of environmental regulation in respect of this highly notorious pollutant.</i></p>
<p>4.2 A(1) (b)</p>	<p><i>Inorganic Chemicals</i> – activity (other than water treatment and other specified activities) likely to release halogens (chlorine <i>et al.</i>), interhalogens or hydrogen halides to air.</p> <p><i>20 permits – chlorine and the other halogens are notoriously toxic and they and the compounds covered are potentially damaging to all three media if released.</i></p>
<p>4.2 A(1) (d)</p>	<p><i>Inorganic Chemicals</i> – use of any compound of a range of metallic elements (including arsenic and lead) where the activity may result in releases of the elements or their compounds to air or to water.</p> <p><i>24 permits – significant releases to both air and water. The elements covered and their compounds are toxic.</i></p>
<p>4.2 A(1) (f)</p>	<p><i>Inorganic Chemicals</i> – use of mercury or cadmium or any compound thereof which may result in releases to air.</p> <p><i>18 permits – significant releases of cadmium to water and the need to maintain regulation of activities involving these very notorious substances justify retention of IPPC.</i></p>

<p>EPR Sch. 1, Part 2, Section...</p>	<p>Environmentally justified activities</p> <p>(The section heading under which the activity is listed is quoted in <i>italics</i>. Justification for retention is given in <i>bold italics</i> after each description.)</p>
<p>4.2 A(1) (h)</p>	<p><i>Inorganic Chemicals</i> – any activity, other than combustion or incineration of carbonaceous material, which is likely to result in the release to air of any acid-forming oxide of nitrogen.</p> <p><i>9 permits – potentially significant releases of nitrogen oxides to air are controlled under present arrangements.</i></p>
<p>4.7 A(1) (b)</p>	<p><i>Manufacturing Activities Involving Carbon Disulphide or Ammonia</i> – any activity for the manufacture of a chemical which may result in the release of ammonia into the air other than a refrigeration activity.</p> <p><i>5 permits – potentially significant releases of ammonia to air controlled under present arrangements.</i></p>
<p>5.1 A(1) (f)</p>	<p><i>Incineration and Co-incineration of Waste</i> - incineration of any gaseous compound containing halogens in a plant which is not an incineration plant or co-incineration plant.</p> <p><i>No current permits, but needed to cover the possibility that the activity might arise from removal of CFCs and similar compounds from refrigeration and air conditioning plant – particularly since the requirements concerning waste incineration of Chapter IV of the Directive do not apply to gaseous waste.</i></p>
<p>6.3 A(1) (a)(i)</p>	<p><i>Tar and Bitumen Activities</i> – distilling tar or bitumen in connection with any process of manufacture.</p> <p><i>2 permits – highly significant releases of naphthalene to air: no other suitable means of environmental regulation.</i></p>

APPENDIX E – legacy activities – “remove from Part A”

The activity descriptions tabulated here are proposed to be removed from Part A in the amended Part 2 of Schedule 1 to the EPR and hence from IPPC.

EPR Sch. 1, Part 2, Section...	Activities to be removed - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
	[Seven activity descriptions]
3.1 A(2) (a) and (b)	<p><i>Production of Cement and Lime</i> – grinding cement clinker or metallurgical slag.</p> <p>8 permits – the activity descriptions are proposed for insertion in Part B of Section 3.1.</p>
3.3 A(1)(a)	<p><i>Manufacturing Glass and Glass Fibre</i> – manufacturing glass fibre in an installation with a capacity of 20 tonnes/day or less.</p> <p>5 permits – the installations concerned operate below the threshold in the Directive and would fall from regulation unless carrying out an activity described elsewhere in Part 2 of EPR Schedule 1.</p>
3.3 A(1)(b)	<p><i>Manufacturing Glass and Glass Fibre</i> – manufacturing glass frit or enamel frit and its use in any activity where that activity is related to its manufacture and the aggregate quantity of such substances is likely to be 100 tonnes or more in any 12-month period.</p> <p>4 permits – this activity is already listed under Part B of Section 3.3 without the capacity threshold.</p>
3.4 A(1)(b)	<p><i>Production of Other Mineral Fibres</i> – producing any fibre from any mineral.</p> <p>1 permit – installation with minimal impact.</p>
4.1 A(1) (e)	<p><i>Organic Chemicals</i> – flame bonding of polyurethane foams or polyurethane elastomers.</p> <p>3 permits – activity similar to that described in 4.1 B (b) which will be amended to cover this.</p>

EPR Sch. 1, Part 2, Section...	Activities to be removed - short description (The section heading under which the activity is listed is quoted in <i>italics</i>)
4.4 A(1) (b)	<i>Plant Health Products and Biocides</i> - formulating products if this may result in the release to water of specified substances. 1 permit - regulation solely as water discharge activities (under Schedule 21 of the EPR) is considered sufficient.
6.4 A(1) (a)	<i>Coating Activities, Printing and Textile Treatments</i> – applying or removing organo-tin compounds. 3 permits – organo-tin compounds no longer used.

Strategic Steering Group Meeting

Item No. **SSG19.02.04-02**

Subject: Implementation of the Industrial Emissions Directive for biological treatments of sewage sludge

SSG is asked to note that the Environment Agency:

1. has determined that the Industrial Emissions Directive applies to the biological treatment of sewage sludge
2. will be discussing the timetable and process for permit applications through the Water UK waste and recycling network

1.0 Background

- 1.1 Directive 2010/75/EU on industrial emissions (the IED) entered into force on 6 January 2011 and was transposed into UK law on 20 February 2013¹. The IED recast the Directive on integrated pollution prevention and control (IPPC) and introduced a revised schedule of industrial activities falling within scope of its permitting requirements. The schedule of waste management activities includes the recovery of non-hazardous waste with a capacity exceeding 75 tonnes per day involving biological treatment, but excludes activities covered by the Urban Waste Water Treatment Directive² (UWWTD).
- 1.2 There was much discussion about whether the biological treatment of sewage sludge is an activity covered by the UWWTD. In July 2014 we deferred the need to submit permit applications for sewage sludge digestion at sewage treatment works to allow further consideration of the question. All of the UK environmental regulators have now concluded that the biological treatment of sewage sludge is not an activity covered by the UWWTD and is therefore within the scope of the IED. This unanimously held view has been communicated to the UK and devolved governments with a view to commencing implementation.

2.0 Implementation

- 2.1. The IED seeks to achieve a high level of protection for the environment taken as a whole from the harmful effects of industrial activities. It does so by requiring each of the industrial installations to be operated under a permit from the competent authority with conditions based around the use of best available techniques (BAT). In this instance the Environment Agency is the competent authority.
- 2.2. The IED set a deadline of 7 January 2014 for existing installations to obtain an environmental permit. We have therefore delayed implementation of this aspect of the IED for over five years. We now

¹ Environmental Permitting (England and Wales)(Amendment) Regulations 2013

² Directive 91/271/EEC concerning urban waste water treatment

need to address this by ensuring all installations involving the biological treatment of sewage sludge obtain and operate under an environmental permit in as short a timescale as can reasonably be achieved.

- 2.3. We recognise that many sludge treatment facilities were constructed prior to the current permitting requirements and their design may not be compatible with the best available techniques as described in the EU BAT reference documents. Where this is the case risk assessments can be used to demonstrate that an equivalent level of environmental protection is being or can be achieved. Where additional measures are required we will use improvement conditions within permits to allow time to achieve the BAT standard.

3.0 Next Steps

- 3.1. The Environment Agency is developing a sludge strategy in order to plan and deliver clear and consistent regulation of sewage sludge treatment and use activities. It will be finalised by the end of 2019. The permitting of sewage sludge biological treatment activities is one element of the strategy. It will be delivered in parallel with the development of the strategy.
- 3.2. We will use the Water UK waste and recycling network (WaRN) as the main forum to discuss IED and permitting arrangements. We therefore propose that the representatives who attend WaRN act as the main point of contact. We will also ensure that our water company account managers are kept fully informed of progress.
- 3.3. On a practical level all internal resourcing and training needs are being addressed in preparation to support pre-application discussions and the receipt of permit applications later this year. Through WaRN we be asking each company to provide a definitive list of all sites used to carry out biological treatment of sludge, and to provide a best estimate of the number of permit applications they anticipate making.

Clive Humphreys, Environment and Business, Environment Agency

Nick Fincham
Director of Regulation

Our ref:
Your ref:
Date: **09 July 2019**

By email only: nick.fincham@thameswater.co.uk

Dear Nick

INDUSTRIAL EMISSIONS DIRECTIVE

At the last Strategic Steering Group meeting on 2 April 2019 we tabled a paper about implementation of the Industrial Emissions Directive (IED) for biological treatments of sewage sludge. The paper (enclosed) informed the group that the IED applies to the biological treatment of sewage sludge, and that we would be discussing the timetable and process for permit applications with the Water UK waste and recycling network. The meeting acknowledged the paper and its contents received some discussion.

The purpose of this letter is to inform you that we are now implementing this aspect of the IED. This means that permits will be required for the biological treatment of sewage sludge above the IED thresholds. We will arrange for engagement and further communications to take place, principally through the Water UK waste and recycling network, and will be inviting applications for permits in accordance with a timetable to be agreed.

In order to agree the timetable implementation and to initiate the permitting process we are asking each water and sewerage company to provide details of the following to Clive Humphreys via your waste and recycling network representative by 24th July:

- sites carrying out biological treatment of sludge
- sites carrying out biological treatment of other sewage related wastes such as screenings and grits
- sites operating biogas engines
- sites injecting biogas to the gas grid

Should you require any further information please contact Clive Humphreys at clive.humphreys@environment-agency.gov.uk.

Yours sincerely



Sarah Chare

Director of Operations

Secondary Containment for the Water Industry

Darren Legge
Senior Advisor – Landfill and Resources for Waste Team Team
February 2020

In the presentation we will look at:

- What our sector guidance currently requires and what it will require;
- A look at CIRIA 736 and how this will relate to new sites;
- How CIRIA 736 will relate to existing sites
- A few examples of problems we have encountered
- A summary of what we are looking for

Current guidance;

‘How to comply with your environmental permit : additional guidance for Anaerobic Digestion includes AD and the digestion of organic sludge generated from the treatment of municipal waste water (2013)’.

What does this require in terms of secondary containment?

Above ground structures;

- bunds to be impermeable, stable and resistant to the stored materials
- have no outlet (that is, no drains or taps) and drain to a blind collection point
- have pipework routed within bunded areas with no penetration of contained surfaces
- be designed to catch leaks from tanks or fittings
- have a capacity greater than 110 percent of the largest tank or 25 percent of the total tankage, whichever is the larger
- have regular visual inspections - any contents must be pumped out or otherwise removed under manual control after checking for contamination
- be fitted with a high-level probe and an alarm (as appropriate) if not frequently inspected
- have tanker connection points within the bund (where possible), and if not possible you must provide adequate containment for spillages or leakage
- have programmed engineering inspections (extending to water testing if structural integrity is in doubt)
- Be designed, constructed and maintained to meet with the specifications outlined in the Construction Industry Research and Information Association guidance document titled CIRIA 164.

For sub-surface structures;

- establish and record the routing of all site drains and subsurface pipework
- identify all sub-surface sumps and storage vessels
- engineer systems to minimise leakages from pipes and make sure they can be detected quickly if they do occur, particularly where hazardous (that is groundwater-listed) substances are involved
- provide secondary containment and leakage detection for sub-surface pipework, sumps and storage vessels
- establish an inspection and maintenance programme for all subsurface structures, for example, pressure tests, leak tests, material thickness checks or CCTV

Future guidance;

‘Appropriate measures for the biological treatment of waste’.

What the difference?

For secondary containment we require CIRIA 736 rather than CIRIA 164

Draft appropriate measures for biological treatment of waste – specific guidance referred to;

- Recognised industry standards for the design and construction of secondary containment measures;
 - CIRIA 736 for secondary containment and lagoon structures
 - ADBA ICOP and risk assessment tool
 - Design and construction validated by a suitably qualified person

CIRIA 736

- CIRIA C736 'Design of containment systems for the prevention of pollution : secondary, tertiary and other measures for industrial and commercial premises' (2014) – the landfill industry wanted to move away from the use of this document but didn't;
- Is risk also based and reflects current good practice for all liquids stored on a permitted site – including AD, landfill and oil and gas sectors;
- Provides design criteria for concrete and earth bunds – bunds don't necessarily have to be concrete

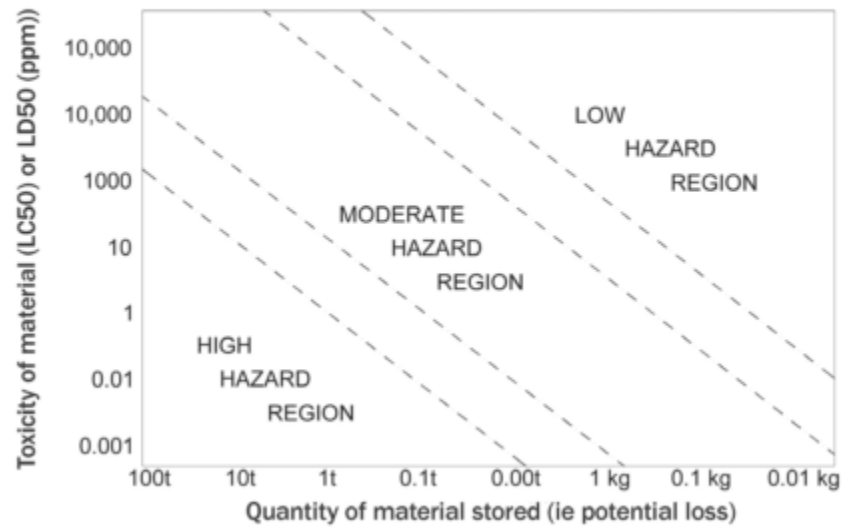
ABDA ICOP and Risk Assessment Tool

- Key messages:
 - Has been available since July 2016 – so plants constructed since then should have better secondary containment than prior to issue
 - Early and continuous discussion with the EA recommended to determine suitability of location and design
 - Requires a risk assessment approach
 - ICOP still relies heavily of CIRIA 736 despite industry wanting to move away from this documents
 - Although the ICOP is primarily for the industry we the Environment Agency, can use it to inform our decision making process

The risk assessment tool – follows the CIRIA 736 approach;

- Identify the hazard via the S-P-R approach
- Determine the Site Hazard Rating - CIRIA Box 2.1 for the source-pathway-receptor;
- Calculate the realistic likelihood of loss of containment occurring – CIRIA Paragraph 2.5;
- Calculate the overall Site Risk Rating – CIRIA Box 2.2;
- Determine the class of containment - CIRIA Paragraph 2.6.1;

Hazard Rating for Source



Hazard Rating for Pathways

Some Examples

Higher Risk / Lower Risk

- On top of hill facing surface water
 - Drains open to surface water
 - Sitting on an aquifer
 - On site boundary
 - Site with weather extremes
- On flat ground well away from SW
 - Pumped discharge drainage system
 - Sitting on impermeable ground
 - In middle of fully protected site
 - Cooler drier site with no extremes

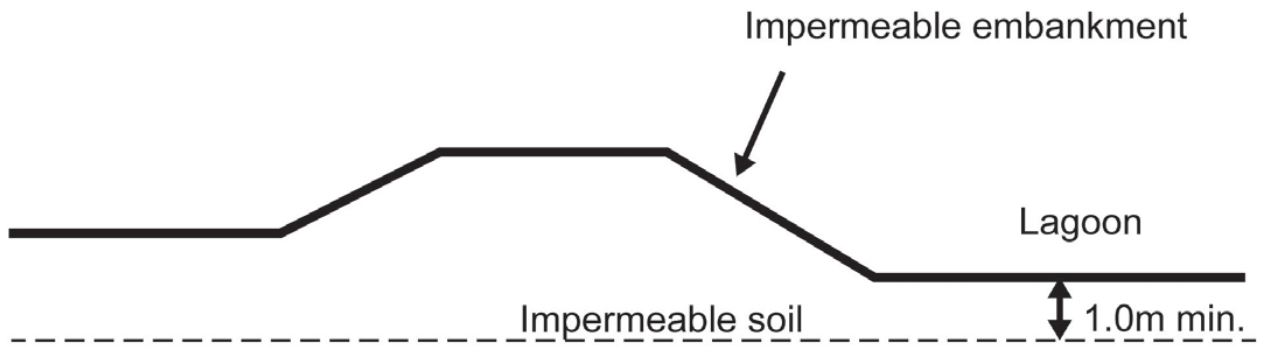
Receptor

- Humans, animals, water course or body, groundwater
- Environmental sensitivity of receptor
- Nature and classification of receiving water
- Dilution and mixing – before reaches receptor

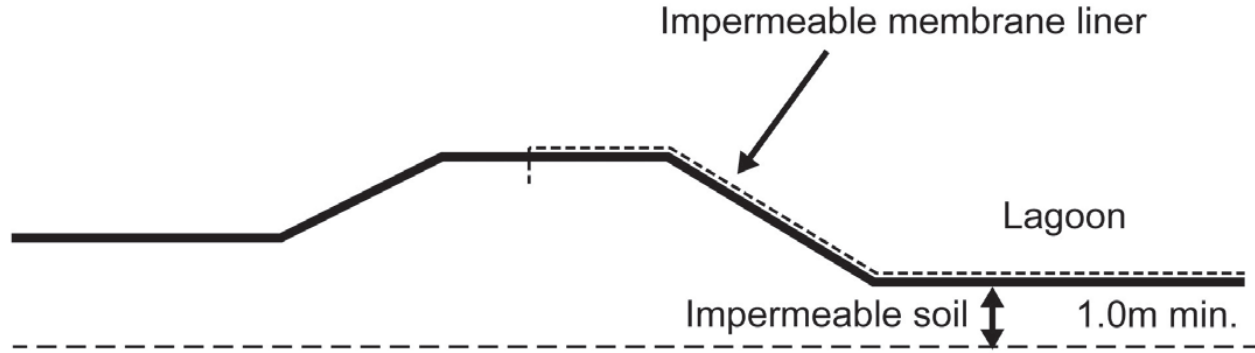
Bund Integrity Requirements based on required Performance Standards

Possible combination	Overall Risk Rating	Indicated class of secondary containment
HH, HM, OR MH	HIGH	Class 3
MM, HL, OR LH	MEDIUM	Class 2
LL, ML, OR LM	LOW	Class 1

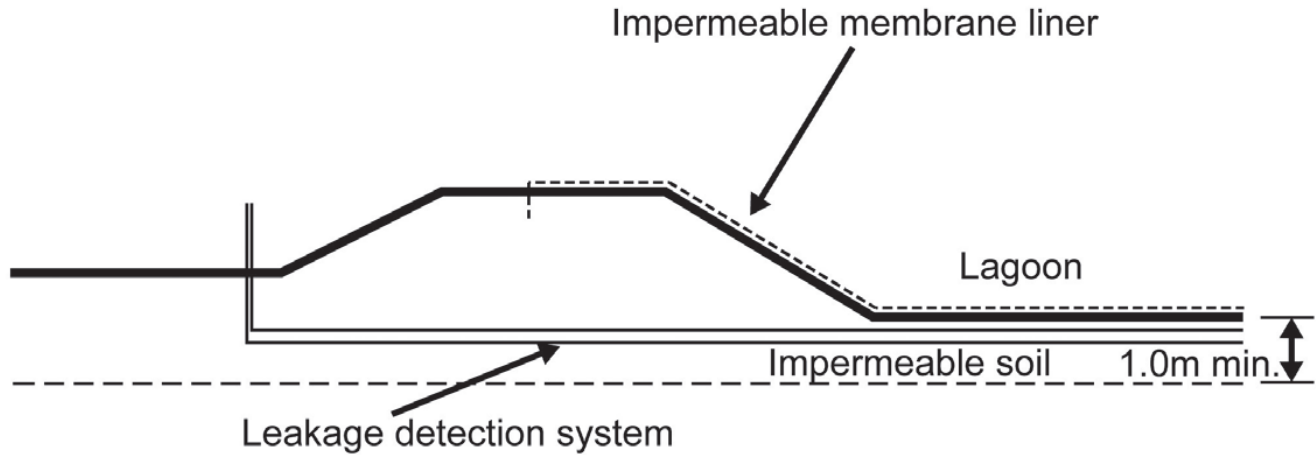
Class 1



Class 2



Class 3



Existing Installations

- CIRIA 736 and the ICOP identify what secondary measures are required and how these should be design and constructed. But what about those sites that are already constructed and operated?
- CIRIA 736 was published in 2014 with the ICOP being published in 2016. Since these dates suitably designed secondary containment should have been constructed
- Before these dates, it is possible/likely that secondary containment was either not installed or will not meet the guidance
- Where this is the case we need evidence that what has been constructed is fit for purpose or that further measures/improvements will be put in place to ensure the environment is protected should there be a failure of the primary containment

Existing Installations – What does CIRIA Require?

- Chapter 5 of CIRIA 736 addresses existing installations
- First, establish the class of containment that is required for the site, specifically looking at;
 - Nature and volume of inventory to be stored
 - Compatibility with form of construction
 - Potential pathways to sensitive receptors – site drainage, emptying rainwater
 - Type of containment system – concrete, blockwork, earth
 - Condition of the containment – inspect, repair, maintain
 - In service performance – design able to tolerate anticipated loading
- Next, determine whether there has been a change of use from when the site was originally developed to identify whether further construction is required
- Where the construction needs to be upgraded, Ch12 provides options

Chapter 12 – repair and upgrading of existing containment facilities

- Repair and maintenance of concrete walls
- Pipe penetrations
- Repair techniques
- Extension of containment – to follow Chapter 7 or 8 depending on material

- CIRIA 736 would also apply if no secondary containment measures are in place and the assessment has determined that these are necessary to protect the environment

But what we can achieve needs to be based on the risk posed by the site and in order to reduce the risk sufficiently – might be that the solution for one site isn't the same for another.

Secondary containment issues

- Inappropriate design and/or build
- Inspection & maintenance



Secondary containment issues

- Lack of evidence of CQA
- Absence of secondary containment



In summary what do we expect?

- Appropriately designed infrastructure
- Construction quality assurance
- Planned inspection & maintenance regime
- Continuing evidence of fitness for purpose

Appropriately designed infrastructure

- Is the tank specified to perform its current function? (specific gravity, pressure, temperature, resistant to contents, design code)
- Is the bund designed as a water-retaining structure? (joints, seals/sealant, tie-bar holes)
- How is surface water managed? (sealed drainage)

Construction Quality Assurance

- CQA plans for intended construction (design drawings, tech specifications, competent engineer)
- Competent supervision of construction phase (records)
- CQA reports for as-built (evidence built according to plan, competent engineer sign-off)

Planned inspection & maintenance

- Listed assets with reference data (design spec, CQA)
- Competently designed inspection regime for critical infrastructure
- Written schemes of examination & competent sign-off of continuing fitness for purpose
- Planned preventative maintenance regime for all fixtures & fittings

Continuing evidence of fitness for purpose

- We know how they were built and what they were designed to do
- We know they are being checked and maintained
- We have confidence in the site management
- We have assurance that the risk of failure is low

A large, light blue circular graphic containing a white silhouette of a person with their arms raised in a celebratory gesture. The person's head is replaced by a stylized cloud or flower-like shape. The word "Questions?" is centered within this graphic in a dark blue font.

Questions?

Water and sewage companies IED permits:

Basic pre-application advice – applying (v1, March 2021)

This document provides basic advice for water and sewage companies applying for permits or variations in the biowaste treatment sector.

This advice covers the application itself and the associated charges. We expect the majority of applications will relate to biological treatment of waste by anaerobic digestion (AD). This guidance is tailored with that in mind. If your site undertakes other activities you should consider how this advice and other guidance is applicable.

Note – If you have been served a **Regulation 61 Notice**, refer to the relevant section before reading the rest of this advice.

Check if you need an environmental permit

How do I apply for a new permit?

How do I change (vary), transfer or cancel my permit?

How much will my permit cost?

- Baseline charge

- Add-on charges

- Habitats assessment

- Subsistence

- Sites of High Public Interest (SHPI)

Declaration

Submitting an application

Application Timescales

Publicising and consultation

Regulation 61

Further Support

- Enhanced pre-application advice

Check if you need an environmental permit

If you are unsure whether your activity requires an environmental permit or what kind of permit you require, you should read our [guidance on whether you need an environmental permit](#).

How do I apply for a new permit?

You must complete the relevant forms and provide the required supporting information.

For some operations you can apply for a [standard rules](#) environmental permit. These have fixed conditions and are only suitable for a limited number of activities and locations:

- [Apply for a new standard rules online](#).
- You can also use the [application forms for a new standard rules permit](#).

For all other activities and locations you need to apply for a bespoke permit:

- To apply for a new bespoke environmental permit you must complete application forms A, B2 and F1.
- For bespoke installation activities you must also complete form B3.
- For bespoke waste operations, that are not directly associated activities, you must also complete form B4.
- [Application forms and guidance for a bespoke permit application](#).

You should read the guidance notes that accompany each form. You need to email the completed forms, along with supporting documentation, to psc@environment-agency.gov.uk.

How do I change (vary), transfer or cancel my permit?

If you already have a permit, and want to change (vary) it, transfer it to another person or business, or surrender it, you must provide the correct forms and supporting information.

For example, to apply to vary an existing bespoke installation permit you will need to complete application forms A, C2, C3 and F1.

[How to change details of your environmental permit, transfer it to somebody else or surrender it](#).

How much will my permit cost?

Before applying, you should read our [Environmental permitting charges guidance](#). This sets out how to calculate your charge and when certain charges apply.

Baseline charge

You can find a full list of activity charges in table 1 in the tables of charges in the [Environmental permitting charging scheme](#). The baseline charge for an application covers the work we carry out each time we determine a typical permit application.

There are fixed baseline charges for new applications, variations to permits, transfer applications and surrender applications.

New anaerobic digestion installation activities and permits

To apply for a new permit, the full permit application charge for the new activity will apply.

To apply to vary a bespoke permit to add a new activity, the full permit application charge for that new activity will apply. For example, if you want to add an anaerobic digestion installation activity to an existing bespoke permit, which currently only permits the operation of CHPs, you will need to pay the full permit application charge for the activity being added.

Most new anaerobic digestion installation activities will be a Section 5.4 (a)(i) and (b)(i) - non-hazardous waste installation for biological treatment with an application charge of £13,984 (charging ref. 1.16.2.1). This charge covers the assessment of directly associated activities including combustion plant and air quality modelling.

To apply for more than one new activity you need to calculate the correct application charge using the approach set out in section 2.12 of the [charging guidance](#). Using the [tables of charges](#), you need to calculate the sum of:

- 100% of the relevant application charge in the [tables of charges](#) for the largest application charge
- 50% of the relevant application charge for any secondary activities that can reasonably be considered to be part of the same operation – to reflect the time saved during the determination period, for example, by only needing one consultation or one set of operator competence checks
- 10% of the relevant application charge for the same activity carried out multiple times on the same site

Varying existing anaerobic digestion permits

To apply to vary an existing permit which already authorises anaerobic digestion under a bespoke waste operation, you will need to pay a variation charge of the anaerobic digestion installation activity you are changing to. We expect a substantial variation to be the most appropriate level of variation for the majority of cases.

To apply to change a standard rules permit to a bespoke activity you need to apply for a bespoke permit as you cannot make significant changes to standard rules permit. You will need to pay a variation charge of the anaerobic digestion installation activity you are changing to. We expect a substantial variation to be the most appropriate level of variation for the majority of cases.

For example, to vary a SR2009no4 permit to a non-hazardous bespoke anaerobic digestion installation activity, the charge would be £12,586 (charging ref. 1.16.2.1, substantial variation)

Other variations

To apply to make changes to other permitted activities the charge will be a variation charge of each activity being varied. The scope of the variation types are described in section 3 of our [charging guidance](#). The charges for each type of variation can be found in table 1.6 of our table of [Charging Scheme](#).

As described in our [charging guidance](#), the following points should be taken into account when calculating your variation charge.

- If you want to add an activity to your permit, you must pay the charge for a new permit application for that type of activity
- If you want to vary a permit that covers more than one activity you must pay a variation charge for each activity you want to vary. If the change affects other activities on the same permit, that means they will also need to be changed, you will need to pay a variation charge for each of the other activities affected
- If you have a permit that covers the same activity multiple times, you pay a variation charge when changing each repeat activity. However, if you want to make the same change, at the same time, to a second or subsequent repeat activities, you do not need to pay another variation charge. This is because the changes to the second or subsequent repeat activities are regarded as administrative changes which are free of charge
- If you have a permit that covers multiple activities and you apply to change any plant or infrastructure (for example replacing the boilers, or extending the site boundary), you pay the highest variation charge of the activities affected. Any changes to the other activities are then regarded as administrative variations and will be free of charge. This applies if it is a minor, normal or substantial variation

Add-on charges

You may have to pay an add-on assessment charge for the assessment of plans, for example an odour management plan.

If we need to carry out additional assessments, for example a habitats assessment, we may charge extra for this work. You must pay the add-on charge when applying for a new permit or if you need to submit a new plan or updated when applying for a permit variation.

In some cases the costs of assessing these plans is included in the baseline application charge. The activity description in table 1 in the tables of charges will say if this is the case.

The plans and assessments are listed in table 1.19 in the tables of charges in the [Charging Scheme](#).

As odour has been identified a key issue for sites that carry out biological treatment. Therefore an odour management plan is required. If you need a new plan, or an existing one to be revised, the following charge will apply:

- Odour management plan – a fixed charge of £1,246.

Noise and bioaerosol emissions have also been identified as potential key issues for the sector. Depending on the findings of your risk assessment, it is possible that the following add-on charges may apply in addition at the baseline application charge:

- Noise and vibration management plan – a fixed charge of £1,246.
- Emissions management plan (bioaerosols) – a fixed charge of £1,241.

There are no charge reductions for these plans when submitted as part of a variation application.

Habitats assessment

For certain protected sites we need to carry out a habitats assessment. For these sites we charge a fixed charge of £779.

This is an assessment of the risks to one or more of these sites, a:

- European Site within the meaning of the Conservation of Habitats and Species Regulations 2017
- site referred to in the National Planning Policy Framework 2018 as requiring the same assessment as a European Site
- site of special scientific interest within the meaning of the Wildlife and Countryside Act 1981
- marine conservation zone within the meaning of the Marine and Coastal Access Act 2009

We have included further information on when this is required in the supporting documents section below.

Subsistence

If we grant a permit, you will need to pay an annual subsistence charge to cover the ongoing costs of regulating the permit. The subsistence charges are in listed in the tables of charges in Part 3 of the charging scheme.

Biological treatment installation activities, including treating hazardous or animal waste and anaerobic digestion, have a subsistence charge of £11,019 (charging ref. 2.16.11).

If any of your activities are listed in table 2.16 in the [tables of charges](#), you must pay the sum of the highest installation activity charge and the highest waste operation charge.

We can confirm the subsistence during the determination of your application.

Sites of High Public Interest (SHPI)

If your site is designated as a SHPI additional charges and a different charging process apply. Additional information on SHPI is included in [section 2.5 of the Environmental Permitting Charges Guidance](#).

An application for a SHPI is subject to a newspaper advertising charge of £500.

The number of hours it takes to determine the application will be calculated at £100 per hour (commonly referred to as a 'time and materials' charge). If this is higher than the standard application charge listed in the Charging Scheme, the additional charge component will be charged – please see [section 2.5 of the Environmental Permitting Charges Guidance](#).

Declaration

Please ensure the Declaration section is completed by each “relevant person”.

In the case of a company a relevant person must be an active director/company secretary as listed on [Companies House](#). We accept letters from a relevant person stating that they authorise another individual to submit applications, and complete the declaration, on their behalf.

Further information on who should complete the declaration can be found in section 5 of the [guidance notes for the F1 application form](#).

Submitting an application

Please submit your application by email or, if applicable, by using the online form as detailed in the 'How do I apply for a new permit?' section above. Any applications submitted by post may be delayed as our offices are not yet fully operational following the Covid-19 lockdown.

Application Timescales

Once an application is duly made, the amount of time taken to determine your application will vary. It will be impacted by factors such as:

- The quality of the application

- The complexity of the application
- Whether an application is of high public interest
- Whether the application includes novel technologies or techniques
- Whether the determination requires input from others, both internal and external to the Environment Agency
- Whether modelling and/or monitoring and assessment is required, for example Air Quality modelling and assessment

The Permitting Officer determining your application will be able to keep you updated with the progress of your application.

Publicising and consultation

The majority of applications will be publicised on Citizen Space, a platform for public consultation, and linked through [gov.uk](https://www.gov.uk). There are no additional costs associated with this. Additional costs will be associated with sites of high public interest, see above.

Once applications have been determined the majority will be publicised on [gov.uk](https://www.gov.uk). This will include the permit and our decision document.

Regulation 61

If you are already permitted as a bespoke anaerobic digestion installation, and are therefore IED compliant, we should only need to carry out a BAT review. You do not need to apply to do this. Instead, we will serve a Regulation 61 notice asking for the relevant information for us to be able to carry out this review.

Once we have this information we carry out a regulator initiated variation. This will follow a similar process to an operator led variation. Once we have completed the determination we issue a variation and send an invoice to you to cover the costs of our work.

In the case of a regulator initiated variation, the charge is equivalent to the charge that would have been payable if the variation had been made in response to an application. This is likely to be at a normal variation level.

You may also apply to make other changes to a permit at the same time we're carrying out a regulator initiated variation. These applications will be charged as a regular application.

We can issue all changes under one permit and will specify which conditions have changed as a result of our variation or your variation. It is important to note that the appeal period against conditions imposed by a regulator initiated variation is 2 months. It is 6 months for conditions relating to an operator variation.

Further Support

Enhanced pre-application advice

If you want further specific technical advice on your activity you can apply for our enhanced pre-application service. This is a chargeable service. Further details of the service are provided in [section 2.3 of our charging guidance](#).

For Installations, our enhanced pre-application service is now limited to specific technical questions and dependant on your application meeting certain criteria. For the time being we have agreed that for these applications that you do not necessarily have to meet those criteria.

Whilst we are operating a reduced service, we have limited our enhanced pre-application advice service to answering specific technical questions you may have.

Once we receive your request for enhanced pre-application we will assess if this is something we are able to provide at that time. Please note: We cannot currently attend site visits or face to face meetings or provide a review of your application prior to submission.

We periodically review the level of service we can offer.

You can apply for enhanced pre-application advice using our [pre-application guidance request form](#).



**Water Pollution Prevention, intelligent
Drainage
&
Using CIRIA736**



Chronology

CIRIA 164 - 2004
Buncefield - 2005
CIRIA 736 - 2014
Sentencing Guidelines - 2014
EA Archive PPGs 2015
Fire Prevention Plans - 2016





CIRIA 164 - 2005

**Applied to COMAH sites
Bunding
Penstock Valves
Guidance for Constructors**



Buncefield



Biggest explosion since WW2
Ash Cloud
Water Pollution
Legacy

CIRIA 736

Universally Applicable & Accessible
Educated/Responsible Customers
Understanding Risk
Updated Technology



Containment systems for
the prevention of pollution
*Secondary, tertiary and other measures
for industrial and commercial premises*



Sentencing Guidelines - 2014

Punishment
Deterrence
Removal of Gain

BBC Sign in

NEWS

Home UK World Business Politics Tech Science Health Family & Education

England Local News Regions

News Sport Weather Player Sounds

Thames Water fined £20m for sewage spill

22 March 2017

Facebook Twitter Email Share

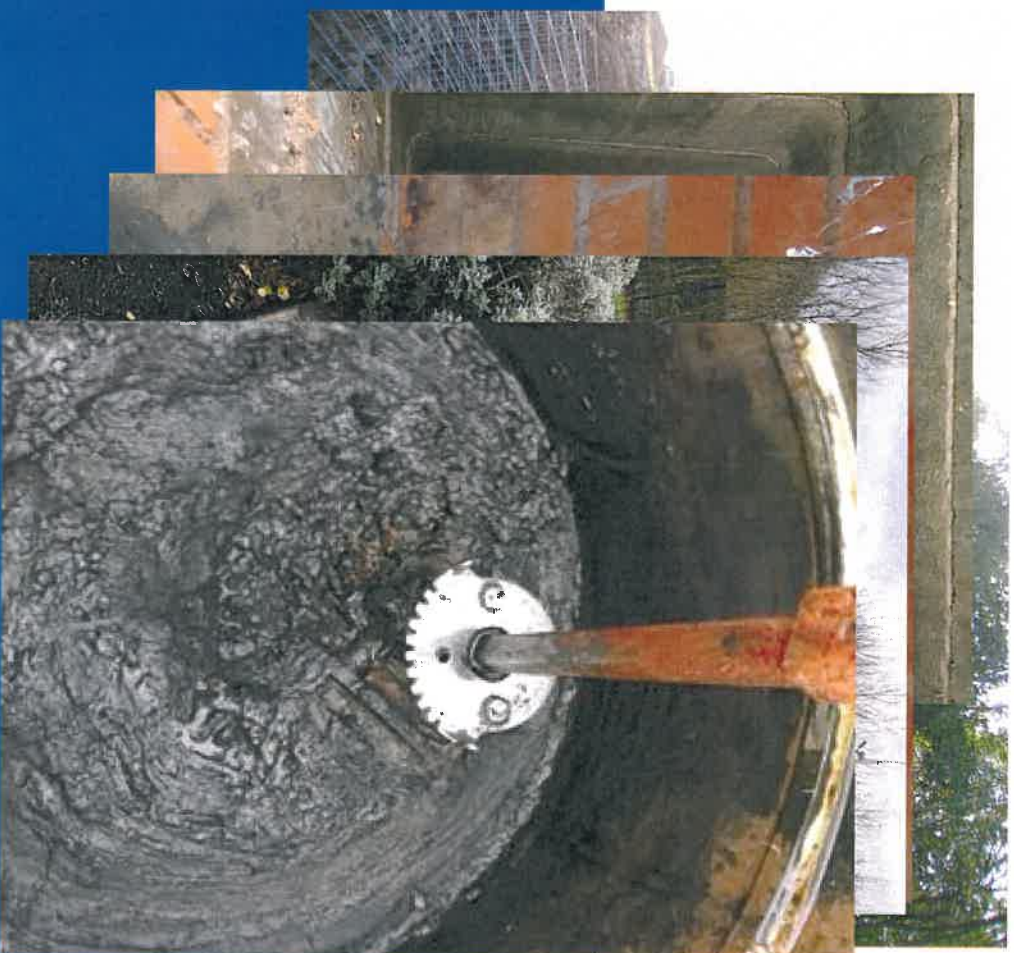


Sewage poured onto Upper Thames. Sailing Club's protest

Thames Water has been fined a record £20m after pumping 1.9 billion litres of untreated sewage into the River Thames.

Trouble with Penstock Valves

Not Purpose Designed
Operability Issues
Maintenance Issues
Poor Monitoring



ToggleBlok C736 3.8
System Reliability

Purpose Designed
Operability
Self Contained
Adaptable
Maintenance
Future Proof



 **SANDFIELD**
PENSTOCK SOLUTIONS



ToggleBlok C736 3.8
System Reliability

Purpose Designed
Operability
Self Contained
Adaptable
Maintenance
Future Proof



 **SANDFIELD**
PENSTOCK SOLUTIONS

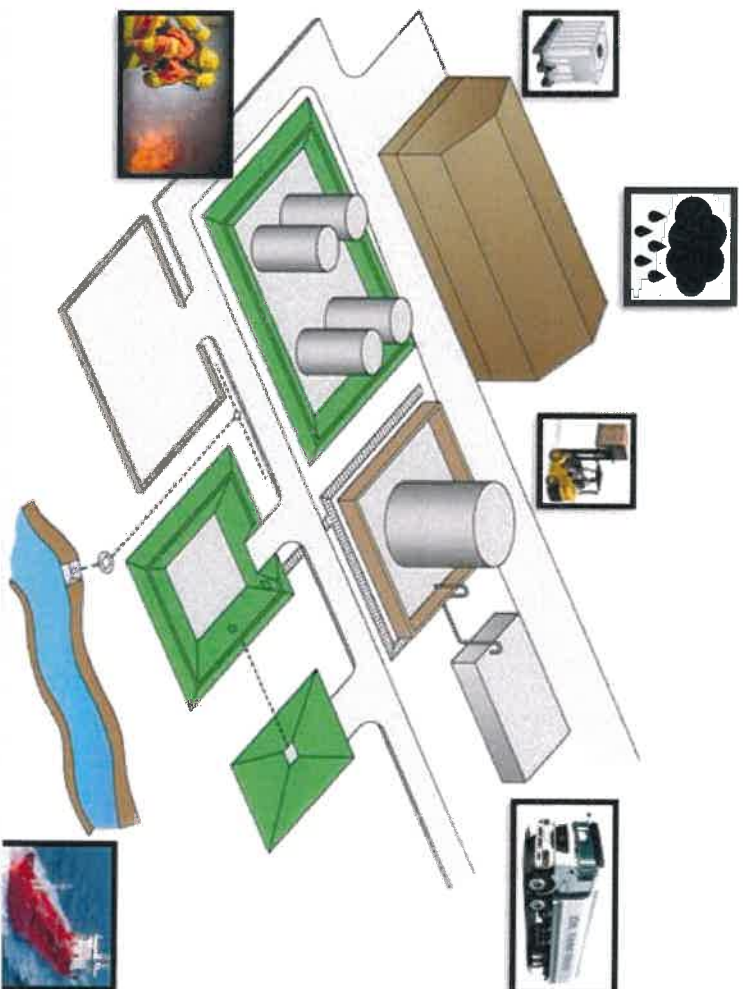
Scheme scoping and cost benefit

CIRIA736 SECTION 4.3.3, Set out the containment scope (page 44,45)

The containment volume should include an allowance for the total volume of accumulated rainfall in response to a 10 per cent AEP event for:

- a 24-hour period preceding an incident
- the duration of the incident (advice on the duration should be sought from the Fire and Rescue Service)
- an eight day period following an incident or other time period as dictated by site specific assessment.

Understand the basic risk 1st

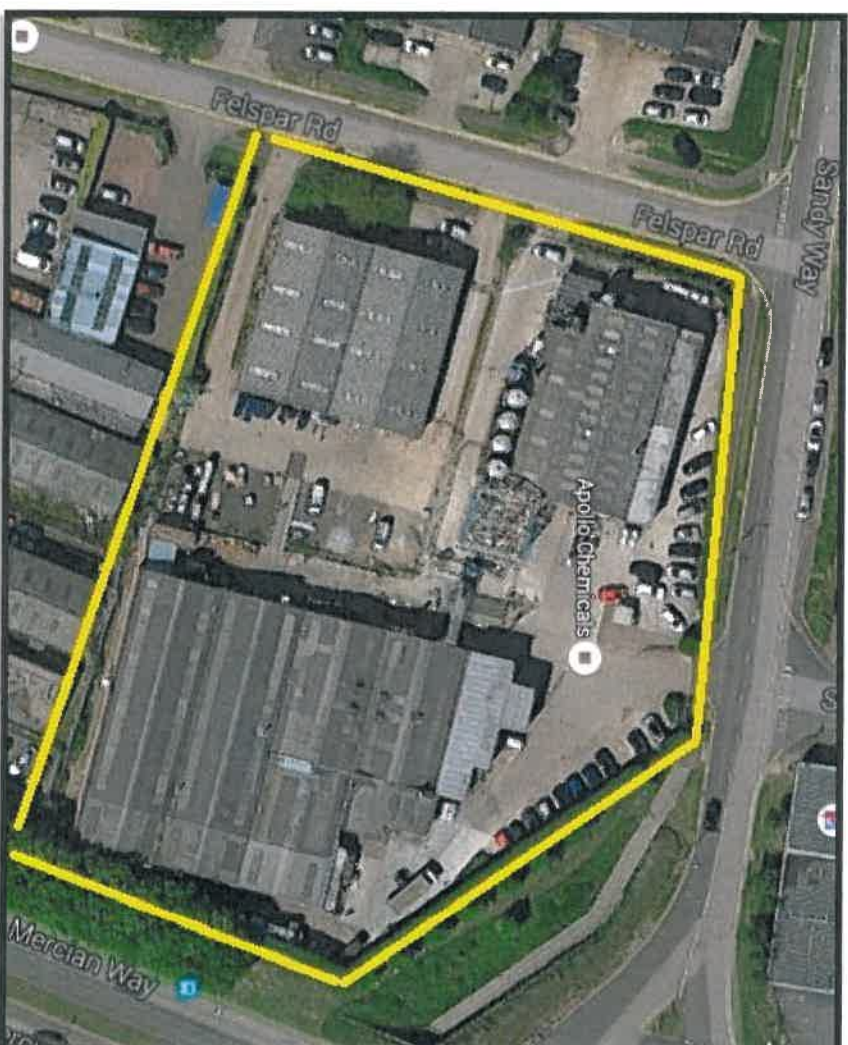


- THE SOURCE POLLUTION & VOLUME
- PATHWAY OFF SITE
- SOURCE TO PROTECT

Don't just focus on primary and secondary bunds.
Tertiary areas are the pathway off site.

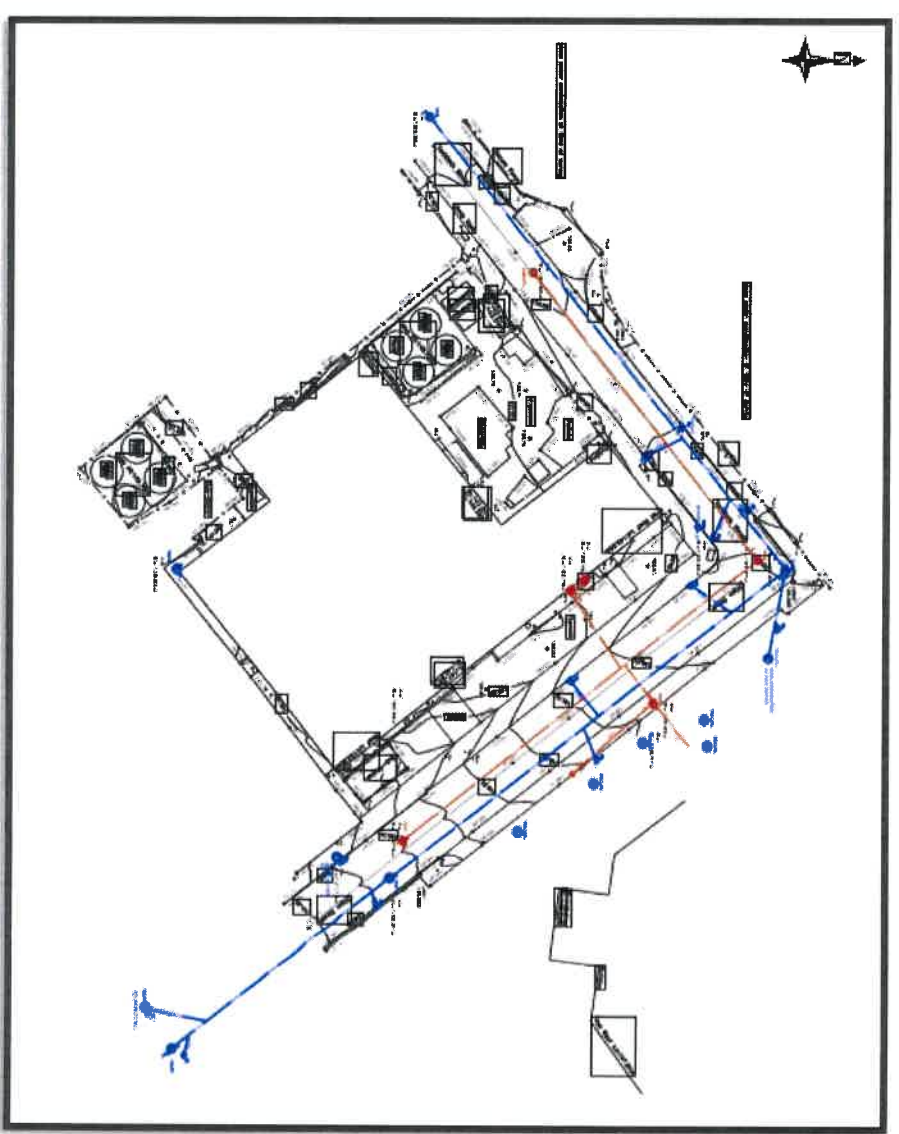
Gather the information

- Site catchment area



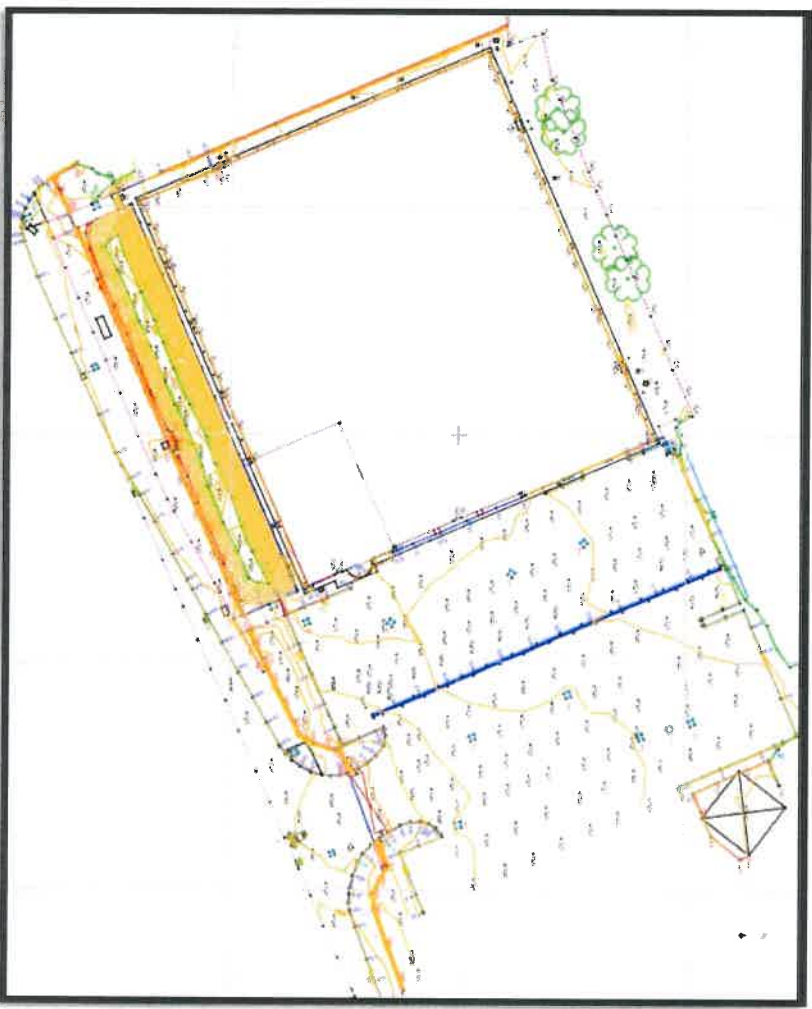
Gather the information

- **Site Drainage Connectivity**
CCTV surveys are not needed for Spill animation.

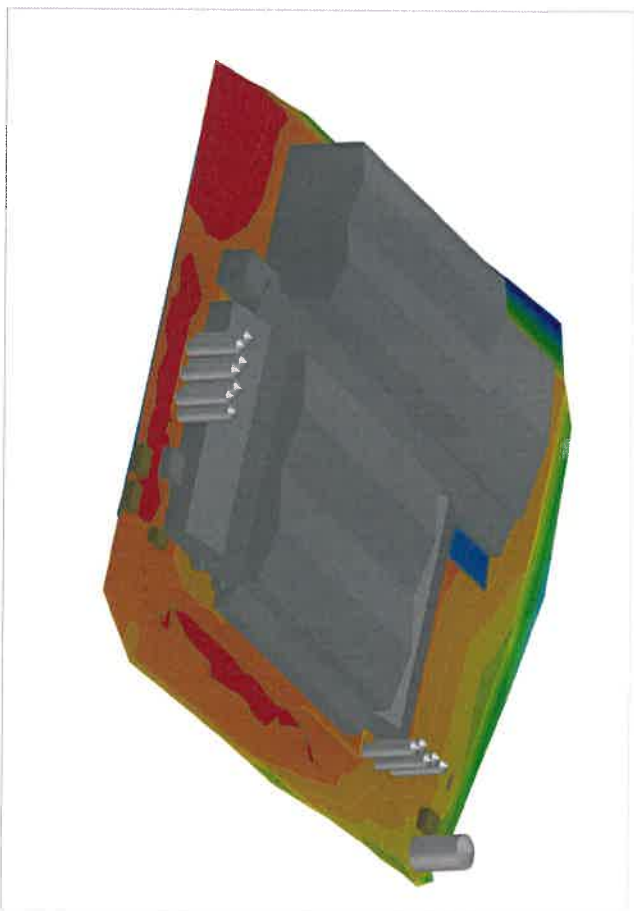


Gather the information

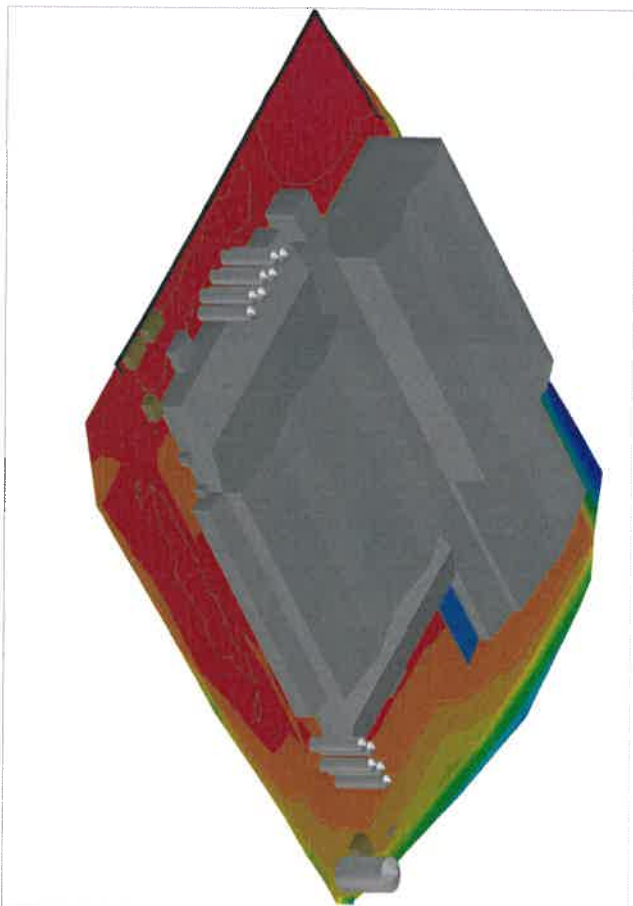
- Site Topography



Plastic
manufacturing.
CIRIA736 4.3.3
Containment
valve only.



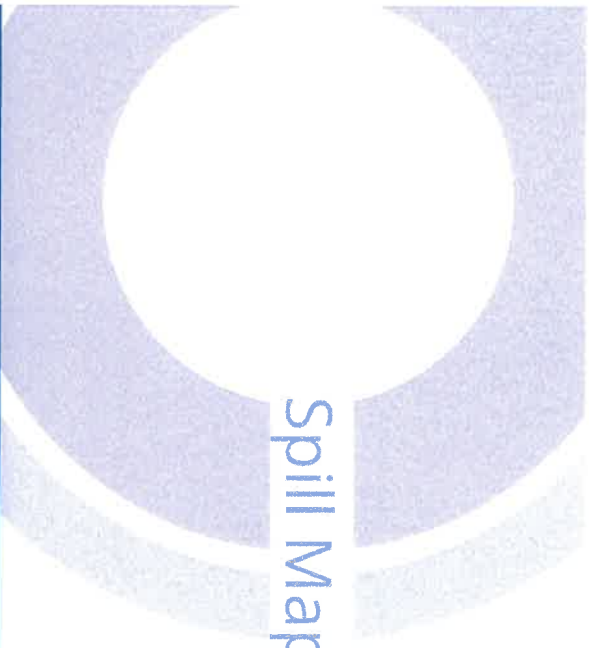
Plastic
manufacturing.
CIRIA736 4.3.3
Containment valve.
100mm to 250mm
kerb. 150 tabletop



Spill Mapping

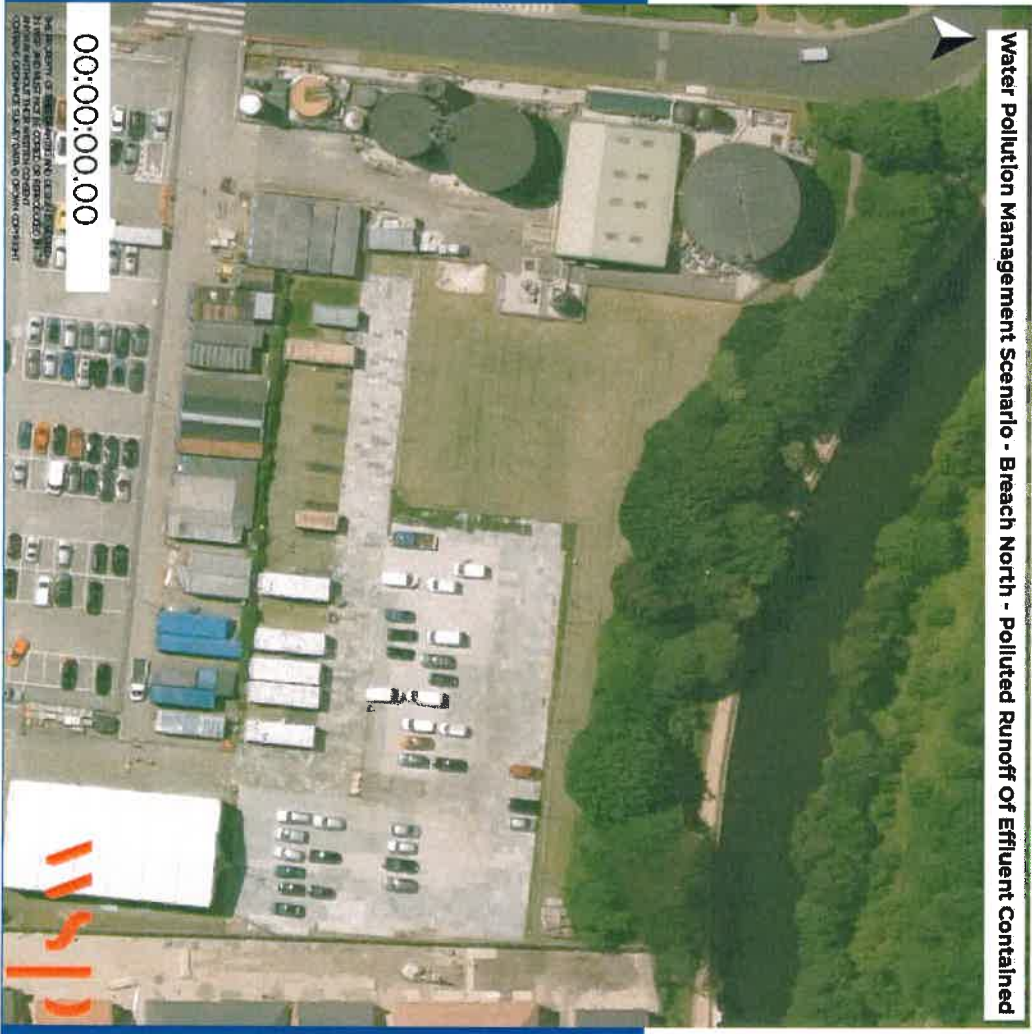
Food Manufacturing plant
Effluent treatment plant
Design for 2.9mtr high bund around asset
Build cost >£800k
No reference to CIRIA736 bund calculated
Based on 110% storage





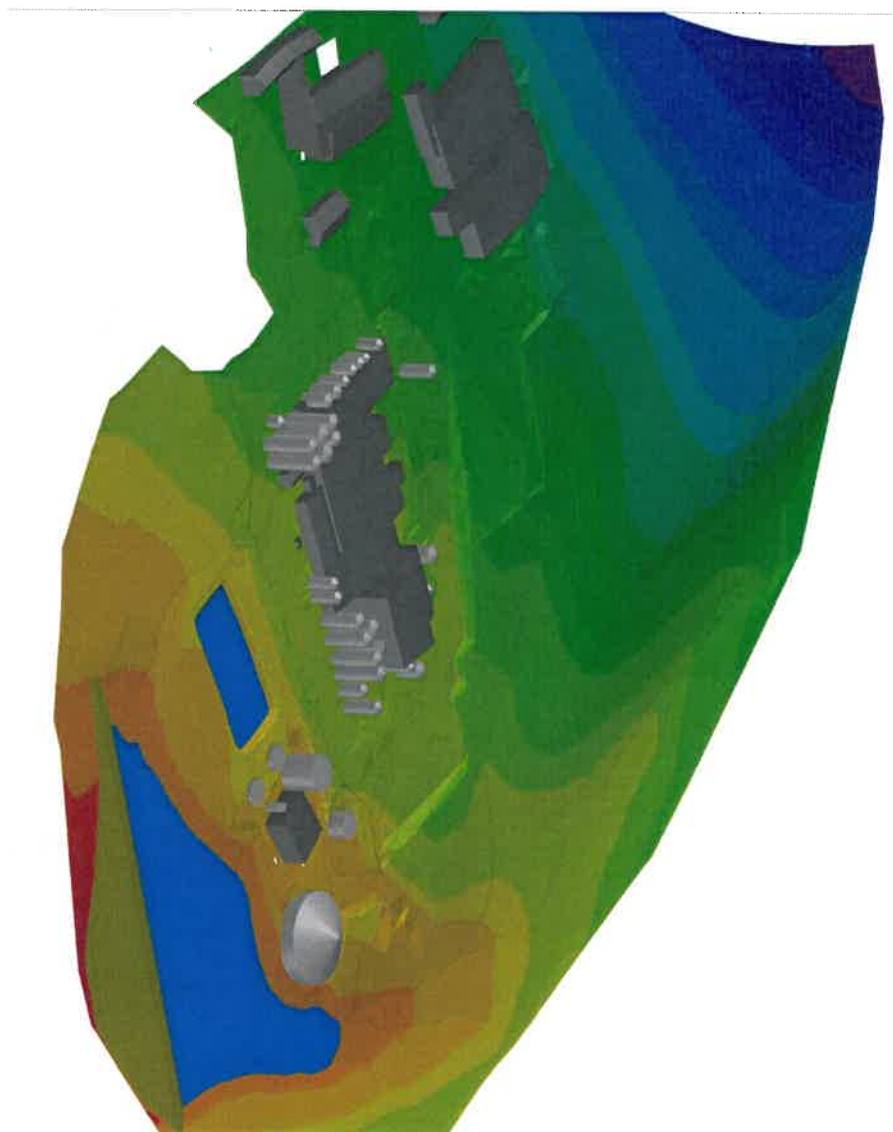
Spill Mapping

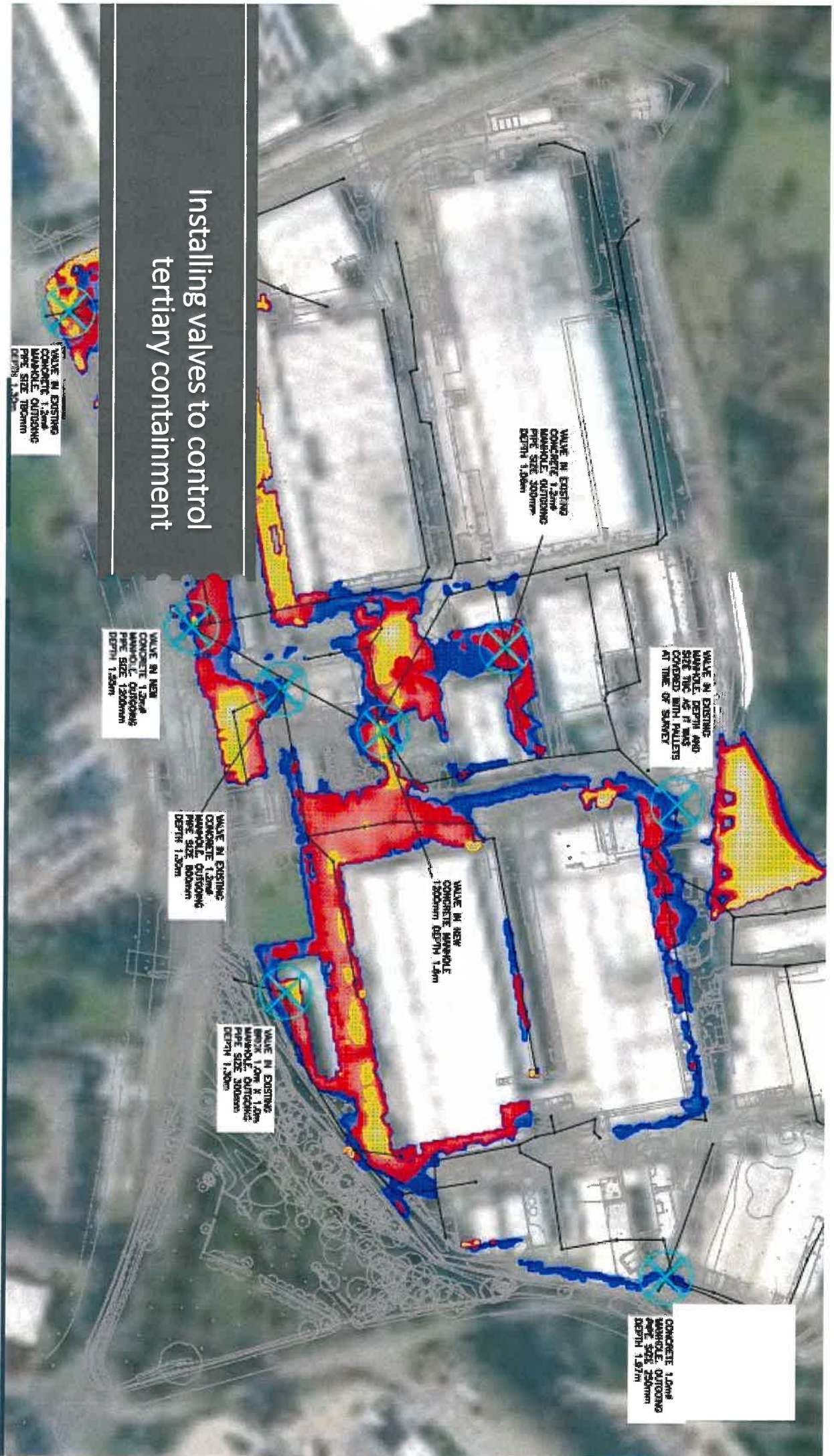
- Model the pollution to CIRIA 736
- Identify the best containment model before moving to a design.
- Max bund wall height 0.7mtrs
- Evidence the design to all parties
- Move to design stage



Water Pollution Management Scenario - Breach North - Polluted Runoff Of Effluent Contained

CAD MODEL OF SITE FLOW





Summary

1. Set out the scope of containment to CIRIA736 4.3.3
2. Gather information
 - Fire fighting volume
 - Stock
 - Rainfall
 - Catchment area
 - Drainage plans. Don't worry about CCTV.
 - Topography
3. Deliver a clear animation of a potential disaster



David Cole

Technical Director

Sandfield Penstock Solutions

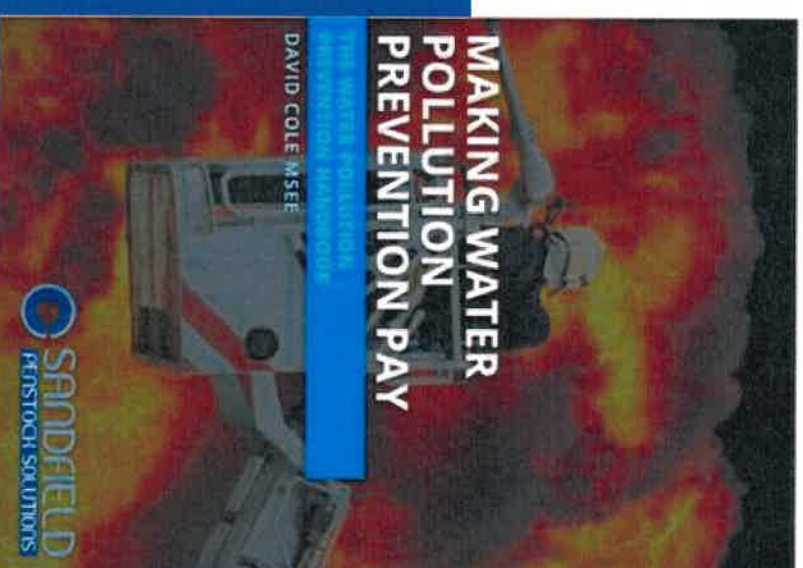
ANY QUESTIONS?

David Cole

dcole@penstockolutions.co.uk

T:01299 823158

www.penstockolutions.co.uk



Water and sewerage company IED permits: Update April 2022

To: Regulatory Directors of Water and Sewerage Companies

**Duly making of Tranche 2 – Tranche 6 applications to commence
from 09 May 2022**

Summary

We contacted you in February 2022 to explain that our approach to assessing permit applications submitted in Tranches 2 to 6 will revert to the standard application approach as outlined within the [Environmental Permitting Core Guidance](#). This means that we will perform the standard level of scrutiny at the duly making stage commencing from the beginning of May 2022. Our previous approach was not applied as strictly as we took the decision to try to progress the applications during *determination*. We have not seen the progress that we had anticipated, therefore we are reverting to our usual process to ensure applications contain the information we need to progress them.

The Environmental Permitting Core Guidance sections 6.4 – 6.8 outline the duly making process. If application information is insufficient, the application will not be duly made. Our [charging scheme guidance](#) states: *The Environment Agency will check your application to make sure it is complete and they can accept it as 'duly made'. This means they have enough information to start to determine your permit application.*

From 09 May 2022, permitting officers will start to undertake duly making checks for permit applications from Tranche 2. We intend to take the same approach for the subsequent tranches, we will let you know if this changes. To reiterate our letter from February 2022, if we consider information is missing, the applicant will have 10 working days to provide it. Applications with missing or clearly inadequate information will be returned.

Our duly making checks and subsequent determination are conducted on an individual application basis, not part of an industry wide or group approach. If you consider that individual applications to date are likely to be insufficient for the purposes of duly making, you should update your application documents and submit them to the Environment Agency, starting with your Tranche 2 applications. We strongly advise that you do this as soon as possible and not wait for the applications to be allocated to a permitting officer.

If you consider that your applications will not be duly made, and you cannot make the necessary improvements to them, you do have the option to withdraw your application and receive a full refund. If we have to return your application as *not duly made*, we will retain a portion of the application charge (as outlined in our [charging scheme](#) guidance).

Consequences of applications *not duly made*

If your application is returned as *not duly made*, or is withdrawn, you will not have the necessary authorisation to operate your facility. Operating a regulated facility without an environmental permit is an offence under the Environmental Permitting Regulations 2016. Where this occurs we will determine the appropriate enforcement response on a case by case basis.

Key issues

Our letter from February 2022 outlines some of the common issues which may cause an application to be returned as *not duly made*. Our experience of assessing applications to date in Tranche 1 has highlighted applications which are missing key information. This letter provides feedback on key aspects which may result in an application being returned as *not duly made*.

New plant, assets and infrastructure

- Applications which contain new plant/assets proposed on site must meet Best Available Techniques (BAT) requirements at the application stage.
- If parts of the proposals have been recently constructed and have not been designed and developed to BAT, we will consider that key information was not submitted, and your application may not be duly made.
- Any changes to the site infrastructure and plant (related to the installation) must be in the application. If there is key information missing, we cannot assess your proposals and your application may be returned as *not duly made*.
- Please note that we will not permit new plant which does not meet BAT and we will not use improvement conditions to address proposals not designed to BAT.

Containment and secondary containment

- As explained in both the containment and spill modelling workshops we consider the approach taken by the ADBA risk assessment tool and in CIRIA C736 to represent the industry standard for containment. We recommended their use to demonstrate equivalence to BAT.
- Submissions received under Tranche 1 included assessments/proposals which were not sufficient to provide a level of environmental protection equivalent to BAT.

- Our experience during Tranche 1 is that the *Environmental Quantitative Risk Assessments* (EQRAs), as submitted, do not demonstrate environmental protection equivalent to BAT and cannot be used as an alternative to CIRIA C736.
- For existing facilities not designed and constructed to CIRIA C736 standards we expect spill modelling which demonstrates that spillages will not leave the site boundary and will not cause pollution. If spill modelling shows that spillages will leave the site, then improvements will be required. Arguing that the likelihood of a loss of containment is extremely low is not sufficient to meet BAT.
- The term ‘credible scenarios’ used in containment assessments must be defined in detail and be supported by evidence from structural engineers.
- Our approach does not necessarily mean a blanket rejection of all applications containing an EQRA. We will treat each application on its own merit. However, if an application relies solely on an EQRA (without spill modelling which shows that pollution would be prevented from leaving the site) we are more likely to consider that an application is *not duly made*.
- Submissions that do not meet BAT should contain site specific proposals for alternative containment measures. Applications submitted without appropriate alternative measures may result in the application not being duly made.
- Reliance upon permeable areas to retain spills is highly unlikely to meet BAT.

Bioaerosol Risk Assessments

- Applications with point source or ambient bioaerosol emissions within 250 meters of a sensitive receptor must include a Bioaerosol Risk Assessment.
- Bioaerosol Risk assessments must meet the requirements of our M9 Position Statement ([Bioaerosol monitoring at regulated facilities - use of M9: RPS 209 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)). They must show that the process and/or abatement measures adequately prevent, or where this is not possible, significantly reduce the risk of bioaerosol release. It must show that the resulting activity will be unlikely to expose the nearest sensitive receptor to elevated concentrations of bio-aerosols.
- Bioaerosol Risk assessment must include qualitative and quantitative assessments. Where bioaerosol levels have not been provided, as a minimum, a plan to address quantitative data must be provided as part of the risk assessment.

Emission Point Plans

- Applications must include an emission points plan(s) which clearly identify the location of all emissions to air and water. This also includes emissions returned to the wastewater treatment works.

- Applications that do not identify emissions leaving the permit boundary may be returned as *not duly made*.

Air Quality Modelling

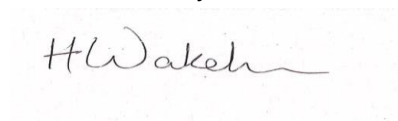
- Applications that need to assess the risk of emissions to air must provide a detailed air dispersion model and risk assessment of emissions which do not screen out through your air emissions risk assessment ([air emissions risk assessment for your environmental permit guidance](#)). Modelling reports should follow the [air dispersion modelling reports guidance](#).
- Applications that do not provide a relevant assessment may be returned as *not duly made*.

Odour Management Plans

- Odour management plans submitted must take account of applicable Best Available Techniques (BAT) requirements and be in line with our guidance, *H4 Odour Management – how to comply with your environmental permit* [Environmental permitting: H4 odour management - GOV.UK \(www.gov.uk\)](#).
- Applications that do not demonstrate Best available techniques in relation to odour may be returned as *not duly made*.

The [Best Available Techniques reference](#) document (BRef) contains comprehensive information on BAT and supports the binding [BAT conclusions](#) which must be met by August 2022, or where relevant the date specified by an improvement condition.

Yours sincerely



Helen Wakeham

Deputy Director - Water Industry Regulation

Enclosure: Copy of February Communiqué

[Home](#) > [Business and industry](#) > [Business and the environment](#)
> [Appropriate measures for the biological treatment of waste](#)



Consultation outcome

Appropriate measures for the biological treatment of waste: consultation response document

Updated 27 July 2021

Contents

1. Introduction
2. How we ran the consultation
3. Summary of the main findings and our actions
4. Responses to ‘about you’ consultation questions (1 to 3)
5. Responses to consultation questions (4 to 13)
6. Next steps
7. Annex: list of consultation respondents (by name)



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This publication is available at <https://www.gov.uk/government/consultations/appropriate-measures-for-the-biological-treatment-of-waste/public-feedback/appropriate-measures-for-the-biological-treatment-of-waste-consultation-response-document>

1. Introduction

The purpose of this consultation was to engage with stakeholders and the wider public and invite comment on the content of our draft technical guidance 'Appropriate measures for biowaste treatment'. Our aim was to help operators understand the appropriate measures for permitted facilities that transfer or treat biowaste. The guidance is also applicable to exempt waste activities which are required to meet the relevant objectives. Relevant objectives, in relation to waste, are to make sure that the waste is recovered or disposed of without:

- endangering human health
- using processes or methods which could harm the environment

In particular without:

- causing risk to water, air, soil, plants or animals
- causing nuisance through noise or odours
- adversely affecting the countryside or places of special interest

The guidance is not definitive and it does not prevent, limit or replace an operator's obligation to assess appropriate measures fully and put other measures into place if necessary.

Currently, the measures and standards for permitted facilities taking biological waste for transfer and, or treatment are set out in various documents:

- Draft technical guidance documents (November 2013 Anaerobic digestion, composting and mechanical biological treatment)
- Framework for assessing suitability of wastes going to anaerobic digestion, composting and biological treatment (July 2013)
- Sector guidance note S5.06: recovery and disposal of hazardous and non-hazardous waste (May 2013)

- BAT reference documents (BREF) and best available techniques (BAT) measures for waste treatment

The proposed guidance will replace the documents listed in the first 3 bullet points. It will be published on GOV.UK.

Other guidance may also apply to biowaste facilities, for example on developing fire prevention plans, environmental management systems (EMS), odour management plans (OMP), for medium combustion plants and specified generators and for controlling and monitoring emissions.

This guidance incorporates the relevant requirements of the waste treatment BAT conclusions document, made under the European Industrial Emission Directive (2010/75/EU). This applies to waste installations permitted under the Environmental Permitting Regulations 2016.

New installations must meet the standards from the start of operations. Sites permitted after 17 August 2018 must already be meeting them. Existing waste installations (permitted before August 2018) are required to meet BAT and the associated emission limits (BAT AELs) by 17 August 2022. Where an operator is unable to comply by the deadline they have an option to apply for a derogation. Advice regarding derogations for BAT compliance is available through the [Industrial Emissions Directive derogation: cost-benefit analysis tool](https://www.gov.uk/government/publications/industrial-emissions-directive-derogation-cost-benefit-analysis-tool) (<https://www.gov.uk/government/publications/industrial-emissions-directive-derogation-cost-benefit-analysis-tool>).

The guidance provides clarification about how we expect operators to achieve compliance with the BAT conclusions. In some circumstances compliance with the BAT conclusions may be insufficient to prevent harm and in these cases the operator may be required to undertake additional measures.

There is overlap between BAT for waste installations and necessary measures for waste operations. The Environment Agency uses the term 'appropriate measures' to

cover both sets of requirements. Exempt waste operations must meet the relevant objectives as set out in the Introduction. This guidance indicates the appropriate measures for exempt biowaste transfer and treatment operations.

Some measures may not be suitable or relevant for your operation. Appropriate measures will depend on the:

- activities being carried out
- size and nature of the activities
- location of the facility

We will implement the guidance for new permitted facilities through the environmental permit application process. For existing facilities, we will do this through staged permit reviews. We have also reviewed the existing standard rules that apply to biowaste transfer and treatment operations. The review ensures that those standard rules provide an appropriate level of environmental protection and include the appropriate measures and standards. The revised versions will be published shortly.

Once published, the guidance will apply to all biowaste operations.

2. How we ran the consultation

In 2013 we produced draft guidance documents with industry's contribution and those documents are considered by the industry to be sound technical guidance. The draft guidance merges 4 previous documents specifically relating to biowaste.

In 2018 we met industry representatives and trade bodies to review regulatory compliance issues and seek views on how we could achieve improvements. The industry strongly favoured formally publishing appropriate measures guidance and

revising permits. We agreed to consult industry in a call for evidence which we undertook in 2018, and in 2019 we consulted on revised standard rules.

We shared a pre-consultation version of this guidance with key stakeholders including the water industry in the summer of 2020. We incorporated suggested amendments prior to the formal consultation.

We ran a formal online public consultation on the Environment Agency Citizen Space website over a 6-week period between 10 July and 21 August 2020. We also received responses by email which we have incorporated into the responses.

We asked 15 questions relating to specific aspects of the draft guidance (technical questions 4 to 15 of the consultation). We also asked for additional comments. We have reviewed all of the comments and suggestions and will amend the guidance as appropriate.

A list of the names of organisation that responded to the consultation is in the Annex at the end of this document. We would like to thank all the respondents for their time and contributions.

3. Summary of the main findings and our actions

The format of the guidance received a mixed response. Several respondents thought the document should be structured so that different processes are addressed separately. Alternatively that we provide a table to indicate when specific measures apply.

Some stated that the guidance adopts 'a one size fits all' approach whilst others said that they were supportive of standardising and simplifying guidance across the sector.

The majority pointed out that there are differing levels of risk within the sector and a risk-based approach should be used in applying appropriate measures.

We agree that some measures are not relevant to all biowaste treatments and consider that section 2 of the guidance explains when appropriate measures apply. However in light of these comments we will review the guidance and make amendments where it appears appropriate. The BAT conclusions remain mandatory for installations.

There was no clear consensus regarding the process monitoring requirements. Several respondents expressed concerns over the detailed level of process monitoring suggested, especially for anaerobic digestion (AD) processes. However others supported robust process monitoring and considered this should already be standard practice.

We considered all relevant technical responses and will amend the text where appropriate. However we note that other industry standards and documents indicate the importance of good process control and believe this to be standard practice.

Some respondents felt that operators should be given time to implement changes to secondary containment requirements. There was a clear perception that existing sites would be required to retrofit secondary containment to CIRIA 736 standards. We have made it clear that the requirement to ensure secondary containment to CIRIA 736 standards applies to new sites. Existing facilities such as water industry sludge digesters are unlikely to be designed and built to a CIRIA 736 specification. In such cases we expect operators to evaluate primary and secondary containment to ensure it is fit for purpose and use alternative means to achieve an equivalent standard. All sites must be assessed by a chartered engineer.

Some respondents appeared unclear about waste characterisation and duty of care requirements. There were some comments expressing concern at the rigour of assessment for bespoke and novel wastes. Waste characterisation must be undertaken to fulfil duty of care requirements. Our existing framework for assessment

of novel and bespoke wastes has been incorporated into the guidance. This represents a continuation of current practice and not a tightening of requirements. We are concerned at the lack of awareness of existing legal obligations. All wastes accepted must be suitable for biological treatment and not simply to blend and dilute in another bulk material. The majority of output from the biowaste sector is used on agricultural land used for food production so this is a critical consideration.

We received many comments about the storage and covering of digestate and liquors. Some felt that we were not joined up with Department for Environment, Food and Rural Affairs (Defra) and Department for Business, Energy and Industrial Strategy (BEIS) and that it is not the Environment Agency's remit to control pollution to air. We are working closely with Defra and BEIS on the need to reduce emissions and balancing this with the need to divert biodegradable waste to recovery. Ammonia emissions are addressed in the Clean Air Strategy and responsibility for controlling emissions from permitted facilities lies with the Environment Agency. We are clear that it is necessary to control and mitigate ammonia pollution.

Respondents commented on the need for contingency measures when the land bank is not available, or where the facility is not fully functional, for example, for equipment failure and incidents.

One contingency measure mentioned in the guidance was to stop or reduce the acceptance of feedstock. Some respondents felt this was either excessive or not practicable. We accept that some processes such as sewage sludge digesters cannot easily be turned off although sludge can be diverted elsewhere. However we will retain this in guidance as it is a measure that operators must consider. Planning for contingencies is critical to compliance. A facility should not accept waste it does not have the capacity to legally treat then store or export. Contracts to receive and dispatch waste should be designed to accommodate such contingencies. In recent years wet and extreme weather has severely impacted the sector's ability to manage materials and being climate change ready is becoming increasingly critical to business continuity. Contingency planning is a must do.

Some water companies commented that the August 2022 timescale set out for BAT compliance was unlikely to be achievable. They believe any significant capital works should form part of the next 'water industry national environment plan' (WINEP) and compliance timescales should align with the water industry 5-year business planning cycle. We disagree. The WINEP does not determine regulatory compliance deadlines which are laid down in legislation. Water companies were informed in July 2019 of the need to obtain environmental permits for their sludge digesters and in exceptional circumstances will allow until the end of 2024 to meet BAT requirements. This represents a 5 and a half year lead in period for compliance.

We will review and make changes to the guidance where we believe it is appropriate. These changes will provide greater clarity on how and when the guidance applies, will drive improved environmental performance and reduce impacts to the wider environment, whilst minimising the business impact.

We aim to publish the revised guidance in early summer 2021. We may respond to individual company specific comments where this is deemed necessary.

4. Responses to 'about you' consultation questions (1 to 3)

Q1 Are you responding as an individual or on behalf of an organisation or group?

We received 29 responses to the consultation:

- 25 responses on behalf of an organisation or group
- 4 responses from individuals

A list of respondents is provided at the end of this report.

Q2. We asked if responders would like to be updated.

28 responders wished to be updated and they provided their contact details. We will ensure we update them on progress. We aim to publish the revised guidance in summer 2021.

Q3 We asked if we could publish responses

26 confirmed their responses could be published (4 individuals and 22 groups or organisations).

3 organisations stated that we could not publish their responses because of:

- confidentiality
- the impact of COVID-19 on internal stakeholders

See the list of organisations that responded to the consultation in the annex at the end of this document.

5. Responses to consultation questions (4 to 13)

Q4 We asked whether the guidance was clear about which sites have to follow the guidance.

We received 25 responses:

- yes – 12
- no – 11
- do not know – 2

There were 16 responses providing further information.

a) Two respondents commented it was not clear on which sites the guidance applied to, commenting that the guidance needs to be divided into subsections for each process type. One respondent suggested a matrix to show what applies to each process.

b) One respondent said that attempting to provide all-encompassing guidance caused greater uncertainty along with references that say ‘some measures may not be suitable or relevant to your operation’. Although some sections refer to specific operations, others do not. With the addition of apparent repetition and cross over of topics between references and unreferenced sections and those with, and without, subheadings the overall picture is unclear in many areas.

c) One respondent stated that the terminology was confusing, stating the use of the term ‘must’ for many requirements and in some places stating some measures ‘may not be relevant’, left the document open to interpretation. Suggesting that there

needed to be development of appropriate sectorial, or possibly sub-sectorial, guidance.

d) Several water companies asked for clarity regarding what activities the guidance applied to. For example whether or not other activities at waste water treatment works (WwTW) such as dewatering sites, tankering of domestic wastes (cess and septic), and interworks tankering are captured. Clarity was required on which parts of sludge treatment centres are included in Waste Framework Directive (WFD) or excluded under Urban Waste Water Treatment Directive (UWWTD) and Sludge (Use in Agriculture) Regulations (SUiAR), for example, liquor treatment plants, biosolids cake pads.

e) One company stated that the definition of a lagoon versus a tank is not clear.

f) One trade body stated that the term 'fibre' should be clarified.

g) Two companies questioned the term 'low cost improvement' stating that assessment of risk or aggregated costs across sites had not been taken into account.

h) One water company felt that the timescales and investments required where the industry was only recently identified as failing under the Industrial Emissions Directive (IED) was totally unreasonable.

i) One water company commented on the applicability of the guidance for AD operations involving energy crops which were not 'waste' and asked that we advise what regulation is applicable to such activities as these must surely represent similar environmental risks in terms of emissions and escapes, and comparable obligations and enforcement should apply.

Our response

a) and b) The guidance applies to 800 separately permitted facilities (and a much larger number of exempt facilities) covering biowaste transfer, digestion and composting activities. They differ widely in their complexity, scale, location and age. We accept that these differences will result in diverse risk profiles and this is acknowledged in the guidance which states that:

“Some measures may not be suitable or relevant for your operation. Appropriate measures will depend on the:

- activities being carried out
- size and nature of the activities
- location of the facility”

Despite this some generic measures do apply to most facilities, for example EMS and waste acceptance procedures.

We will not be providing sub-sectorial guidance. We consider that the operator is best placed to understand the risk profile of their activities and should take responsibility for applying the guidance to their site. This offers some flexibility but also requires that the guidance be read in context. Operators will inevitably need to exercise some judgement in deciding what constitutes appropriate measures for their facility.

We will however review the guidance to remove duplication and where possible offer further clarification about which measures relate to specific processes.

c) The term ‘must’ is used to make clear that operators are required to demonstrate that a measure or measures have been considered. Where appropriate the operator can demonstrate that the measure is not relevant, or can justify an alternative measure which provides an equivalent level of environmental protection.

d) The guidance is clear that waste water treatment processes at UWWTD facilities are not regulated under IED or WFD. However tankered effluents arriving at these facilities are controlled wastes and their acceptance at the works requires an

environmental permit. These permitted facilities are subject to the guidance. For clarity the pre-assessment and acceptance criteria in the guidance do apply to the importation of effluents to the head of works.

Sewage sludges transferred between works and cess and septic tank wastes are controlled wastes whilst in the tanker but can be discharged to the head of works without a permit. The guidance does not apply to these activities unless the wastes are mixed with other effluents.

Liquor treatment and sludge treatment and storage facilities are waste operations regardless of whether they are co-located with UWWTD facilities and are therefore subject to the guidance.

Using aeration and activated sludge treatment methods to treat industrial waste waters falls within the definition of biological treatment so this guidance does apply to these facilities.

Sludge dewatering is not biological treatment so not subject to this guidance unless it is a directly associated activity at a biological treatment installation.

This is a complex area of regulation. Where there is any uncertainty relating to specific activities we will continue to advise water companies through the usual channels.

e) We will amend the text to clarify. The definition of tanks and lagoon containment are clearly laid out in CIRIA 736.

f) A fibre is the solid fraction from a digestate and should be able to be stacked. We will amend the text as appropriate to clarify.

g) Examples of low cost measures that can be easily implemented included improved signage, maintenance schedules, temperature and process monitoring, and procedure or document reviews such as OMP or EMS.

h) The BREF and BAT were published in 2018 with a legal deadline for compliance of August 2022. We confirmed that water companies would need to comply with BAT in July 2019. We consider that there has been ample time to prepare. However we recognise that for a small number of sites the deadline will be challenging because of the need to carry out significant infrastructure improvements. In these cases we will consider using improvement conditions to allow limited extensions. Where operators consider they are unable to comply with BAT requirements by the end of 2024 they will need to demonstrate that they meet the criteria for a derogation.

i) Anaerobic digestion of energy crops is not subject to waste regulation and therefore out of scope of the guidance. We agree that anaerobic digestion activities pose broadly similar environmental risks regardless of the type of feedstock. The question of whether energy crop digesters should fall under similar permitting requirements to waste digesters is a policy matter which is outside the scope of this guidance but we will raise the matter with government.

Q5 Are there additional measures that you think we should include in the environmental management system section to protect people and the environment for biological treatment of the waste sector?

We received 25 responses:

- yes – 4
- no – 18
- do not know – 3

16 respondents provided further comments.

Summary of responses

a) The insurance and engineering sector said that sections regarding pressure relief and vacuum systems should be more robust. They further commented that as many pressure vacuum systems are not designed to a standard, this required increased focus on maintenance and inspection checks. The insurance sector also expressed concerns about the need for lightening conduction requirements.

b) One respondent suggested that the EMS should be audited and accredited annually by independent external third party. Overall the industry welcomed the inclusion for all sites to have an EMS, ensuring a level playing field. One company responded that they had accredited ISO 14000:1 and felt that if too much was prescribed in the EMS section of the guidance which could prohibit the progressive nature of this internal standard.

c) We were asked to clarify how much detail small sites need in the EMS and whether an EMS be used over multiple sites with the same process.

d) One water company added that several new named documents are identified but it is not clear if they are relevant to all AD sectors, and clarity is sought on this point. For example 'Leak Detection & Repair Plan' and 'Residues Management Plan'.

e) The same respondent stated that creating and maintaining an 'inventory of waste water and waste gas streams' needs further definition to see that it is adding real value, prioritised to any significant pollutants, and that accompanying monitoring requirements are not unduly onerous. A 'fugitive emissions plan' also needs to be realistic in terms of what it can practically contain or abate.

f) The same water company considered that the EMS and its content should be the responsibility of the operator, and the prescriptive list blurs the distinction between guidance and mandatory requirements.

- g) Some respondents commented that the level of details in pre-acceptance and acceptance of waste was too much. We received extensive comments from the waste water industry sector regarding waste acceptance and the cost of upgrading assets to a standard.
- h) Some respondents expressed concern regarding potential inconsistency that may develop during Environment Agency compliance visits.
- i) It was claimed that following manufacturer's guidance will duplicate maintenance and cause increased down time. For example conducting engineering checks on some tanks every 5 years would cause unnecessary down time and loss of revenue.
- j) One respondent commented that the 'Emissions Control' section may fit better under the management system section compared to where they are located within the document now – odour, pests, noise and vibration, and waste minimisation.
- k) One water company questioned the relative roles of the Environment Agency and other regulatory bodies such as the Health and Safety Executive (HSE). It was suggested that fire and explosion prevention are within the remit of the HSE and not the Environment Agency.
- l) One water company responded that the need for waste characterisation does not necessarily apply to biosolids (meaning biosolids produced from only UWWTD treatment, with no co-digestion). They stated that the current instrument, the SUIAR allows for land recycling with no further waste controls, and that this is expected to remain the case by the development of an assurance scheme as stipulated by the [Environment Agency strategy for safe and sustainable sludge use](https://www.gov.uk/government/publications/environment-agency-strategy-for-safe-and-sustainable-sludge-use) (<https://www.gov.uk/government/publications/environment-agency-strategy-for-safe-and-sustainable-sludge-use>) published on 15 July 2020.

Our response

a) We have revised and expanded the section on pressure relief and vacuum systems and the assessment to address lightening.

b) The EMS must incorporate details about how the site is managed and how emissions and pollution is prevented dependant on the risk profile and inventory. With regards to the suppression of developing internal systems we do not think this is the case. An EMS is a live document that is meant to be regularly reviewed.

c) For all operations, including smaller ones, the EMS must ensure there is sufficient control to prevent pollution and ensure compliance with the permit. Less complex activities may require a less detailed EMS. We will amend the guidance to clarify the use of an EMS across multiple sites. As respondents have made clear every site is different and whilst the EMS can be applied across multiple sites some elements of the EMS may need to be site specific.

d) We confirm that these documents are relevant to all AD sectors.

e) The inventory requirement is derived directly from the BAT conclusions but it is also best practice. We refer operators to the BAT and BREF for further detail. A fugitive emission plan should be comprehensive. It should identify all potential sources of fugitive emissions and detail measures to minimise them. Where these measures are limited by practical or other constraints this should be noted and justified within the plan.

f) There has been detailed industry guidance available since 2008 (The Composting Association 2008) and more recently the anaerobic digestion industry has produced guidance on good operational practice and have developed schemes to assist operators. The adoption and implementation of an evidenced and documented EMS that is regularly reviewed is not a new concept. In our experience where site procedures, processes and maintenance regimes are not rigidly applied the results

can significantly impact on the environment and local communities and in some extreme cases result in loss of the plant.

g) Pre-acceptance and acceptance procedures are not new. We produced guidance in 2013 to enable the biowaste sector to accept novel types of wastes. This guidance is simply being incorporated into the main guidance document. It encompasses obligations under the duty of care and the environmental permit. The principles are protective of the biological treatment process and the environment and ensure that only wastes which are suitable for and capable of treatment are accepted. They also prevent the dilution and dispersion of pollutants by mixing with bulk wastes. Installation permits will already be compliant with the requirements as specified in SGN 5.06.

h) No rationale was provided to support this concern. We will ensure that our staff continue to receive training based on this guidance and believe this revision of appropriate measures will improve consistency.

i) We believe that following manufacture's guidelines is best practice. Manufacturers understand the design characteristics of their plant and are best placed to determine operation and maintenance parameters. Not following manufacturer's recommendation introduces unnecessary additional risk. Protecting revenue is not an acceptable reason for cutting corners. Where manufacture's recommendations are critical in relation to design and tolerance parameters of the plant or where a failure to do so negates insurance cover then they must be followed. Where there is a deviation this should be done in line with assessment such as the Hazard and Operability Analysis. If an equivalent approach is shown to ensure safe and effective operation and integrity of plant infrastructure without increased environmental risk or consequence this must be outlined in the EMS. In such cases an alternative maintenance and inspection regime can be fully documented and implemented.

j) The document is written to ensure permit compliance and emission controls apply across a range of control points. However, where emissions are regulated under the

permit and limits applied then we believe these warrant separate and identified measures.

k) The EMS must cover all aspects of operations which may impact on the environment. Clearly fire and explosion prevention is a fundamental aspect of site safety but the evidence shows that fires and explosions at waste facilities can also cause significant environmental harm. We expect the EMS to address and minimise these risks. Non-compliance with HSE regulations, for example, lack of Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) assessment or signage, can prevent us safely inspecting facilities.

l) This interpretation of the SUIAR is incorrect. Sewage sludge is a waste. The regulations, which are *lex specialis*, make the landspreading of sludge as a waste subject to specific rules. Regulation 3(7) of the SUIAR requires the sludge producer to ensure sludge is used in such a way that account is taken of the nutrient needs of the plants and that the quality of the soil and of the surface and ground water is not impaired. This can only be achieved by characterising the waste prior to its use. The role of any assurance scheme is also misunderstood as it will not change the waste status of sludge.

Q6 Are there measures included in the environmental management system section that you feel are not relevant to the biological treatment of waste sector?

We received 24 responses:

- yes – 7
- no – 11
- do not know – 6

16 responses were received detailing further comments.

Summary of responses

- a) Many comments were in relation to concerns that the Environment Agency is expecting retrofitting of critical infrastructure and additional secondary containment.
- b) There was comment from 2 water companies regarding 'avoiding underground pipework', or to include secondary containment or monitoring underground pipework. Comments related to secondary containment not being feasible for existing pipework and other underground assets. By moving underground pipework above ground, there would be an increased need for pumping (adding to the carbon footprint of the process) and the added risks of failure of this additional equipment.
- c) One water company stated that with regards buffer storage capacity, water company assets operate on a continuous basis with very limited ability to close the process therefore this section should not be applicable. Assets are designed with a degree of capacity for emergencies and the material processed is low hazard. Another stated that water companies operate on a continuous basis therefore ceasing to accept waste is not an option and where there is excess gas the use of a waste gas burner (flare) is used.
- d) One water company stated that more detail is needed on remote monitoring of alarms.
- e) One respondent stated that the reference to abatement of emissions from safety relief valves and bursting discs should not cause their operation to be restricted as this may result in unsafe practices. It was suggested this be clarified to remove any ambiguity.

Our response

a) We have stated that we do not require retrofitting on existing sites. We require that all critical infrastructure is fit for purpose, inspected and maintained so that it remains fit for purpose. Where it cannot meet a standard, and we have suggested CIRIA 736 as the industry recognised standard, then the operator must put in place an improvement plan or additional measures as recommended by a chartered engineer (or both) that achieve an equivalent standard. Our standard rules permits have required all containers to be within a bunded area. A bunded area is secondary containment, so should therefore have the ability to contain polluting material.

b) We have not stated that underground pipe work should be replaced, but it should be avoided wherever possible. Underground pipe work is difficult to monitor, inspect and repair. Where underground pipework continues to be used there must be regular maintenance checks and leak detection measures in place to minimise the risk of leaks and ground contamination.

c) We have suggested a range of contingency measures including as a last resort diverting the waste elsewhere. Continuing to accept waste at a facility with no capacity or with severe operational difficulties is often the root cause of non-compliance. Particularly with issues around odour and pollution. Where diversion is not an option we expect operators to put alternative contingency measures in place. This is usually possible for some wastes within the network of waste water treatment works but we accept this may not always be the case. For some operators it will be essential to manage sludge and other organic outputs in periods when there is no access to the land bank. Biogas production contingency planning is necessary because national gas networks are under pressure. Frequent disposal of gas by flaring is not an appropriate long-term contingency for gas overproduction.

d) Remote alarm monitoring may be set up on a case-by-case basis as long as the technical and maintenance personnel have access to alarms when the site is not manned.

e) The appropriate use of safety systems is already covered by the guidance which states that 'If this is not advisable on safety grounds, you must focus attention on reducing the probability of the emission'. In our experience a significant percentage of systems are poorly designed or unfit for purpose and there is considerable scope for improvement. It is incumbent upon the operator to ensure that pressure relief devices are designed and operated in a manner which does not result in unnecessary biogas loss. It is inefficient in terms of energy recovery and in some cases the significant losses of methane, a powerful greenhouse gas, undermines the environmental benefits of AD.

Q7 Do you think that the measures in the guidance are appropriate for the commissioning of biological treatment plants?

We received 25 responses:

- yes – 11
- no – 9
- do not know – 5

Most responses felt this section was satisfactory but there were some notable technical suggestions which we have included in the guidance or amended. We received 17 further comments about this section. There were no clear improvements or suggestions about how safe commissioning could be achieved.

Summary of responses

a) Many respondents commented that commissioning is site and plant specific. One water company commented that many of the capital schemes are delivered to multiple external stakeholder dependencies and are therefore complex and often working to tight time constraints. They went on to say that they were concerned about the potential delays which could result from another external dependency and the knock-on impacts on the outputs and delivery of the projects. They added that clarification would be useful regarding commissioning or decommissioning plans in relation to which 'plant or equipment' is to be included (AD, CHP, gas to grid, flares, storage tanks). One respondent stated that commissioning is not relevant to open composting operations.

b) Two water companies asked for clarification about the definition of a 'period of dormancy' and went on to seek clarity if this applied to tank inspections or cleaning, and to thermal hydrolysis plant (THP) and combined heat and power plant (CHP). They wanted further clarity as to the necessity for a full commissioning plan to be undertaken each time. They stated that increased tank inspections would be a huge burden, especially if the Environment Agency want to sign off each one.

c) Two water companies commented on the need for a decommissioning plan in relation to what was deemed 'satisfactory condition or state', and went on to ask who is qualified to decide this in each case. One added that a number of their sites are located on historically contaminated ground and site condition reports are not available. Others stated that decommissioning guidance is not considered appropriate and considered onerous.

d) The use of lithium tracing in AD was supported by some but not by others due to residence time and the structure of the tanks.

e) One respondent stated that, in terms of commissioning and the use of inoculum, that where more novel waste inoculum was used it may have to travel long distances and inoculum can be in short supply. They went on to state that it was more useful to say the inoculum should be compliant with the permit where possible. This will ensure that commissioning can take place in a timely manner and reduce the cost and the

distance associated with transport. One respondent stated that permit applications take more than a year and causes difficulty in planning commissioning due to the uncertain nature of permit issue.

f) One a water company stated that when a refurbished plant requires re-seeding a U6 exemption is required. The current U6 exemption does not contain the new European Waste Catalogue (EWC) codes we have been asked to use, for example, 190206. It would be helpful if the exemption application could be updated to include the latest EWC codes.

Our response

We have noted the comments received and amended the technical text where appropriate.

a) This section is not exhaustive and there will be instances that where specifics of the plant and its location will need to be considered. Commissioning or recommissioning needs to be carefully managed, with the design and construction regulations and commissioning fundamental to any project. These activities require a process management approach and cannot be dealt with in an ad hoc fashion. Our guidance is based on industry best practice and nothing should be contrary or additional to a well designed and executed commissioning or decommissioning plan. We expect to see the sign-off for each commissioning phase but this will not cause any delay as this documentation will already be required for other purposes. The complexity of any commissioning plan is dependent on the complexity and location of the site. Even for composting operations there are instances where equipment and plant need to be commissioned, for example, shredders, air abatement and leachate management systems. These activities must be managed and documented.

b) On the question of scope, decommissioning and re-commissioning is relevant to any plant covered by the permit, or which will have a direct impact on the operation of the permitted facility. A plan needs to cover the extent of the dormancy and complexity of the process and equipment being brought back into commission. It will include emptying, inspecting and recommissioning a digester, this is a significant and technically complex activity. We will amend the text to clarify. The Environment Agency does not seek to approve each plan but requires evidence that the operator has identified all potential risk and put procedures in place to remove those risks. We consider that a qualified chartered engineer would provide an appropriate level of sign off. We are unclear why reference to increased tank inspections has been raised here.

c) Decommissioning is a necessary and important stage in permit surrender and should be considered throughout the operational life of a facility. Failure to do so means more work on surrender. Site condition reports are required at the permit application stage so each permitted facility will have one. At the end of the operational life of the facility the operator must produce an evidenced decommissioning proposal which enables them to proceed to surrender. The guidance provides a framework rather than a binding set of requirements. Further guidance on site condition reports and how to surrender permits can be found on GOV.UK.

d) We have amended the text regarding digester mixing efficiency to provide lithium tracing as one recognised procedure and included other recommendations.

e) We note the comment regarding permit issue time. Where the determination of permit applications for new sites are delayed we find this is generally due to incomplete information being submitted. This guidance should enable an applicant to provide sufficient information and therefore reduce permit assessment time. However, for existing operations this should not be an issue. Decommissioning and recommissioning digesters or key plant should be planned activities. Aspects of AD feedstock and organic loading should be within the business planning of the site and not considered simply to meet a tariff guarantee date.

f) We will explore whether it is possible to amend the U6 exemption. We will also review RPS231 and where possible amend it to cover the interim period.

Q8 Do you think that having and implementing a contingency plan that meets the requirements of the proposed guidance should be an appropriate measure?

We received 25 responses:

- yes – 15
- no – 9
- do not know – 1

We received 16 further comments regarding this question.

Summary of responses

a) Most respondents supported the need to have robust contingency plans. In particular it was recognised that for off-farm waste-fed AD, planning for volatile weather would help the agriculture sector meet the compliance requirements on storage for nitrate vulnerable zones (NVZs) and farming rules for water (FRfW). It was also recognised that sites need to have alternative storage arrangements in place for times when the agricultural land bank is not available. One company said that while they cannot plan for all eventualities they do need to think about which scenarios present a risk.

b) Several respondents and trade bodies commented that ceasing to accept waste incurs potentially large costs and loss of customers and contractual issues and may affect process stability in AD and can have adverse implications that are not related to gas management.

c) Two water companies said while they recognise that contingency plans are a normal part of planning processes in order to ensure risk is managed and critical activities maintained through abnormal circumstances. However, they did not believe that they should constitute an appropriate measure. They went on to state that a requirement for formalised contingency plans should be proportionate to the level of risk, and where required, guidance should enable operators to consider risks and measures appropriate to their operation and not prescriptive in detail. For water companies dealing with inter-site sludge movements internalised to their own business or catchment (that is, satellite to hub works import), the non-hazardous nature of the waste means that the accompanying level of risk is already inherently low. Many sewage plants, when land bank is limited, will seek alternative arrangements to avoid the need to stop accepting waste. One responder stated that the onus should not be on the treatment facility. Stating that waste carriers and producers also have an obligation to prepare. Another stated that it was not necessary for a waste producer to see the permit and that they should not have to be informed of the details of the contingency planning.

d) One operator felt that storage of material that fails end of waste classification is a matter for the Animal and Plant Health Agency (APHA) and PAS110.

Our response

All new facilities will have to demonstrate they have adequate storage available.

a) As the biowaste sector matures and weather patterns change the need for contingency planning has become more urgent. We acknowledge that not all eventualities can be planned for but it is the responsibility of waste producers and permit holders to minimise those risks by planning for foreseeable adverse events.

b) Contingency planning is a core business activity which protects operators from significant risks. We agree that there are sound business reasons why ceasing to accept waste or diverting waste should be actions of last resort and with good contingency planning they can be. Contingency planning can minimise the risk of having to take these actions and suffering any consequential losses or contractual issues. Sharing contingency plans with waste producers and working together is best practice and prevents the producer or holder of waste committing duty of care offences or permit breaches.

c) We consider contingency planning to be central to risk management and therefore an appropriate measure. For installations contingency planning is necessary to achieve compliance with aspects of BAT. Plans will vary in complexity but must be sufficiently detailed and robust to address the risks associated with the activity and the waste being handled. The guidance is deliberately not prescriptive in this regard but does provide a framework for operators. Classifying sludge as low risk simply because it is classed as non-hazardous is overly simplistic; there are many examples where sludge has caused environmental harm. We accept that the production of sludge cannot be avoided but this simply emphasises the need for sludge producers to make robust contingency arrangements. This responsibility cannot be passed on to other parties. We accept that water companies cannot stop accepting waste via the sewage systems but other tankered waste inputs may need to cease or be diverted elsewhere to manage risks.

d) Waste which fails to achieve end of waste continues to be regulated as a waste and is therefore our concern. Also we are the competent regulatory body to support (or not) certification schemes. We work with the APHA as E. coli and salmonella failures are a concern and result in a zoonosis notice.

Q9 Do you think that obtaining details about who the waste producer is should be an appropriate measure?

We received 26 responses:

- yes – 16
- no – 9
- do not know – 1

We received 21 further comments regarding this question.

The majority of responses considered this to be fundamental in compliance with waste acceptance and waste description and ensuring that waste producers comply with regulatory requirements. Contamination control, was welcomed by most respondents.

Summary of other comments

a) One water company said that without further clarity on which waste streams this applies to it was difficult to comment.

b) Some responders felt it was up to the operators to understand the risk and that the measures were impracticable and gave an example of 'portaloo' waste. They went on to state that the 'producer' and subsequent holders (that is, person or persons responsible for the collection and transfer of waste from point of production to point of reception) have met their duty of care requirements it may not be possible for the operator to contact the producer or obtain their details as relevant information will have been provided to enable safe acceptance and treatment. They felt this waste acceptance measure was an unnecessary administrative burden.

- c) One operator said that pre-acceptance and collecting the information may mean that waste cannot not be processes for some days. This should be done in initial or proposed supply with periodic checks. The checking of paperwork was too onerous for small AD operators.
- d) One operator stated that they, the operator, should be able to choose what characteristics and testing is applicable to their process and waste feedstocks. It is not feasible to have all the proposed analytical checks carried out and these should be used as an example.
- e) In relation to reduction of ammonia and controls in feedstock - one trade body responded that this should be aligned to legislation that Defra will put in place to implement the clean air strategy. They stated that for some operators covered storage will be impossible without Defra support. The measures proposed may encourage sites to cease taking feedstock like chicken manures. Covering will be too prescriptive they felt that measures used in pig and poultry sector should be used such as reducing the ratio between emitting surface area and volume of the manure heap or using a three-sided wall. Others responded that OMP and risk assessment are sufficient.
- f) One respondent stated that holding stable high energy waste for longer than 5 days should be permissible for example powdered off-specification food waste.
- g) With regards prevention of cross contamination, one respondent considered that segregating waste is not always feasible and are often blended to feed to digesters.
- h) One respondent stated that washout certificates should not be required for bulk containers each load.
- i) One water company stated they had little control of bespoke waste arriving at site. They commented that this document should only apply to bespoke wastes being imported directly into a sewage sludge facility, rather than the UWWTD facility.

j) Two water companies stated that they were not able to keep representative samples on site due to the volume of samples. The data set and requirement are too large and will distract operators from the management of the site. Smaller site will not have a computerised tracking system. This is a comprehensive and detailed requirement. Where a sludge treatment facility is only accepting sewage sludge wastes we would question whether the requirement for such a system is cost beneficial.

Our response

a) This applies to all waste streams unless the method of collection or treatment makes it impossible in which case checking the duty of chain care is sufficient. Waste characterisation, coding and accurate description are fundamental to the pre-acceptance, acceptance and segregation and are legal requirements and necessary to comply fully with a permit. The Waste (England and Wales) Regulations 2011 and 34(5) of the Environmental Protection Act 1990 set out the requirements.

b) We agreed with the comment about portaloo waste streams which is an example covered in comment a) above. We will amend the appropriate text. However we do not consider that isolated examples where the measure does not apply, means it is not a valid appropriate measure. Nor can we accept the measure is an unnecessary administrative burden. Assurance about the type of waste being received is fundamental to safe waste management.

c) The purpose of pre-acceptance is that it is carried out when the waste producer contacts the facility and should not cause hold up when that waste is agreed as permitted and suitable. Waste tracking requirements represent best practice regardless of the size of the operation and are critical for permit compliance and quality assurance for the end user.

- d) The duty of care recognises that waste producers are best placed to understand their waste and the characteristics it is likely to possess. Having this information allows the operator to manage their process more effectively. Receiving wastes without full information about their characteristics increases the risk to the plant and final product quality. The parameters given in the guidance indicate what would typically be required.
- e) The requirement to reduce and minimise ammonia and other emissions goes beyond odour management. We agree that these measures described in the guidance will be part of a management system or risk prevention. We are working with Defra and they are fully acquainted with changes we have made to permits and this guidance.
- f) High energy dry waste which is sealed or contained may present a lower risk of odour. If supported by a risk assessment then we agree these could be kept for longer periods as set out in an OMP and waste inventory.
- g) Segregating waste is best practice and essential where wastes are incompatible. It is also required where animal by-products are accepted. However the guidance also recognises that wastes may be blended prior to being fed into the digestion process.
- h) Wash out certificates are required for untreated animal by-products and the transportation of commercial and hazardous waste. The full characterisation and knowledge of the waste received should be paramount to the process controls on site. Cross contamination can compromise this. The guidance states that in some circumstances a declaration of the previous load may be sufficient.
- i) Operators should only import wastes into their facilities if they can show their treatment process can treat the waste effectively. Allowing unsuitable wastes to be received would effectively sanction dilute and disperse activities and would distort the market against operators of more suitable treatment facilities. Placing controls upon the types of bespoke waste entering water company facilities also provides some reassurance about the quality of the sludge produced. This is important to both the

end user and to anyone accepting the sludge for further treatment. It also ensures that legal obligations on restricting persistent organic pollutants are observed. All these factors are equally true for imports to the head of waste water treatment works and to sludge treatment facilities.

j) Much of the on-site sampling and analysis can be avoided by implementing comprehensive pre-acceptance procedures. For installations it will be necessary to operate a waste tracking and inventory system in order to comply with BAT 2c and 4b. Where site specific difficulties arise alternatives can be proposed to ensure an equivalent standard to BAT is achieved.

Q10 Do you think that the requirement to install secondary containment that is built to a recognised standards should be an appropriate measure?

We received 24 responses:

- yes – 8
- no – 14
- do not know – 2

We received 20 detailed comments

Summary of responses

The fact that two thirds of respondents did not recognise the importance of secondary containment in protecting the environment is alarming. Containment is a fundamental principle in pollution prevention at industrial sites, waste management facilities and even in domestic settings, for example double skinned or self-bunded heating oil tanks. In the vast majority of settings relying solely on primary containment is not an acceptable option. Secondary containment is both an appropriate measure and for installations a BAT requirement.

a) One water company stated that CIRIA 736 is not wholly necessary or appropriate for the water industry which already uses high engineering standards.

b) A number of respondents commented that full compliance with CIRIA 736 may not be achievable at some existing sites but was appropriate for new sites. They suggested that a risk based approach should be taken at existing sites with an option to put in place systems to reduce the risk of pollution, such as a greater number of tank inspections and comprehensive maintenance procedures.

c) Several water companies recognised that secondary containment is a BAT requirement but stated it would be significantly challenging to retrospectively install secondary containment by the August 2022 deadline. They suggested that a phased approach in line with water industry asset management plans (AMP) funding cycles should be considered.

d) One respondent stated there is over reliance on CIRIA 736 as a document developed for the petrochemical industry and is not for use on the waste sector.

e) A number of respondents stated that the requirement for secondary containment should not be default approach. One stated that in some cases they would be relying on tertiary containment as it was not possible to retrofit secondary containment in some facilities. Others stated that the use of risk-assessment as an alternative to CIRIA 736 does not come across clearly enough in the guidance.

f) Another water company asked for clarification on the requirements for above ground tanks applies to pre-existing tanks and below ground tanks. Stating that this requirement should be subject to risk assessment on pre-existing infrastructure to demonstrate the benefit of such extensive investment. They further commented that this should be within the AMP funding cycle. They further commented that this contradicted the section that states 'avoid using underground tanks and pipework - if it is not economically possible to replace them, you must protect them by secondary containment or a suitable monitoring programme'.

Our response

a) CIRIA is the industry standard and provides a benchmark against which alternative schemes can be measured. We are aware that the water industry uses the Civil Engineering Specification for the Water Industry (CESWI). The industry has been invited to demonstrate that this is equivalent to CIRIA 736. However it is apparent that water companies apply CESWI in different ways. It is also clear that CESWI is an engineering specification and because it does not adequately address environmental risk some water company assets built to CESWI specifications lack the containment measures that would enable them to meet BAT.

b) This is entirely consistent with BAT and with our guidance. We expect new facilities to be designed and built to CIRIA 736 standards. At existing sites we recognise that retrofitting may not be viable so alternative mitigation measures may be required to achieve an equivalent level of environmental protection. The guidance explains that 'operators of existing sites must use a chartered structural or civil engineer to undertake a detailed assessment to identify if additional infrastructure improvements are required to protect the environment'.

c) The August 2022 deadline for BAT compliance is a legislative requirement and water companies were informed in July 2019 that their sludge biological treatment

facilities would need to comply with BAT. We have noted above that retrospective installation is not necessarily required at existing sites. We will consider using improvement conditions for major works but these will not extend beyond the end of 2024 at the very latest. Compliance with legislation is not conditional on funding. Funding is out of scope of this consultation and funding questions should be directed to the Water Services Regulation Authority (OFWAT).

d) CIRIA is based on the widely adopted source-pathway-receptor approach to risk assessment and is applicable to any situation where secondary containment may be required. It is standard practice to use recognised standards where they are available and CIRIA 736 is considered the industry standard of choice.

e) CIRIA 736 is a risk based standard which provides a benchmark against which alternatives can be assessed. The key measure of the acceptability of containment taken as a whole is the level of environmental protection achieved. If a combination of primary, secondary and tertiary containment plus any additional measures provides equivalent environmental protection this can be proposed. As the guidance states 'Where a measure is not suitable or relevant, an operator can either; propose alternative measures, that must achieve the same level of environmental protection or provide an explanation of why the measure is not relevant using a risk based approach.'

Q11 Do you think the guidance is clear on the requirements to cover storage structures?

We received 25 responses:

- yes – 3
- no – 21
- do not know – 1

We received 20 further comments

Summary of responses

- a) One trade association noted that ammonia abatement issues will be covered by Defra's Clean Air Strategy and so should be removed from the guidance. FRfW, Code of Good Agricultural Practice and Silage, Slurry and Agricultural Fuel Oil Regulations were also referenced. They also said that BEIS need to be involved in relation to the Green Gas Support Scheme (GGSS).
- b) Some respondents associated the covering of stores solely with the need to control odorous emissions. One trade body responded that members believe that covering storage is difficult and that other solutions can be found in the odour management plan (OMP) meaning that the plant should not need to invest twice.
- c) One respondent stated that the guidance should require all vents to be leak tested and must have a current leak test certificate. Other respondents felt that requirements on abating and containing vented releases was too prescriptive.
- d) Two responders stated that abating emission will conflict with DSEAR regulation where a vessel that could produce methane should not be fully covered.
- e) Several respondents added that retrofitting is not appropriate and disproportionately expensive and not suitable for existing assets. Rather this needs to be addressed at the design and planning stage.
- f) One water company was seeking clarity on whether this included small day tanks where small quantities are held prior to de-watering. Covering existing tanks will require significant investment and disruption.

g) There was a request to clarify the applicability of cover requirements to storage bays and windrows at open windrow composting sites.

Our response

a) We work closely with Defra and BEIS on emission controls and in particular ammonia. We have worked together on the GGSS, discussed our guidance and have agreed measures that are within our remit to implement through permit controls. It should be noted that the need to control emissions and protect public health is not dependent upon the availability of a subsidy.

b) It was apparent that respondents were unclear whether the purpose of covering storage structures was to abate odour or to prevent other emissions such as ammonia. The guidance refers to preventing or mitigating fugitive emissions including odour, ammonia, methane and other organic compounds and dust. The responses that address only odour ignore the need to control and mitigate other emissions. Odour is a symptom of emission and loss of containment and whilst the OMP covers control of odour and impact on amenity the requirement to cover tanks comes from a need to control and mitigate other polluting emissions. Reliance on the OMP is therefore not sufficient.

c) We have amended the text where appropriate.

d) We liaise closely with the HSE and have sought their advice in the preparation of this guidance. We will follow up comments regarding DSEAR with the HSE and amend the text if necessary. We recognise some of the concerns raised and are also aware that covers can reduce volatilisation and reduce the risk of explosive atmospheres.

e) We have not stated that retrofitting fixed covers is an absolute requirement on existing sites. If retrofitting is technically problematic then alternatives such as a floating cover may be an acceptable means of reducing surface air stripping. This is in agreement with Defra and advice in evidence from various reports, for example [Options for Ammonia Mitigation – Guidance from the UNECE Task Force on Reactive Nitrogen](http://www.clrtap-tfrn.org/sites/clrtap-tfrn.org/files/documents/AGD_final_file.pdf) (http://www.clrtap-tfrn.org/sites/clrtap-tfrn.org/files/documents/AGD_final_file.pdf).

f) Day tanks are included in this requirement but where appropriate an evidence-based risk assessment could be submitted to propose alternative measures. The comment on cost and disruption is noted but this is not an acceptable reason to disapply appropriate measures.

g) We will amend the text to clarify the requirements.

Q12 Do you think the requirements are clear and helpful to the operator to determine if a bespoke waste is suitable for treatment using a biological process?

We received 25 responses:

- yes – 12
- no – 11
- do not know – 2

We received 15 further comments.

Summary of responses

We received a number of comments about the general applicability of some statements. For example some respondents made general observations about the overly prescriptive nature of the guidance. Others raised concerns about specific requirements such as 'you must minimise the time you store waste in reception before treatment and hold it for no longer than 5 days' which was considered to be impractical and dependent on the waste stream as many can be stored for longer without risk.

We accept that there will be exceptions to some of the statements in the document. We are unable to respond to all of them but such instances are already catered for in the guidance which states that 'where a measure is not suitable or relevant, an operator can either propose alternative measures that achieve the same level of environmental protection or provide an explanation of why the measure is not relevant'. We expect operators to be able to provide evidence of any decisions to deviate from the guidance if asked.

a) One respondent stated that the feedstock for AD plants is variable and the information in the guidance does not provide information about the AD process and plant feedstock.

b) One trade body suggested that requirement for bespoke waste to have a high level of biodegradability is not possible; stating that high lignocellulose waste does not have 90% biodegradability and the stability outlines in PAS 110 should be sufficient. This was also picked up by a water company who stated that waste rarely can be fully mineralised, and asked what equates to full mineralisation, stating that this is an onerous challenge as the lab tests give the degradation rates of the individual waste which may be different when mixed with other wastes. For anaerobic processes full degradation may take 2 weeks to reach full stabilisation, therefore approvals for these wastes will take a minimum of 3 to 4 weeks which is may be impractical for some industries as pre-acceptance procedure. They suggested that in some processes 90% of the degradation occurs in a short space of time with the remaining 10% taking

longer. In some cases 90% biodegradability is not demonstrable where partial degradation will have happened in the previous process, before the waste is received. It was suggested that the UWWTD requires a minimum of 80% chemical oxygen demand reduction, however this guidance is even more onerous and may be impractical. Would it be better to align to UWWTD, or just state 'until stabilised'?

c) Others stated that full mineralisation is impossible but that the recommendations are helpful. However the degree of prescription is excessive and needs to reflect the risk being better captured in the EMS. Others suggested the level of detail required is unclear and illustrative case studies would be appropriate.

d) One water company stated that 90% biodegradability is not demonstrable for some leachates and digestates or centrates where partial degradation will have happened in the previous process, before the waste is received.

So what is the purpose of taking a waste such as a leachate if the biological treatment process it is consigned to does not afford effective treatment?

e) One water company stated that it was not possible to avoid particulate metals in waste and that metals are ubiquitous and it is very challenging to ensure there is no presence of metals. They stated that the sites use 6mm screens, but a number of these waste streams have no other disposal options.

f) One respondent stated they were not sure any labs testing waste have United Kingdom Accreditation Service (UKAS) or monitoring certification scheme (MCERTS) accreditation. Another operator commented that it is not clear how an operator is meant to test and evidence biodegradability. They stated that suitable techniques are not given and believe this should be explained in more detail giving examples of how this can be done. They stated that this potentially is very onerous and costly and questioned if the cost was beneficial. However they did not suggest any other way to ensure the waste was suitable for the process.

g) Several water companies wanted clarification of whether the requirements apply to wastes tankered to the head of a WwTW. One stated that they thought it should only apply to wastes tankered directly into a sludge digester.

h) One water company expressed concern that when receiving sewage sludges from other companies they will have limited control over the bespoke wastes which may have been accepted into the WwTW. They stated that the onus should be on the waste receiver (the UWWTD sites) to characterise and assess the wastes rather than the sewage sludge treatment facility.

i) One respondent commented on the statement 'if you accept similar waste from a different producer it will require its own pre-acceptance assessment'. They said that they take a risk based approach and have a sampling programme in place, therefore not every import is sampled. They asked whether a 'season ticket' style pre-acceptance procedure was sufficient.

Our response

a) Pre-acceptance requires that the characteristics of the waste stream need to be assessed as suitable for the process before agreeing to take the waste. This ensures that an operators meets the permitted waste types and listed activities. Where there is no variation in the waste then a simple annual check on the waste or load delivered can be used. Where there is greater variability the frequency of testing should be increased. Where there are a wide range of feedstocks being received each one needs to be assessed and demonstrated as suitable for the biological treatment it will receive. It is for the operator to consider other variables when making that assessment.

b) The WFD states that the treatment of a waste must be appropriate for that waste. Some wastes sent for biologically treatment have been found not to be capable of

biological treatment and are simply being diluted and lost in another bulky waste. This dilute and disperse practice is not acceptable because it is a form of disposal. This is why acceptance criteria are necessary. Waste sent for biological treatment must be capable of being biologically treated, should have high levels of biodegradability, and should not produce problematic breakdown products. We understand that wood and some other plant material takes longer to biodegrade but they are biodegradable. However it is not acceptable for bespoke wastes to go to biological treatment without prior assessment and operators should not be accepting wastes if they are uncertain of their properties. It breaches duty of care requirements and puts both the treatment plant and the output at greater risk.

c) Fully mineralised means that a substance is broken down to its most stable mineral end point. The purpose of demonstrating mineralisation is to show that no intermediate breakdown substances remain within the waste that could have the potential to cause harm. By demonstrating complete mineralisation within the process the operator can show that there are no intermediate substances that could be of concern and therefore a human health risk assessment is unnecessary. The mineralisation test will be retained in the guidance but we will review and revise the text to make it clearer.

d) Leachates vary widely and are often chemically extremely complex. Mineralisation is likely to be of greater concern than biodegradability. A full characterisation of the leachate would be expected. If it can be demonstrated that a high level of mineralisation is achieved then this might justify its acceptance even if the biodegradability of the waste is lower than normally required.

e) The guidance deals with metals in solution not fragments of metals. If there are metal fragments in excess of 6mm there is a problem with the feedstock.

f) There are a number of UKAS accredited laboratories nationally and MCERTS accredited laboratories. Some of these laboratories specialise in biodegradability testing. If the waste producer is unable to provide adequate information the operator should seek the services of a laboratory.

g) Yes these measures apply to wastes deposited at the head of a waste water treatment works. We consider this to be an important control point where it is necessary to ensure only appropriate wastes are entering a biological treatment process. They can only be accepted if it is shown that they are capable of treatment in that process, otherwise contaminants will simply partition into the sludge or the effluent and be released into the environment. We will produce standard rules for tankered wastes deposited at the head of the works. Where operators can comply with these then they will not need a bespoke permit.

h) We agree that responsibility for characterising and assessing wastes received at a WwTW lies with the operator of that facility which is why we apply the pre-assessment and acceptance requirements to imports to the head of works.

i) Yes an appropriate 'season ticket' approach should be sufficient if the wastes are similar, well characterised and variability is taken into account. The greater the variability the greater the need for periodic sampling.

Q13 Do you think that the parameters and inhibitory values provided in the section called inhibition values for aerobic and anaerobic processes are appropriate and relevant?

We received 25 responses:

- yes – 3
- no – 12
- do not know – 10

We received 15 further comments.

Summary of responses

- a) One trade body felt this was information that had no place in a regulatory document and did not allow for the range of feedstock variability and digester bacterial population.
- b) One operator stated that these inhibitory values should be used as guidance only and strict interpretation may prevent materials from being accepted. Another added that it was unclear as to what the inhibition tables add to the document but there must not be an expectation that operators will routinely monitor for these.
- c) One respondent stated they were not clear why this is needed and how it is implemented. Another queried if these values are guidance or thresholds.
- d) One water company stated the reference needed updating, and more relevant referencing should be used for operational methods. They further commented that by including the specifics of this table, we were not future proofing this document as technology surrounding this changes quickly.

Our response

- a) We regulate and control waste inputs through the permits. The acceptance of waste requires the operator to understand its effect on the process and this is about process control, understanding the environmental fate of substances, and ensuring that inappropriate substances are not allowed to enter and compromise the biological treatment process.
- b) We developed the original framework for assessing waste as a result of biowaste treatment companies wanting to take various novel chemical and industrial waste streams where the treated outputs were aimed at the agricultural land bank. This was,

in the absence of no framework for assessment. Industry was involved in the development of this framework in 2013 to 2014. This allowed a structured assessment of waste streams to guarantee that the resulting outputs were not a risk to the end user or the wider environment. In the absence of such frameworks we would agree a list of waste and the industry would have to adhere to that list or undertake more extensive testing and chemical analysis of the final materials. They are still able to do that if they feel the inhibitory values are not appropriate for their treatment process and can demonstrate this.

c) Where we can be assured that the waste are suitable and fully recovered by a biological process and that biological treatment is a bona fide option then we can agree that the waste can be processed. Where a waste falls outside of the inhibition values it is often possible for the operator to manage this, for example, pH adjustment.

d) We will retain the information in the guidance as it both emphasises the importance of considering inhibitory factors and assists operators in assessing and presenting information on novel waste streams. We will review the literature but would appreciate evidence based comments and examples of where the guidance can be improved.

Q14 Do you think the requirement to install an enclosed flare that is capable of achieving 1,000°C with 0.3 seconds retention time at this temperature should be an appropriate measure?

We received 25 responses:

- yes – 11
- no – 5
- do not know – 9

On the whole this is accepted as best practice. There were 13 further comments.

Summary of comments

a) One respondent said that the requirement to have a flare available always was too onerous. Another said that it was not clear why an open flare is not considered best practice. A third said that they were unsighted on the derivation of this requirement or if it is a reasonable expectation for existing ground flares. They assumed that most or all their existing flares would fail this criterion.

b) One respondent stated that the need for a flare should be based on a site specific risk assessment adding that most AD sites will produce gas from feedstock where non- methane trace elements are readily combustible. Replacing flares will have a significant cost to the AD sector.

c) One respondent stated that the requirement to 'optimise the flare to make sure the combustion of gases is efficient' needs further clarification. Another stated that it would be helpful to understand the environmental benefit that is achieved through implementation of this requirement. Methane has a flame temperature of 1500 to 1600 degree C, adding in some endothermy from the CO₂ and H₂O present in the gas, 1000 degrees C should be achievable in the crescent of the flame. Modifications to the flare to increase either the temperature or the retention time are likely to require flame shaping or repression and this is likely to increase the NO_x emissions accordingly.

d) One respondent stated that they thought that this is a desirable long-term outcome and several of their sites are currently compliant. The additional information regarding the intended outcome will allow us to understand the work required at the remainder of our sites. We are happy to upgrade in due course as and when the individual sites are refurbished. However, we see no need to carry out this work prior to that

refurbishment and suggest that a derogation of this requirement be granted until such time.

Our response

a) Open or shrouded flares are not permitted in other sectors as there is no capability to monitor the emissions from these types of flares and therefore no assurance that the destruction of volatiles takes place. Flares, whether closed or shrouded (open flares), should be capable of achieving maximum destruction of trace elements.

We believe that all AD plant must have a process and equipment to burn surplus biogas. It is not appropriate to vent biogas to air other than in an emergency.

b) to d) Flares should be able to destroy trace elements and VOCs and the burn time and residence time is critical. Where flares are rarely used then a shrouded flare may be sufficient. It is up to the operator to ensure that maximum destruction is achieved by maintaining the flare and choosing the most effective operating parameters.

Q15 We really value your feedback on the proposed guidance. Please let us know if there are any other sections that are unclear. Let us know how we can improve then. Please provide as much information as possible to support your answer.

We received 22 further responses with multiple technical threads, and we have summarised these. We will take these into consideration and revise the text where

appropriate. We will respond to individuals in due course.

a) Section 60 of the draft Appropriate measures for biowaste treatment consultation document requires the operator to consider every option available for managing each waste and material, including extended storage, other recovery or treatment options and disposal. As an operator we would reserve the right to delegate this responsibility to a contractor but understand that the accountability would lie with the operator.

Our response: Contracting out responsibility for delivering contingency measures is risky and we would expect a full audit of any sub-contractors ability to deliver. Ultimately the responsibility remains with the company to demonstrate it has robust contingency arrangements in place.

b) Section 61 on page 42 of the draft Appropriate measures for biowaste treatment consultation document requires an operator to have a system in place to prevent 'tanker drive off'. It is not clear what systems would be considered acceptable. It is not thought to necessarily be practicable at existing sites either which will have waste reception areas built in a specific way that might not allow this. Significant capital investment may also be required which may not be available until the next Ofwat funding cycle for water companies. Can this be something as simple as an immobiliser fitted to vehicles that detects if it is still coupled?

Page 42 of the draft Appropriate measures for biowaste treatment consultation document – requirement for system to prevent 'tanker drive off' (whilst still coupled) – this is impractical for the majority of our discharge points, and we are unsure of a solution.

Other water companies said they can see how this can arise but it did not need to be covered in an appropriate measures document.

Our response: Experience has demonstrated that this can and does happen and because it can have environmental consequences it is included as an appropriate measure. We do not recognise the comment about significant capital investment and

the water industry funding cycle is irrelevant. If an immobiliser is effective this would be acceptable. A simple procedure might also suffice such as depositing the vehicle keys by the coupling point which is only released when the vehicle is uncoupled.

c) It is unclear whether some measures apply to interworks sewage sludges and tankered domestic sewage.

Our response: Where activities are excluded from waste controls by the controlled waste regulations then the guidance is not applicable although we believe it is still relevant.

d) The implementation date for low-cost improvements is within 12 months of the document being published. This will be outside the scope to attract WINEP AMP funding. Larger improvements are to be completed as soon as reasonably possible or within the time frame set in the site permit. BAT related improvements need to be completed by August 2022. Both the larger and BAT improvements are outside the timetable for WINEP AMP funding. PR20 has been approved and funding requirements for AMP 8 starting in 2025 will not start until 2024.

Our response: The examples given on page 7 illustrate the difference between low cost and capital intensive. Compliance with legal requirements is not dependent upon water industry funding cycles and any funding issues should be raised with Ofwat.

e) There is lack of alignment to other initiatives such as the Environment Agency sludge strategy and related working groups.

Our response: The review and publication of guidance is not dependent upon delivery of the sludge strategy which is primarily about sludge use and not treatment.

f) Introduces onerous requirements for sites that have not been previously been subject to permit obligations. The retrospective application of BAT to existing assets is too onerous.

Our response: It is not the guidance which introduces BAT requirements to previously unpermitted facilities it is a legislative requirement. Where BAT cannot be achieved at existing sites then the operator can apply for a derogation subject to meeting the strict criteria laid down in legislation. The existing BREF and BAT conclusions set out best practice and it is assumed that most good operators would be operating broadly in compliance with this. Where we feel we need to enhance environmental protection to achieve our own national environment objectives then we can issue further guidance.

g) Sections 3 and 6 Waste acceptance. Would the pre- acceptance and acceptance for monitoring and sampling apply where tankered waste activity is already permitted? Will it be necessary to merge tankered waste permits and biological treatment permits?

Our response: Operators may choose to consolidate these activities under a single permit. This can be more cost effective in terms of subsistence charging.

h) Do operators who only take raw sludge need to adopt the pre acceptance methods? Given that sludge treatment have standards inputs is there a need to assess this annually?

Our response: Facilities receiving only raw sewage sludge for treatment will need to carry out periodic checks on quality but if the waste is well characterised and consistent this can be done less frequently. Raw sewage delivered to the head of works is excluded from waste controls but some basic analysis is advisable to manage the load on the works.

i) One water company suggested that managing bulk loads and tankers where sites are unmanned or out of hours was too onerous.

Our response: We are surprised to learn of unmanned sites, but some controls would be necessary, and the company should submit their risk assessment and procedures. Where works are unmanned (highly unlikely at permitted facilities) CCTV and remote monitoring are already mentioned in the guidance as an option.

j) Where there is a dedicated fleet of tanker who only carry raw sewage sludge will a wash out certificate be necessary

Our response: No it will not be necessary to have wash-out certificates if the waste is the same and carried by a dedicated fleet of vehicles. We will clarify this in the text.

k) The use of meteorological monitoring will be overly expensive for the water industry and sludge treatment continues all year round.

Our response: The use of weather data and monitoring does not have to be expensive and can be easily recorded on site. The operations can be timed or adjusted to comply with conditions. This is especially important where the operator intends to moderate operations when the prevailing wind direction is towards a sensitive receptor.

l) There has been no assessment of the impact on regulated business and would be expected when regulation is changed.

Our response: We have not changed regulation. We are updating existing guidance on appropriate measures. However, we are required to do a business impact target assessment.

m) Proposals for plant enclosure conflicts with health and safety requirements and have not been fully considered

Our response: We have not stated that existing sites need to be enclosed. We have shared these documents and worked closely with the HSE over the past years about concerns we share about the sector.

n) One water company stated that these obligations were not indicated or foreseen prior to the recent business planning cycle and funding is not provided to meet these obligations. This is true for all the required explicit and implicit improvements indicated but is an obvious obstacle for containment, enclosure and fugitive emission

expectations in particular - 'softer' requirements such as competence and training will be challenging to be met within the year of adoption of this guidance.

Our response: It would be concerning if there was a significant shortfall in competence at existing water industry facilities. Staff competence and training have long been recognised as standard best practice and company training and competency structures should already be in place. These can be developed into a corporate competence management system or used to deliver training for the necessary modules under the waste management industry training and advisory board scheme.

o) One water company commented on the absence of any reference to the SUIAR, the safe sludge matrix or the biosolids assurance scheme (BAS) is surprising as the water sector largely deploys anaerobic digestion to satisfy these expectations.

Our response: These are out of scope for the treatment guidance. SUIAR and the safe sludge matrix relate to the storage and use of biosolids. BAS is an industry standard with no regulatory role.

p) Removal of plastics is impossible for sewage sludge.

Our response: We acknowledge that microplastic in sludge is an issue and extremely difficult to remove. Larger fragments of plastic and other litter are usually removed by screening. Further work on microplastics in the environment will inform future policy and regulation.

q) Grit removal is a particular issue for operation of sewage sludge digesters and must not be mandated.

Our response: We will amend the text to clarify but it is important that the integrity of mixing systems and primary tanks assessment is set out in procedures. As with all measures if it is not relevant to certain facilities then the operator is free to demonstrate this is so.

r) Grit and sediment removal from PAS110 containing vessels - if the vessel is only ever containing 'product' where does the 'waste' aspect materialise from and why should waste controls be placed on the grits and sediments that could have otherwise been removed in the digestate. One member has expressed concern at this as they undertook PAS 110 to be exempt from waste regulation controls and may still be held to them after conforming to PAS 110.

Our response: If grits and sediments are being removed from the vessel that produces PAS110 digestate they are not digestates and cannot achieve end of waste status. They are regulated as a waste.

s) The proposed expectations for methane slippage is a particular if relatively minor concern, as this sets an unachievable expectation where gas engines are involved. As such it should be deleted or revised, as this appears to be out with operator control, with no commercially viable or readily available abatement solution possible.

Our response: We have been monitoring the emissions data and we are aware that methane slippage may be a significant issue. This is a guidance document but we are undertaking review of emission monitoring and will review that data to assess if in future secondary abatement needs to be instigated. Methane slip is detrimental to the environment and is a loss of income to operators where the combustion is not efficient.

t) The presumption of enclosure for receipt of sludge cake will drive unnecessary and unfunded expenditure. It would potentially create new confined spaces or DSEAR areas and so is inherently undesirable, not likely to be cost beneficial and so should be removed.

Our response: The requirement to enclose reception areas for sludge cake will not be taken forward. We will expect operators to take other operational measures to minimise emissions from the handling and storage of sludge cake.

u) Regarding the need to calibrate meteorological monitoring equipment every 4 months. This will depend on the type of instrument used and there is little benefit to prescribe such frequency

Our response: It is an appropriate requirement given that meteorological conditions are a material consideration for on-site operations. The absence of a frequency would cause the requirement to be unenforceable and the 4 month figure is caveated by words 'unless agreed otherwise with the Environment Agency' so it is flexible.

There were additionally many hundreds of individual comments and we have taken these into account and revised the guidance where appropriate. We will endeavour to feed back to individual responders in due course where requested.

6. Next steps

Now we have considered the consultation responses received, we will finalise the guidance document for publication. We will publish the finalised guidance on GOV.UK.

We will convert the PDF document that was used for the consultation to HTML format so that the guidance is fully accessible.

7. Annex: list of consultation respondents (by name)

The organisations that responded are:

- Veolia
- Assentech Sales Ltd
- Yorwaste Limited
- Charlie Trousdell Associates Ltd
- Aqua Enviro, a UK subsidiary of SUEZ Smart and Environmental Solutions
- Environmental Services Association (ESA)
- REA - The Association for Renewable Energy and Clean Technology.
- Foodchain and Biomass Renewables Association FABRA UK
- Biffa Waste Services Limited
- Yorkshire Water
- Andigestion Ltd
- Wessex Water Services Ltd
- Natural World Products Ltd
- The National Farmers' Union (NFU)
- Viridor Limited
- Thames Water Utilities Limited
- Bio-Based and Biodegradable Industries Association
- Chartered Institution of Wastes Management (CIWM)
- Severn Trent Water Ltd
- United Utilities
- Anglian Water Services Ltd
- The Anaerobic Digestion and Bioresources Association (ADBA)

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CIRIA 736 for AD Plants

Relevant Good Practice – Secondary Containment

17th May 2022

global **environmental** and **advisory** solutions



WELCOME



Marc Giambianco

Technical Director – SLR Consulting

Marc is a Technical Director at SLR consulting with over 17 years experience in the waste sector. Since 2011, Marc has fulfilled the role of project manager / owners engineer on a number of anaerobic digestion projects and has experience with the construction and commissioning, of dry and wet AD technologies for food waste and farm-based AD Plants. Marc has assisted in the development of ADs for both the Public and Private sectors. In recent years Marc has project managed and provided Technical Due Diligence input into a number of AD projects with specific input into civils, ground conditions, utilities and contracts. These projects include single sites and portfolios and new builds and existing facilities.

Marc is experienced with the requirements of CIRIA 736 and is able to provide design and assessment support to clients who require secondary containment at their facilities.

WELCOME



Danny Jones

Principal Process Engineer – SLR Consulting

Danny is a Principal with SLR Consulting and has over 20 years of experience in the management, treatment and disposal of landfill leachate and similar waste waters. In his role within SLR's Process Engineering and Process Safety Group Danny provides consultancy services to a wide range of UK and overseas clients on issues relating to leachate management and treatment of industrial waste waters. Danny was the Lead author for the Code of Practice for UK landfill operators in relation to bunding / secondary containment requirements of infrastructure that contains landfill leachate, the 'UK Landfill Industry Code of Practice 'The Establishment of Appropriate Containment Standards for Leachate Storage Infrastructure''. The document was published in 2017 and is in current use.

WELCOME



Ian Walton

Technical Director – SLR Consulting

Ian Walton is a Technical Director at SLR Consulting. He is a chartered civil engineer with over 30 years broad environmental consultancy experience working for both public and private sector clients. He has been responsible for managing and directing a diverse range of commissions including those in the public health, waste management, infrastructure and general development sectors. Ian is also regularly called upon to provide expert evidence in relation to flooding and drainage issues.

Ian was retained by CIRIA in 2012 to author the update of the R164 design of containment systems for the prevention of water pollution from industrial incidents guided by a Project Steering Group drawn from industry and regulators.

Following publication of the updated guidance, C736, in 2014, he has provided advice to industrial and waste management clients on the compliance of their facilities with current guidance. Ian has also been using his expertise in flood modelling and drainage to review the adequacy of tertiary containment in relation principally to the retention of firefighting water.

Secondary Containment & Anaerobic Digestion

New Builds:

- Suitable secondary containment to be in place prior to issue of a permit by the regulator;
- Non waste sites are often exempt, however the operators of these sites still have a duty to protect the environment;

Existing Sites:

- Primary and secondary containment require routine inspection;
- *“Where your activity has above ground storage or primary containment (tanks and/or vessels) used for the storage and treatment of waste, provide a detailed report which describes an assessment of the suitability of the existing primary containment in comparison to the relevant standard in the CIRIA C736 guidance”*
- *“Where your activity has above ground storage or primary containment, provide a detailed report which describes an assessment of the suitability of the existing secondary containment and storage lagoons in comparison to the relevant standard in the CIRIA 736 guidance. The report should follow the methodology for existing facilities which consists of a risk assessment.”*

Legal Background

Operators that pose a higher pollution risk:

- Environmental Permitting (England and Wales) Regulations 2016
- PPC Regulations (Northern Ireland) 2018
- Environmental Authorisations (Scotland) Regulations 2016 in Scotland.

These operators will be Permitted and Regulated by:

- the EA in England;
- NRW in Wales
- NIEA in Northern Ireland
- SEPA in Scotland

BUT.....**Everyone has to follow UK Law** – it is an offence to cause pollution:

- Environmental Protection Act 1990
- Environment Act 1995
- Environmental Damage Regulations 2015

Anaerobic Digestion – Where is Secondary Containment Required

Infrastructure requiring secondary containment include

- Liquid feedstock tanks;
- Digesters;
- Digestate storage tanks;
- Chemicals tanks or IBCs for example ferric chloride; and
- Coolants & any other liquids that have potential to cause environmental harm;

The following does not remove the need for secondary containment:

- Storing of pasteurised digestate; and
- Leak detection systems.

The Law and Good Practice

Acts of Parliament and their Regulations are **'the Law'**

Regulators publish or endorse Good Practice **'Guidance'**

Good Practice is:

CIRIA C736 'Containment systems for the prevention of pollution: Secondary, tertiary and other measures for industrial and commercial premises', published in 2014.

Other relevant industry guidance:

ADBA Tool

Failure to maintain adequate containment can lead to Regulator intervention and prosecution should pollution occur.

CIRIA 736

CIRIA 736

- Major update to CIRIA Report 164 (1997).
- CIRIA Report 163 - Construction of Bunds for Oil Storage Tanks withdrawn
- Funded by Environment Agency and SEPA

Purpose of C736

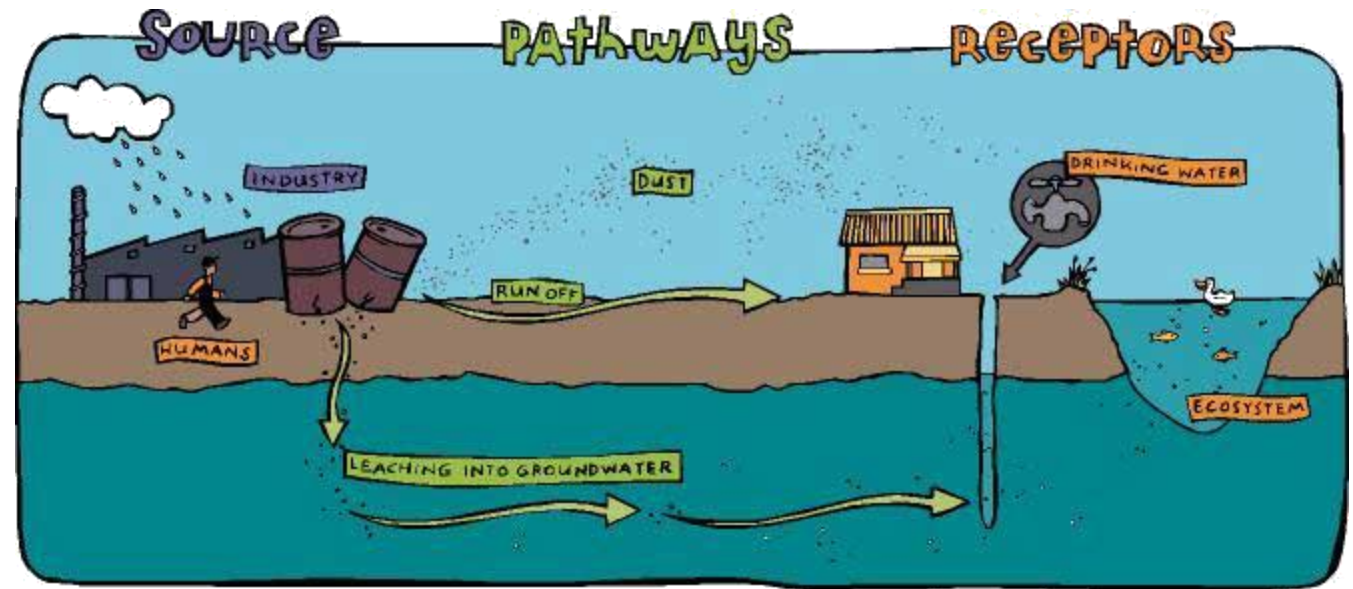
- Reduce the risk of harm to the environment (essentially ground and water) through the storage of hazardous substances – more properly called ‘inventory’

How does C736 achieve this?

- Generally reduce rather than completely eliminate the risk
- Risk assessment that ‘balances’ the potential harm against the resources required, i.e. measures that are proportionate to the risk

C736 – General Principles

- Source – Pathway – Receptor

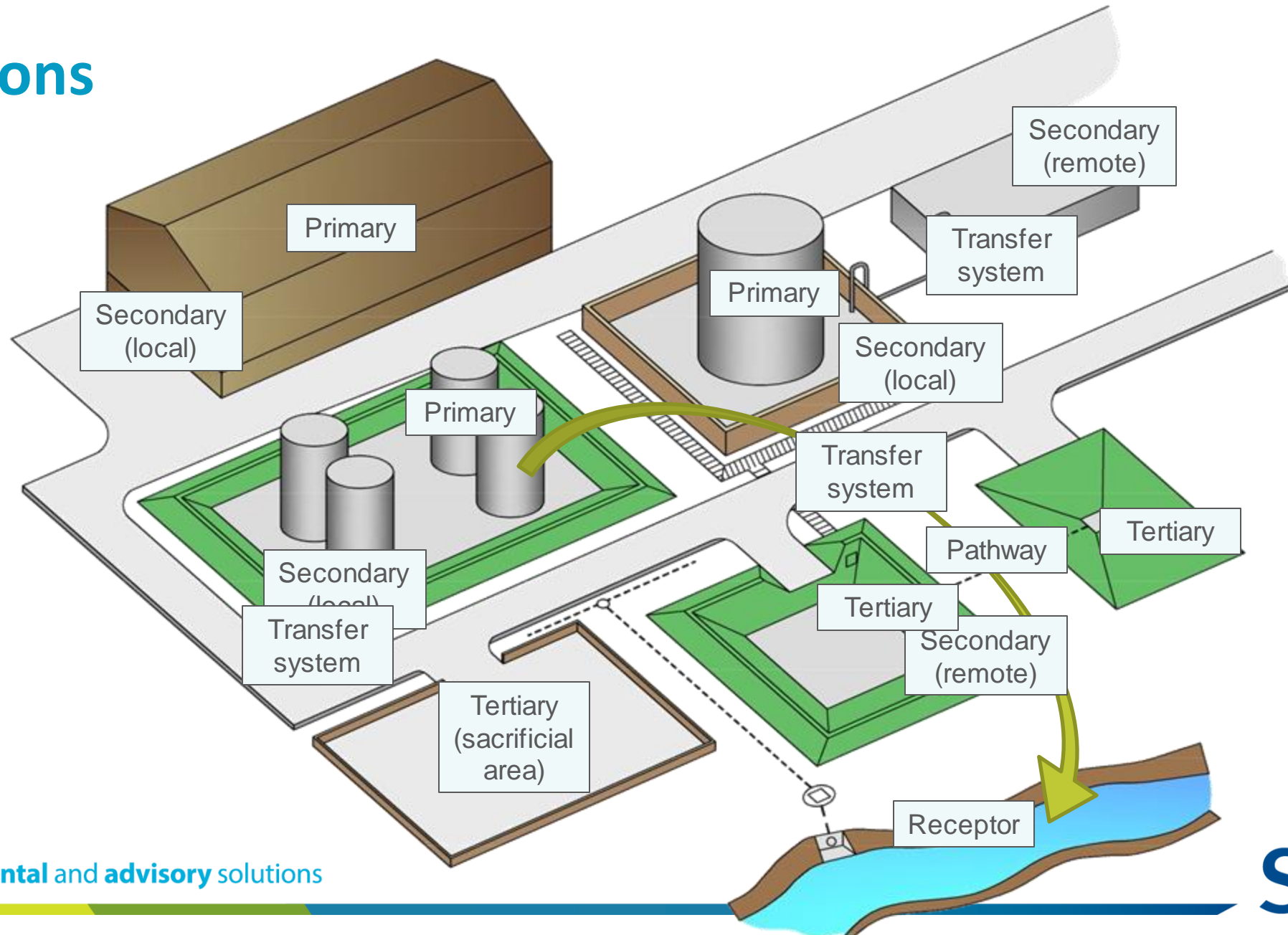


- Source and Receptors generally are 'fixed'
- Containment seeks to 'break' or 'reduce' the Pathway

Primary Containment



Definitions

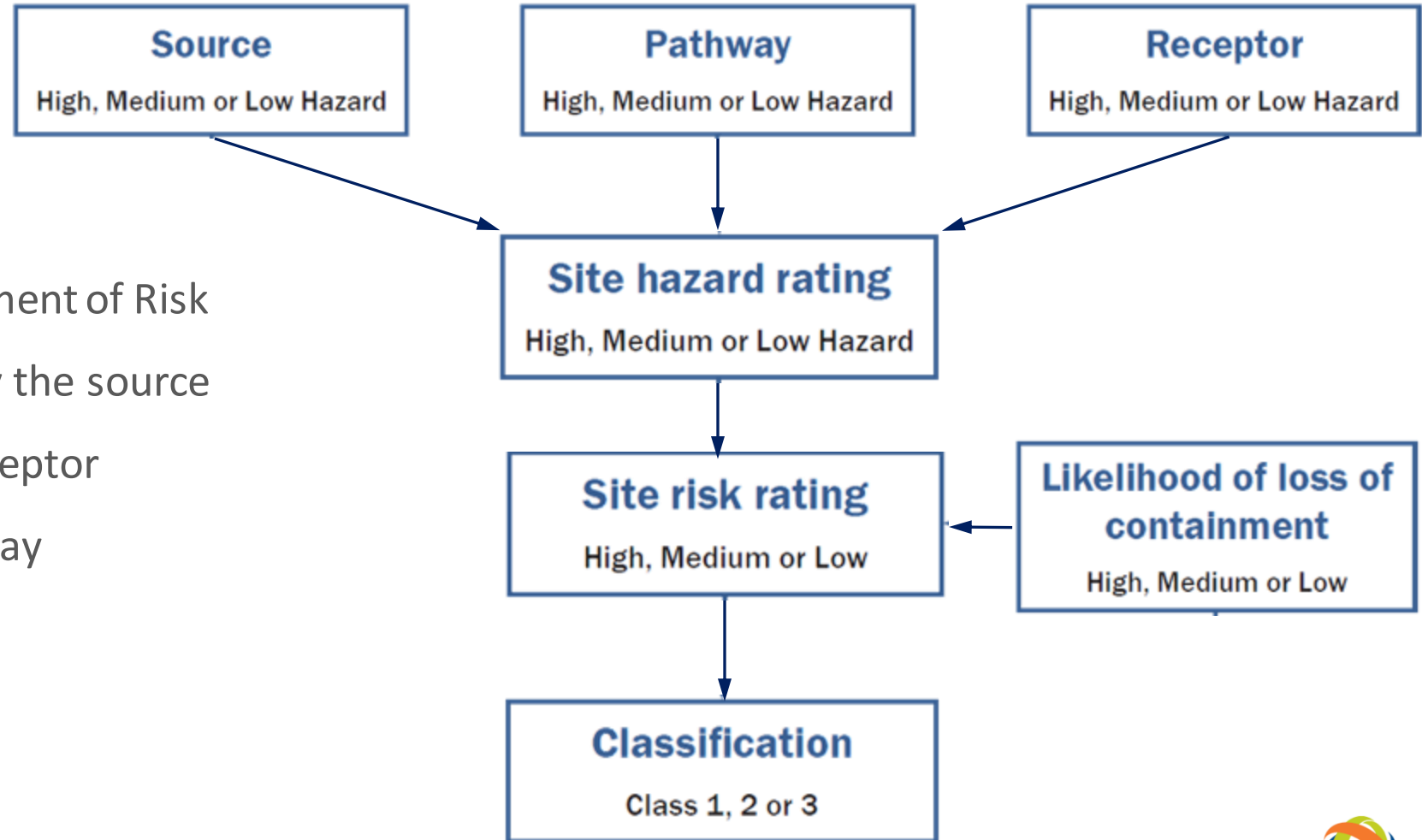


Scope of Guidance

- **Part 1**
 - Introduction
 - Risk Assessment and Classification
 - Containment Options
 - System Capacity
- **Part 2**
 - Assessment of existing installations
- **Part 3**
 - Covers the detail of the design of various containment options

Some key concepts.....

Risk Assessment and Classification



- Classification based on assessment of Risk
 - Hazard presented by the source
 - Sensitivity of the receptor
 - Presence of a pathway

Bund Classes

- **Class 1** – Low hazard
- **Class 2** – Medium hazard
- **Class 3** – High hazard

- **Bund Class impacts on the design, specification and construction of containment:**
 - Layout – proximity to bund wall to prevent jetting
 - Material – reinforced blockwork only permitted for Class 1
 - Drainage – gravity drainage of bunds not permitted for Class 2 and 3
 - Detailing – waterbars required in kicker joints for Class 2 and 3
 - Leak detection – requirement for earthwork bunds, below ground bunds, class 3 bund

Volume of Containment

- **Previous 110% rule**
 - Additional 10% to cover a multitude of sins...
 - Generally adequate to contain firefighting agents (foam) and rainfall
 - BUT still mandatory minimum for some regulations e.g. OSR
- **What has to be contained?**
 - 100% of the contents for single tank
 - For multiple tanks based on credible failure scenario
 - Generally brimful capacity should be adopted
 - Nominal or tank rated capacity may be appropriate
 - Rainfall
 - Firefighting and cooling water applied during an incident



Other Bund Volume Considerations

- **Freeboard**
 - Accounts for uncertainty
 - Firefighting agents (foam) in addition to inventory and rainfall
 - Dynamic effects
- **Firefighting and Cooling Water**
 - 'Explosion' more likely than a fire at most AD plants
 - C736 provides review of methods to provide a first estimate of fire water volumes if required



Failure to manage firefighting water one of the principal cause of environmental harm

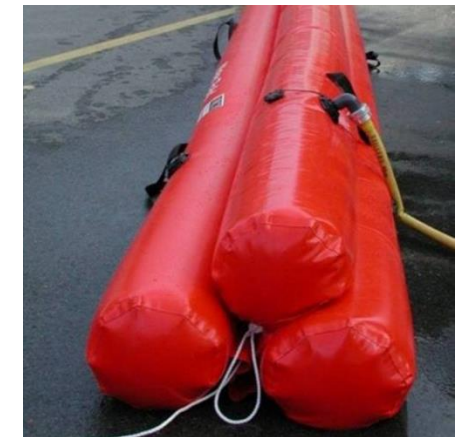
Tertiary Containment

- Where will firefighting and cooling water go?

- Mobilising storage



- Emergency and temporary containment



Existing Facilities - Overview

- **Few new facilities being constructed, generally**
 - Extensions
 - Modification
 - Upgrading
- **Recent inspection indicate uncertainty with form of construction and compliance with good practice recommendations**
- **Assessment of existing containment facilities**
 - *'Source, Pathway, Receptor' assessment for required bund Class*
 - Gap analysis of what is required versus the existing facility
 - Duty holder responsibility to demonstrate facility is appropriate for the risk
 - Regular reviews and any time that the nature of the inventory changes

Existing Facilities – Focus of C736 Guidance

- **Difference to ‘best practice’ construction**
 - Why it is different to a concrete wall
 - Duty Holder should seek professional advice
 - Not rely on ‘have-a-go’ maintenance staff or local builder
- **Impermeably**
 - Joints
 - Penetrations
 - Earthworks
 - Lining systems
- **Fire resistance**
 - Joints – metal waterbars
 - Penetrations – detailed to allow movement and remain sealed

Existing Facilities – Baseline Surveys

- **Asset Survey**
 - Volume of inventory
 - Type and volume of containment
 - Type of construction
 - Potential leakage pathways (joints, drainage, penetrations etc.)

- **Further Investigations**
 - May be required to establish type of construction
 - Ability to withstand loads – foundations
 - Ability to resist fire – rendered blockwork wall or reinforced concrete
 - Type and detail of joints – fire and chemical resistance able to accommodate movement

Existing Facilities – Baseline Surveys

- **Gap Analysis**

- Compare bund Class
- Identify improvements
 - Repair and upgrading
 - Tertiary containment
- Regulator engagement
- Aim is to reduce the risk of causing pollution to occur

Note that it is not the intention of the guidance to be a blanket retrospective application to existing facilities

- **Maintenance Plans**

- Regular maintenance and inspection
- Requirement of EPC, PPC and COMAH
- C736 provides some guidance

Existing Facilities – Maintenance and Inspection Regimes

C736 suggest the following checks by **Operational staff**

- **Daily**
 - Visual inspection including drip trays
 - Remove wastes, remove water
 - Note any damage to tanks, leaks, spills and immediate remediation
 - Check alarms and pumps
- **Weekly**
 - Check drain covers/grids
- **After rainfall**
 - Check for excess water

Existing Facilities – Maintenance and Inspection Regimes

Checks by **Works Engineer or similar suitably qualified manager**

- **Annually** – tanks, pipework, loading bays etc
 - Cracks and corrosion
 - Seals and joints
 - Damage
 - Integrity
 - Signage
 - Equipment

Link to a maintenance plan.

Existing Facilities – Maintenance and Inspection Regimes

5 yearly (or where changes have occurred)

- Site risk assessment and containment classification should be reviewed
- Review details of inspections carried out
- Review maintenance identified, planned and completed

Checks by a **suitably qualified assessor**

- **10+ yearly**

- Wall thickness NDT
- Surface inspections
- Leak detection

Obtaining the guidance

- CIRIA publication C736 Containment systems for the prevention of pollution can be freely downloaded from the CIRIA website.
- Please do register with CIRIA and download the document rather than circulate a copy as this enables CIRIA to keep track of who has copies and will be able to email you notice of any updates.

Obtaining assistance

SLR Consulting can provide a range of Consultants who can help Operators discharge their duties under CIRIA C736.

- SLR can provide services such as
 - Inspection of containment facilities
 - Gap analysis against RGP and BAT requirements
 - Development of improvement plans
 - Negotiation with Regulators
 - Drainage and hydrology studies
 - Spill modelling
 - Climate change and resilience analysis
 - Tertiary containment and firewater modelling

Questions?

THANK YOU FOR LISTENING



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Biological waste treatment: appropriate measures for permitted facilities

From: **Environment Agency** (</government/organisations/environment-agency>)

Published 21 September 2022

Updated: 2 February 2024 - [See all updates](#)

[Contents](#)

4. Site location, design and capacity

Issues to consider relating to site location, design and capacity, reducing or preventing contamination and primary

and secondary containment for new and existing sites.

This section applies to all processes and operations.

4.1 Site location

1. You should consider the potential impacts on local sensitive receptors when selecting a new site.

2. You must choose the location of your site so you prevent or minimise fugitive emissions to air. This includes dust, bioaerosols, odours and other gaseous emissions including ammonia.

3. You should also consider the possible impact of climate change, especially:

- flood risk
- drought
- extreme temperatures
- other extreme weather events

Existing sites must consider the risk of climate change on their existing facilities and as far as possible have contingency measures in place.

4.2 Site design

1. The storage and handling of waste on site must be located as far as technically and economically possible from any sensitive receptors.
2. When designing your biological treatment site you must consider minimising the unnecessary handling of waste between each step in the process, from receipt, during treatment, and during storage of the final material.
3. All biological treatment facilities must be designed by a suitably qualified or experienced person. Facilities must be built to recognised industry standards.
4. You must design your plant to minimise emissions during the transfer of waste from one step to another. For example, the transfer of feedstock from reception to a feed hopper.

You must consider at the design stage where there is an opportunity to cover storage areas and where possible contain, treat and abate air using appropriately engineered plant.

5. To prevent emissions (including ammonia) you must cover digestate stores and compost liquor. Where fixed covers are used these must have a system that can remove and effectively treat emissions.
6. You must consider the location of access doors in relation to sensitive receptors to prevent loss of containment.

Reducing or preventing contamination

7. Good site design and process flow reduces the risk of cross-contamination of pasteurised or sanitised and stabilised materials.

8. You must consider the design, process flow and intended use of outputs during the planning and design stage of your plant to prevent cross contamination of treated and untreated material.

Preventing cross contamination by segregation relies on both the:

- physical separation of waste
- procedures that identify when and where wastes are stored

Primary and secondary containment

New facilities

9. When designing new plant, you must make sure that you assess the environmental impacts from the plant's operating life and eventual decommissioning.

10. All critical structures should be designed and built to construction and design regulation.

11. All secondary containment must meet the requirements of the Construction Industry Research and Information Association (CIRIA) report [C736 \(https://www.ciria.org/ItemDetail?iProductCode=C736F&Category=FREEPUBS&WebsiteKey=3f18c87a-d62b-4eca-8ef4-9b09309c1c91\)](https://www.ciria.org/ItemDetail?iProductCode=C736F&Category=FREEPUBS&WebsiteKey=3f18c87a-d62b-4eca-8ef4-9b09309c1c91) or an equivalent standard.

12. A chartered civil or structural engineer must provide construction quality assurance (CQA) and validate the construction of all facilities. You can use a chartered geotechnical or structural engineer for lagoon design and construction. All pipe work must be designed to allow for inspection or integrity checks, or both.

13. Drainage and vessels must be accessible to allow cleaning and maintenance.

14. You must design underground tanks to allow inspection and must have secondary containment with leakage detection.

15. You must consider the life of all plant and its decommissioning at the design stage. This includes tanks, pipework and drainage and lagoon structures.

Existing sites

16. Operators of existing sites must use a chartered engineer to carry out a detailed assessment of primary and secondary containment where it has not previously been validated to industry recognised standards.

17. You must assess containment structures against CIRIA 736. This is a risk-based assessment. Where you have not used CIRIA 736, the assessment must be an equivalent approved standard. Where improvements are identified, you must propose an improvement programme or process monitoring to make sure there are no uncontrolled process releases.

18. You should monitor underground pipe work or ducting and drainage to make sure there is no leakage.

19. Underground tanks should have secondary containment. You must implement a method of inspection and leakage detection as a minimum.

4.3 Site capacity

1. You must determine the actual physical capacity needed to manage, treat and store waste on your site without causing pollution.

2. You must include factors like seasonal changes in feedstock supplies and in markets for outputs.

Exceeding the site capacity will significantly increase the risks of pollution. This includes the capacity of storm tanks.

3. You must provide enough space on site to operate your plant and equipment safely, and to allow easy and environmentally safe storage and treatment.

4. Environmental permits set limits on the amount of waste you can:

- bring onto site on an annual basis
- treat at any one time
- store at any one time

To determine the daily and annual throughput, you must establish the following critical volumes or tonnes:

- waste storage capacity at any one time for both incoming waste and processed material
- residence time for waste to be fully treated and recycled

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Georgina Collins,
Director Regulated Industry,
Environment Agency

 **Cathryn Ross**
Interim Co-Chief Executive Officer

 Cathryn.Ross@thameswater.co.uk

CC - Chris Walters, Ofwat
David Hallam, DEFRA (Director floods & water)
Tim Griffiths, Ofwat

29 June 2023

By email

Industrial Emissions Directive (IED)

Dear Georgina,

Thank you for your letter of 7th June 2023 regarding the Industrial Emissions Directive (IED) and the important issue of obtaining environmental permits for sludge treatment centres (STCs).

I can confirm that Thames Water supports the objectives of the IED in delivering environmental protection, but we cannot commit to meeting all the requirements set out in the 'Appropriate Measures' guidance (issued September 2022), by December 2024. In addition, we have concerns regarding the overall value for money for customers of this work, in the context of other planned environmental improvements. I would also note that, given the constraints we face in terms of what we are able to deliver, we will inevitably need to focus the capacity we have on those things that matter most for our customers and the environment. The resource that would be required to undertake the full scale of the work envisaged by an extensive interpretation of the IED would mean displacing work to be undertaken on other priority areas.

We accept that the Environment Agency confirmed the need to obtain environmental permits for sludge treatment in July 2019. However, this was confirmed after the industry PR19 price review process and was therefore, not a directly funded activity within the AMP7 period (2020-2025).

Since the guidance was clarified we have been undertaking a gap analysis of the requirements at each site to understand the implications and scale of investment and activity required to develop a programme of works we can commit to. We are now undertaking a range of enabling activities to inform our approach and assess risks. These include:

- Odour emissions data collection and dispersion modelling for the sludge treatment areas for each site
- Developing the liquor monitoring programme
- Undertaking ambient bioaerosol monitoring
- Undertaking Residual Biogas Potential (RBP) testing at an initial five Sludge Treatment Centres
- Continuing to develop the waste acceptance procedures for inter-site sludge, cake, and liquors and for third-party waste imports

In terms of what we need to deliver, and by when, it is already clear to us that we will not be able to comply fully with the 'Appropriate Measures' guidance issued in September 2022. The highly prescriptive approach set out in the measures goes far beyond the original BAT requirements to achieve compliance.

Our current estimate is that the cost of implementing IED aligned with the 'Appropriate Measures' guidance will be in the region of £480m Capex and a £40m increase in Opex per annum. This is a significant change to the assumptions made back in 2019. We need to do further work to scope out the detail of what is required, but a programme of this size will need to be delivered over more than one AMP, especially when considering the requirement to maintain overall treatment capacity during construction activity and the wide range of other infrastructure improvements that will be required in AMP8.

The constraints on delivering more quickly include the availability of skilled resources and additional capability to manage such a large investment programme, and the ability of the supply chain to ramp up to the rates required. We and other companies will need to do significant work to create the necessary pathways and recruit the required skilled individuals to support this programme. Feedback from other companies indicates that the whole industry is already experiencing stretch from key Tier 1 suppliers in delivering existing programmes.

An additional important aspect that is causing us concern is the cost benefit of the requirements now being specified. As we mentioned in our letter to David Dangerfield of 15th May, we are concerned that we are collectively at risk of delivering poor value for our customers' money, at a time when their ability to pay is stretched and when there are many other environmental improvements that will require to be funded in AMP 8.

Against this background, I want to leave you in no doubt that we are fully aligned with the Environment Agency in supporting its wider environmental improvement aims. However, the requirements and timescales set out in the draft permits we have received are not achievable. This is clearly an important issue for both our organisations, and we are keen to meet with yourselves, WaterUK and the wider industry to work towards a solution to achieve the objectives of IED as soon as practicably possible.

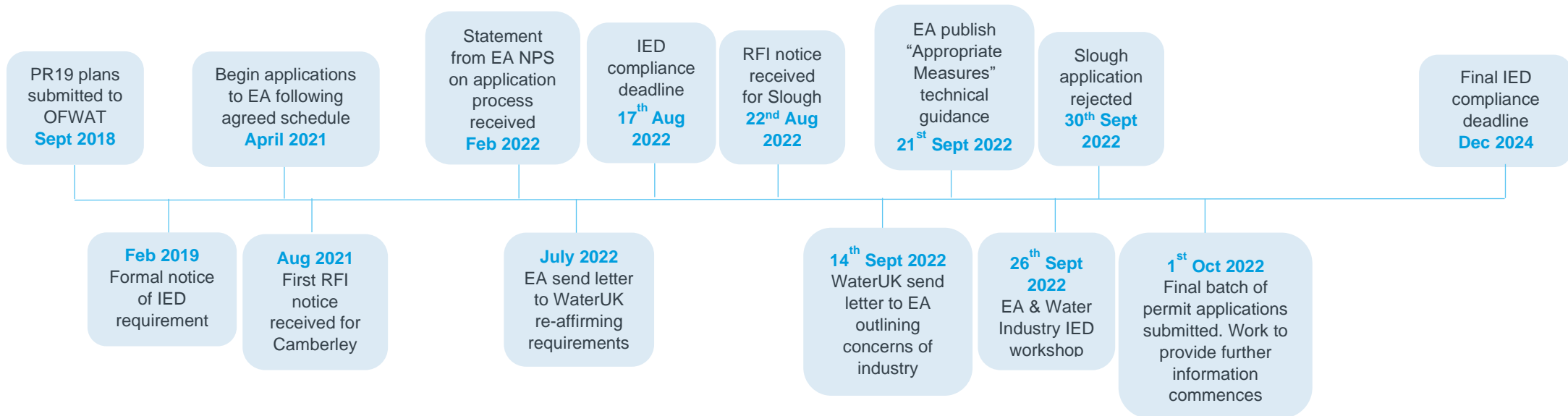
Yours sincerely



Cathryn Ross
Interim Co-Chief Executive Officer

Appendix

Timeline





Water Industry Act 1991

1991 CHAPTER 56

An Act to consolidate enactments relating to the supply of water and the provision of sewerage services, with amendments to give effect to recommendations of the Law Commission. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 Act extends to England and Wales; for minor variations see s. 223(3)

Modifications etc. (not altering text)

- C1** A reference to a detention centre within the meaning of [Part VIII of the Immigration and Asylum Act 1999 \(c. 33\)](#) to be construed as a reference to a removal centre within the meaning of that Part (10.2.2003) by virtue of [2002 c. 41, s. 66\(4\)](#); S.I. 2003/1, [art. 2](#), [Sch.](#)
- C2** Act modified (temp.) (29.3.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), [art. 4](#), {[Sch. 2 paras. 3, 4](#)}
- C3** Act: certain provisions modified (temp.) (8.3.2004) by [The Water Act 2003 \(Commencement No. 1 and Transitional Provisions\) Order 2004 \(S.I. 2004/641\)](#), [art. 6](#), [Sch. 3 para. 7](#)
- C4** Act: transfer of functions (W.) (except ss. 1, 14, 15, 17, 24(2)(d), 27(3), 32-35, 152(2), 193(3), 206(3) (e), [Schs. 1, 4](#) and subject to entry in [Sch. 1](#) of the amending S.I.) (1.7.1999) by [1999/672](#), [art. 2](#), [Sch. 1](#) (as amended by [2003 c. 37, s. 100\(2\)\(4\)\(6\)\(7\)](#); S.I. 2004/2528, [art. 2\(s\)](#); S.I. 2006/3334, [Sch.](#))
- C5** Act restricted (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 15\(2\)\(a\)](#), 225(2).
- C6** Act restricted (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 18\(2\)](#), 225(2).
- C7** Act: definitions of "service pipe" and "water main" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 162\(6\)](#), 225(2).
Act: definition of "sewerage services" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 173](#), [Sch. 20 para. 8\(1\)](#), [s. 207\(8\)](#), 225(2).
Act: definition of "service pipe" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 176\(7\)](#) and 195(7), 225(2).

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Act: definition of "stopcock" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 176\(7\)](#) and 221(1), 225(2).

Act: definition of "trunk main" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 186\(1\)](#), 225(2).

Act: definition of "drain" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 221\(1\)](#), 225(2).

C8 [A table showing the derivation of the provisions of this Consolidation Act will be found at the end of the Act. The table has no official status.]

C9 Act excluded (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), [ss. 11\(2\)](#), 17(2).

C10 Act: definition of "public sewers" applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), [ss. 72\(1\)](#), 76(2) (with [ss. 67\(3\)\(5\)\(8\)](#), [72\(6\)\(8\)](#), [74\(3\)\(4\)](#)).

C11 Act applied (8.8.2017) by [The Wrexham Gas Fired Generating Station Order 2017 \(S.I. 2017/766\)](#), [Sch. 9 para. 34](#)

C12 Act applied (Isles of Scilly) (with modifications) (1.11.2019) by [The Isles of Scilly \(Application of Water Legislation\) Order 2019 \(S.I. 2019/1259\)](#), arts. 2(1), 4 (as amended (27.3.2020) by [The Isles of Scilly \(Application of Water Legislation\) Order 2020 \(S.I. 2020/214\)](#), [art. 6](#))

Commencement Information

II Act wholly in force at 1.12.1991 see s. 223(2)

PART I

PRELIMINARY

The Director General of Water Services

1 The Director General of Water Services.

F1

Textual Amendments

F1 S. 1 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 34\(4\)](#), [101\(2\)](#), [105\(3\)](#), [Sch. 9 Pt. 2](#); S.I. 2005/2714, [art. 4\(a\)\(g\)\(i\)](#) (with [Sch. para. 8](#))

[^{F2}1A Water Services Regulation Authority

- (1) There shall be a body corporate to be known as the Water Services Regulation Authority (in this Act referred to as “the Authority”) for the purpose of carrying out the functions conferred on or transferred to it by this Act or under or by virtue of any other enactment.
- (2) The functions of the Authority are performed on behalf of the Crown.
- (3) Schedule 1A to this Act shall have effect with respect to the Authority.
- (4) In Welsh the Authority may be known as “Awdurdod Rheoleiddio Gwasanaethau Dŵr”.]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F2** S. 1A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 34(1)**, 105(3); S.I. 2005/2714, **art. 4(a)** (with [Sch. para. 8](#))

General duties

2 General duties with respect to water industry.

(1) This section shall have effect for imposing duties on the Secretary of State and on the Director as to when and how they should exercise and perform [^{F3}the powers and duties conferred or imposed on the Secretary of State or the Authority by virtue of any of the relevant provisions.]

[^{F4}(2A) The Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

- (a) to further the consumer objective;
- (b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales;
- (c) to secure that companies holding appointments under Chapter 1 of Part 2 of this Act as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of those functions;
^{F5} ...
- (d) to secure that the activities authorised by the licence [^{F6}of a water supply licensee or sewerage licensee] and any statutory functions imposed on it in consequence of the licence are properly carried out[^{F7}; and
- (e) to further the resilience objective.]

(2B) The consumer objective mentioned in subsection (2A)(a) above is to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services.

(2C) For the purposes of subsection (2A)(a) above the Secretary of State or, as the case may be, the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes;
- (d) individuals residing in rural areas; ^{F8} ...
- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are [^{F9}household premises (as defined in section 17C)] [^{F10}; and
- (f) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are below the consumption threshold and in the area of a relevant undertaker whose area is wholly or mainly in Wales.]

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

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(2D) For the purposes of subsection (2C) above, premises are [^{F11}below the consumption threshold if the total quantity] of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D below is less than the quantity specified in that subsection.

[^{F12}(2DA) The resilience objective mentioned in subsection (2A)(e) is—

- (a) to secure the long-term resilience of water undertakers' supply systems and sewerage undertakers' sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour, and
- (b) to secure that undertakers take steps for the purpose of enabling them to meet, in the long term, the need for the supply of water and the provision of sewerage services to consumers,

including by promoting—

- (i) appropriate long-term planning and investment by relevant undertakers, and
- (ii) the taking by them of a range of measures to manage water resources in sustainable ways, and to increase efficiency in the use of water and reduce demand for water so as to reduce pressure on water resources.

(2DB) For the purposes of subsection (2DA)—

- (a) the reference to water undertakers' supply systems is to be construed in accordance with section 17B;
- (b) the reference to sewerage undertakers' sewerage systems is [^{F13}to be construed in accordance with section 17BA(7).]

(2E) The Secretary of State and the Authority may, in exercising any of the powers and performing any of the duties mentioned in subsection (1) above, have regard to—

- (a) any interests of consumers in relation to electricity conveyed by distribution systems (within the meaning of the Electricity Act 1989);
- (b) any interests of consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986);
- (c) any interests of consumers in relation to communications services and electronic communications apparatus (within the meaning of the Communications Act 2003),

which are affected by the exercise of that power or the performance of that duty.]

[^{F14}(3) Subject to subsection (2A) above, the Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

- (a) to promote economy and efficiency on the part of companies holding an appointment under Chapter 1 of Part 2 of this Act in the carrying out of the functions of a relevant undertaker;
- (b) to secure that no undue preference is shown, and that there is no undue discrimination in the fixing by such companies of water and drainage charges;

[^{F15}(ba) to secure that no undue preference (including for itself) is shown, and that there is no undue discrimination, in the doing by such a company of—

- (i) such things as relate to the provision of services by itself or another such company, or
- (ii) such things as relate to the provision of services by a water supply licensee or a sewerage licensee;]

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- (c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company's protected land or of an interest or right in or over any of that land;
 - (d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Secretary of State or (as the case may be) the Authority to be connected with the company, and in particular by ensuring—
 - (i) that any transactions are carried out at arm's length;
 - (ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;
 - ^{F16}(iii)
 - (e) to contribute to the achievement of sustainable development.
- (4) In exercising any of the powers or performing any of the duties mentioned in subsection (1) above in accordance with the preceding provisions of this section, the Secretary of State and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).]
- (5) In this section the references to water and drainage charges are references to—
- (a) any charges in respect of any services provided in the course of the carrying out of the functions of a relevant undertaker; and
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any of its customers or potential customers to pay.
- ^{F17}(5A) In this section—
- “consumers” includes both existing and future consumers; and
 - “the interests of consumers” means the interests of consumers in relation to—
 - (a) the supply of water by means of a water undertaker's supply system to premises either by water undertakers or by ^{F18}water supply licensees] acting in their capacity as such; and
 - (b) the provision of sewerage services ^{F19}either by sewerage undertakers or by sewerage licensees acting in their capacity as such.]]
- (6) For the purposes of this section—
- ^{F20}(a) subject to subsection (6A) below, the reference in subsection (1) above to ^{F21}the relevant provisions] is a reference to the provisions ^{F22}contained in—
 - (i) Part 2 of this Act (except section 27A and Schedule 3A),
 - (ii) any of sections 37A to 38, 38ZA, 39, 39ZA, 39B to 39D, 40E to 40J, 42, 51CD to 51CG, 63AC to 63AF, 66B, 66CA to 66H, 66K, 66L, 66O(2), 95, 95ZA, 96, 96ZA, 99, 105ZF to 105ZI, 110F to 110J, 110L to 110O, 117E to 117O, 117R, 117S, 143B to 143E, 144ZA to 144ZF, 153, 181, 182, 185, 192A, 192B, 195, 195A and 201 to 203 below, and
 - (iii) any of sections 42 to 54 of the Water Act 2014.]
 - ^{F23}(b)

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^{F24}(c)

^{F25}[(6A) [^{F26}Subsections (2A) to (4) above and [^{F27}sections 2A and 2B] below] do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of [^{F28}subsections (2A) to (4) above and [^{F29}sections 2A and 2B] below], if it is a matter to which [^{F30}the CMA] could have regard when exercising that function.]

[^{F31}(7) The duties imposed by subsections (2A) to (4) above and [^{F32}sections 2A and 2B] below do not affect the obligation of the Authority or, as the case may be, the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any [^{F33}[^{F34}assimilated] obligation] or otherwise).]

Textual Amendments

- F3** Words in s. 2(1) substituted (15.7.2015 for specified purposes, 1.9.2015 for specified purposes, 1.11.2015 for specified purposes, 18.12.2015 for specified purposes, 1.4.2016 for specified purposes, 1.9.2016 for specified purposes, 1.11.2016 for specified purposes, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(2\)](#); S.I. 2015/1469, arts. 2(f)(ii), 3(f)(ii), 4(c)(ii); S.I. 2015/1938, art. 2(g)(ii); S.I. 2016/465, arts. 2(m), 3(g)(ii), [Sch. 1 para. 1\(c\)\(iv\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2016/1007, art. 2(h)(aa)(ii); S.I. 2017/462, art. 3(k)(ii)
- F4** S. 2(2A)-(2E) substituted (1.4.2005) for s. 2(2) by [Water Act 2003 \(c. 37\)](#), [ss. 39\(3\)](#), 105(3); S.I. 2005/968, [art. 2\(f\)](#) (with savings in [art. 4](#), [Schs. 1, 2](#))
- F5** Word in s. 2(2A)(c) omitted (14.7.2014 for specified purposes, 18.12.2015 in so far as not already in force) by virtue of [Water Act 2014 \(c. 21\)](#), [ss. 22\(2\)\(a\)](#), 94(2)(e); S.I. 2015/1938, art. 2(e)
- F6** Words in s. 2(2A)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(c\)\(ii\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F7** S. 2(2A)(e) and word inserted (14.7.2014 for specified purposes, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 22\(2\)\(b\)](#), 94(2)(e); S.I. 2015/1938, art. 2(e)
- F8** Word in s. 2(2C) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(4\)\(a\)](#); S.I. 2017/462, art. 3(k)(ii)
- F9** Words in s. 2(2C)(e) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(4\)\(b\)](#); S.I. 2017/462, art. 3(k)(ii)
- F10** S. 2(2C)(f) and word inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(4\)\(c\)](#); S.I. 2017/462, art. 3(k)(ii)
- F11** Words in s. 2(2D) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(5\)](#); S.I. 2017/462, art. 3(k)(ii)
- F12** S. 2(2DA)(2DB) inserted (14.7.2014 for specified purposes, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 22\(3\)](#), 94(2)(e); S.I. 2015/1938, art. 2(e)
- F13** Words in s. 2(2DB)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 3\(6\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(c\)\(ii\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F14** S. 2(3)(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 39\(4\)](#), 105(3); S.I. 2005/968, [art. 2\(f\)](#) (with savings in [art. 4](#), [Schs. 1, 2](#))
- F15** S. 2(3)(ba) inserted (1.1.2015 for W. for specified purposes, 6.4.2015 for W. for specified purposes, 1.4.2016 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 23](#), 94(3); S.I.

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- 2014/3320, art. 2(1)(a) (with art. 3); S.I. 2015/773, art. 2(3)(a) (with art. 6); S.I. 2016/465, art. 2(e) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F16** S. 2(3)(d)(iii) omitted (25.6.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(2), **Sch. 21 para. 4**
- F17** S. 2(5A) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(5)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)
- F18** Words in s. 2(5A)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 3(7)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(c)(ii) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F19** Words in s. 2(5A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 3(7)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(c)(ii) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F20** S. 2(6)(a)(b) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(6)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)
- F21** Words in s. 2(6)(a) substituted (15.7.2015 for specified purposes, 1.9.2015 for specified purposes, 1.11.2015 for specified purposes, 18.12.2015 for specified purposes, 1.4.2016 for specified purposes, 1.9.2016 for specified purposes, 1.11.2016 for specified purposes, 1.4.2017 in so far as not already in force) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 3(8)(a)**; S.I. 2015/1469, arts. 2(f)(ii), 3(f)(ii), 4(c)(ii); S.I. 2015/1938, art. 2(g)(ii); S.I. 2016/465, arts. 2(m), 3(g)(ii), Sch. 1 para. 1(c)(iv) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2016/1007, art. 2(h)(aa)(ii); S.I. 2017/462, art. 3(k)(ii)
- F22** Words in s. 2(6)(a) substituted (15.7.2015 for specified purposes, 1.9.2015 for specified purposes, 1.11.2015 for specified purposes, 18.12.2015 for specified purposes, 1.4.2016 for specified purposes, 1.9.2016 for specified purposes, 1.11.2016 for specified purposes, 1.4.2017 in so far as not already in force) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 3(8)(b)**; S.I. 2015/1469, arts. 2(f)(i), 3(f)(i), 4(c)(i); S.I. 2015/1938, art. 2(g)(i); S.I. 2016/465, arts. 2(m), 3(g)(i), Sch. 1 para. 1(c)(iii) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2016/1007, art. 2(h)(bb)(ii); S.I. 2017/462, art. 3(k)(ii)
- F23** S. 2(6)(b) repealed (15.7.2015 for specified purposes, 1.9.2015 for specified purposes, 1.11.2015 for specified purposes, 18.12.2015 for specified purposes, 1.4.2016 for specified purposes, 1.9.2016 for specified purposes, 1.11.2016 for specified purposes, 1.4.2017 in so far as not already in force) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 3(8)(c)**; S.I. 2015/1469, arts. 2(f)(ii), 3(f)(ii), 4(c)(ii); S.I. 2015/1938, art. 2(g)(ii); S.I. 2016/465, arts. 2(m), 3(g)(ii), Sch. 1 para. 1(c)(iv) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2016/1007, art. 2(h)(aa)(ii); S.I. 2017/462, art. 3(k)(ii)
- F24** S. 2(6)(c) repealed (15.7.2015 for specified purposes, 1.9.2015 for specified purposes, 1.11.2015 for specified purposes, 18.12.2015 for specified purposes, 1.4.2016 for specified purposes, 1.9.2016 for specified purposes, 1.11.2016 for specified purposes, 1.4.2017 in so far as not already in force) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 3(8)(c)**; S.I. 2015/1469, arts. 2(f)(ii), 3(f)(ii), 4(c)(ii); S.I. 2015/1938, art. 2(g)(ii); S.I. 2016/465, arts. 2(m), 3(g)(ii), Sch. 1 para. 1(c)(iv) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2016/1007, art. 2(h)(aa)(ii); S.I. 2017/462, art. 3(k)(ii)
- F25** S. 2(6A)(6B) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(4)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, art. 2, **Sch.**
- F26** Words in s. 2(6A) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(7)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)
- F27** Words in s. 2(6A) substituted (6.4.2015) by Water Act 2014 (c. 21), **ss. 24(2)**, 94(3); S.I. 2015/773, art. 2(1)(c) (with art. 4)
- F28** Words in s. 2(6B) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(8)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)
- F29** Words in s. 2(6B) substituted (6.4.2015) by Water Act 2014 (c. 21), **ss. 24(2)**, 94(3); S.I. 2015/773, art. 2(1)(c) (with art. 4)

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- F30** Words in s. 2(6B) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 74** (with art. 3)
- F31** S. 2(7) added (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 39(9)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)
- F32** Words in s. 2(7) substituted (6.4.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 24(2)**, 94(3); S.I. 2015/773, art. 2(1)(c) (with art. 4)
- F33** Words in s. 2(7) substituted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **3(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F34** Word in s. 2(7) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 30(2)(a)**

Modifications etc. (not altering text)

- C13** S. 2 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), regs. 1(1)(b), **3(3)** (with regs. 1(1)(c), 3(2)(5))

[^{F35}2A Strategic priorities and objectives: England

- (1) The Secretary of State may from time to time publish a statement setting out strategic priorities and objectives for the Authority in carrying out relevant functions relating wholly or mainly to England.
- (2) The Authority must carry out those functions in accordance with any statement published under this section.
- (3) In formulating a statement under this section, the Secretary of State—
 - (a) must have regard to the duties imposed on the Authority under section 2,
 - (b) must have regard to social and environmental matters, and
 - (c) may have regard to such other matters as the Secretary of State thinks fit.
- (4) Before publishing a statement under this section, the Secretary of State must consult—
 - (a) the Authority,
 - (b) the Council,
 - (c) relevant undertakers,
 - (d) [^{F36}water supply licensees and sewerage licensees],
 - (e) the Environment Agency,
 - (f) the Welsh Ministers,
 - (g) the NRBW, and
 - (h) anyone else the Secretary of State thinks appropriate.
- (5) Before publishing a statement under this section the Secretary of State must—
 - (a) lay a draft of the statement before Parliament, and
 - (b) then wait until the end of the 40-day period.
- (6) The Secretary of State may not publish the statement under this section if, within the 40-day period, either House of Parliament resolves not to approve it.
- (7) “The 40-day period” means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).

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- (8) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (9) In this section “relevant functions relating wholly or mainly to England” means the functions mentioned in [F37 section 2(1)] so far as they relate to appointment areas wholly or mainly in England.
- (10) In subsection (9) “appointment area” means an area for which an appointment is held under Chapter 1 of Part 2.]

Textual Amendments

- F35** Ss. 2A, 2B substituted for s. 2A (6.4.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 24(1)**, 94(3); S.I. 2015/773, art. 2(1)(c) (with art. 4)
- F36** Words in s. 2A(4)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 4**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(d)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F37** Words in s. 2A(9) substituted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **6(2)**

[F35] **2B Strategic priorities and objectives: Wales**

- (1) The Welsh Ministers may from time to time publish a statement setting out strategic priorities and objectives for the Authority in carrying out relevant functions relating wholly or mainly to Wales.
- (2) The Authority must carry out those functions in accordance with any statement published under this section.
- (3) In formulating a statement under this section the Welsh Ministers—
 - (a) must have regard to the duties imposed on the Authority under section 2,
 - (b) must have regard to social and environmental matters, and
 - (c) may have regard to such other matters as the Welsh Ministers think fit.
- (4) Before publishing a statement under this section, the Welsh Ministers must consult—
 - (a) the Authority,
 - (b) the Council,
 - (c) relevant undertakers,
 - (d) [F38 water supply licensees],
 - (e) the NRBW,
 - (f) the Secretary of State,
 - (g) the Environment Agency, and
 - (h) anyone else the Welsh Ministers think appropriate.
- (5) Before publishing a statement under this section the Welsh Ministers must—
 - (a) lay a draft of the statement before the Assembly, and
 - (b) then wait until the end of the 40-day period.
- (6) The Welsh Ministers may not publish the statement under this section if, within the 40-day period, the Assembly resolves not to approve it.

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- (7) “The 40-day period” means the period of 40 days beginning with the day on which the draft is laid before the Assembly.
- (8) When calculating the 40-day period, ignore any period during which the Assembly is dissolved or is in recess for more than 4 days.
- (9) In this section “relevant functions relating wholly or mainly to Wales” means the functions mentioned in [F39 section 2(1)] so far as they relate to appointment areas wholly or mainly in Wales.
- (10) In subsection (9) “appointment area” means an area for which an appointment is held under Chapter 1 of Part 2.]

Textual Amendments

F35 Ss. 2A, 2B substituted for s. 2A (6.4.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 24(1)**, 94(3); S.I. 2015/773, art. 2(1)(c) (with art. 4)

F38 Words in s. 2B(4)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 5**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(d)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

F39 Words in s. 2B(9) substituted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **6(2)**

3 General environmental and recreational duties.

- (1) It shall be the duty of each of the following, that is to say—
 - (a) the Secretary of State;
 - (b) ^{F40}
 - (c) the Director; and
 - (d) every company holding an appointment as a relevant undertaker,
 in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by subsections (2) and (3) below.
- (2) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are—
 - (a) a requirement, so far as may be consistent—
 - (i) with the purposes of any enactment relating to the functions of the undertaker; and
 - (ii) in the case of the Secretary of State and the Director, with their duties under section 2 above,
 so to exercise any power conferred with respect to the proposals on the person subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest [F41 and, in the case of the exercise of such a power by a company holding an appointment as a relevant undertaker, as to further water conservation] ;
 - (b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and

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- (c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.
- (3) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are, subject to the requirements imposed by subsection (2) above—
- (a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
 - (b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
 - (c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (4) Subsections (1) to (3) above shall apply so as to impose duties on the Director and any company holding an appointment as a relevant undertaker in relation to any proposal relating to—
- (a) the functions of [^{F42}the Environment Agency]; ^{F43} ...
 - ^{F44}(aa) the functions of the NRBW; or]
 - (b) the functions of an internal drainage board,
- as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this subsection the reference in subsection (2)(a) above to the functions of the undertaker shall have effect as a reference to the functions of [^{F45}the Environment Agency][^{F46}, the NRBW,] or, as the case may be, of the internal drainage board in question.
- (5) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—
- (a) reasonably practicable; and
 - (b) consistent with the purposes of the enactments relating to the functions of the undertaker in question,
- for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.
- (6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of subsection (5) above, to take into account the needs of persons who are chronically sick or disabled.
- (7) The obligations under this section of a company holding an appointment as a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.
- (8) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by a relevant undertaker to be made available free of charge.
- (9) References in this section to the functions of a relevant undertaker shall be construed, without prejudice to section 156(7) below, as if those functions included the

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management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).

(10) In this section “building” includes structure.

Textual Amendments

- F40** S. 3(1)(b) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002; S.I. 2002/794, art. 5(2), 6, **Sch. 2**
- F41** Words in s. 3(2)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 82, 105(3)**; S.I. 2004/641, **art. 3(u)** (with art. 6, **Sch. 3**)
- F42** Words in s. 3(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 97** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F43** Word in s. 3(4)(a) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 224(2)** (with Sch. 7)
- F44** S. 3(4)(aa) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 224(3)** (with Sch. 7)
- F45** Words in s. 3(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 97** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F46** Words in s. 3(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 224(4)** (with Sch. 7)

4 Environmental duties with respect to sites of special interest.

- (1) Where [^{F47}Natural England] or [^{F48}the NRBW] are of the opinion that any area of land in England or, as the case may be, in Wales—
- (a) is of special interest by reason of its flora, fauna or geological or physiographical features; and
 - (b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,
- [^{F49}Natural England or (as the case may be) [^{F50}the NRBW]] shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.
- (2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—
- (a) is land in relation to which the matters for the purposes of which section 3 above has effect are of particular importance; and
 - (b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,
- the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every relevant undertaker whose works, operations or activities may affect the land.
- (3) Where a relevant undertaker has received a notification under subsection (1) or (2) above with respect to any land, that undertaker shall consult the notifying body before carrying out any works, operations or activities which appear to that undertaker to be likely—

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- (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
 - (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.
- (4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to [^{F51}Natural England], [^{F48}the NRBW], the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.
- (5) The obligations under this section of a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.
- (6) In this section—
- “the Broads” has the same meaning as in the ^{M1}Norfolk and Suffolk Broads Act 1988; ^{F52} . . .
- ^{F52} . . .
- and section 3(9) above shall apply, as it applies in relation to that section, for construing (in accordance with section 6 below) any references in this section to a relevant undertaker.

Textual Amendments

- F47** Words in s. 4(1) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 129(2)(a)**; S.I. 2006/2541, **art. 2**
- F48** Words in s. 4 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 225(2)** (with Sch. 7)
- F49** Words in s. 4(1) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 129(2)(b)**; S.I. 2006/2541, **art. 2**
- F50** Words in s. 4(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 225(3)** (with Sch. 7)
- F51** Words in s. 4(4) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 129(3)**; S.I. 2006/2541, **art. 2**
- F52** Definition of “National Park authority” and the word “and” immediately preceding it repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

Marginal Citations

- M1** 1988 c. 4.

5 Codes of practice with respect to environmental and recreational duties.

- (1) The Secretary of State may by order approve any code of practice issued (whether by him or by another person) for the purpose of—
- (a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which sections 3 and 4 above have effect; and
 - (b) promoting what appear to him to be desirable practices by such undertakers with respect to those matters,
- 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.

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- (2) A contravention of a code of practice as for the time being approved under this section shall not of itself constitute a contravention of any requirement imposed by section 3 or 4 above or give rise to any criminal or civil liability; but the Secretary of State^{F53} . . . shall^{F54} . . . be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how he should exercise his powers in relation to any relevant undertaker by virtue of this Act, any of the other consolidation Acts or the^{M2}Water Act 1989.
- (3) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State shall not make an order under this section unless he has first consulted—
- (a) [^{F55}the Environment Agency][^{F56}and the NRBW];
 - (b) [^{F57}Natural England]^{F58} . . .;
 - (c) the Historic Buildings and Monuments Commission for England;
 - (d) the Sports Council and the Sports Council for Wales; and
 - (e) such relevant undertakers and other persons as he considers it appropriate to consult.
- (5) In this section “the other consolidation Acts” means the^{M3}Water Resources Act 1991,^{F59} . . . the^{M4}Land Drainage Act 1991 and the^{M5}Water Consolidation (Consequential Provisions) Act 1991.

Textual Amendments

- F53** Words in s. 5(2) repealed (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(2), [Sch. 2](#) (with art. 6)
- F54** Word in s. 5(2) repealed (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(2), [Sch. 2](#) (with art. 6)
- F55** Words in s. 5(4)(a) substituted (1.4.1996) by [1995 c. 25](#), s. 120(1), [Sch. 22 para. 98](#) (with ss. 7(6), 115, 117); [S.I. 1996/186](#), [art. 3](#)
- F56** Words in s. 5(4)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 226\(2\)](#) (with Sch. 7)
- F57** Words in s. 5(4)(b) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), ss. 105(1), 107, [Sch. 11 para. 130](#); [S.I. 2006/2541](#), [art. 2](#)
- F58** Words in s. 5(4)(b) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 226\(3\)](#) (with Sch. 7)
- F59** Words in s. 5(5) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), [Sch. 23 para. 28\(4\)\(a\)](#)

Marginal Citations

- M2** 1989 c. 15.
M3 1991 c. 57.
M4 1991 c. 59.
M5 1991 c. 60.

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PART II

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

Making of appointments

6 Appointment of relevant undertakers.

- (1) Subject to the following provisions of this Chapter, a company may be appointed—
 - (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director,to be the water undertaker or sewerage undertaker for any area of England and Wales.
- (2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—
 - (a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
 - (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;
 - (c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to be construed as authorising or requiring that thing to be done in relation to that company; and
 - (d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.
- (3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.
- (4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.
- (5) A company shall not be appointed to be a water undertaker [^{F60}or a sewerage undertaker] unless it is a limited company ^{F61}...

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[^{F62}(5A) A company shall not be appointed to be a relevant undertaker if it is [^{F63}a water supply licensee or sewerage licensee].]

(6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to the Director.

Textual Amendments

- F60** Words in s. 6(5) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(i)**
- F61** Words in s. 6(5) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(ii)**
- F62** S. 6(5A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 3**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F63** Words in s. 6(5A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 6**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(d)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C14** S. 6 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 2** (with reg. 1(1)(c))

7 Continuity of appointments, replacement appointments etc.

(1) It shall be the duty of the Secretary of State to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times both—

- (a) a company holding an appointment under this Chapter as water undertaker; and
- (b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.

(2) Subject to the following provisions of this section—

- (a) the Secretary of State; and
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,

shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.

(3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either—

- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
- (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

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- (4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—
- (a) that company consents to the appointment or variation;
 - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that ^{F64}company;
 - (bb) the appointment or variation relates only to parts of that area and the conditions mentioned in subsection (5) below are satisfied in relation to each of the premises in those parts which are served by that company; or]
 - (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.
- ^{F65}[(5) The conditions are that—
- ^{F66}(a)
 - I the premises are, or are likely to be, supplied with not less than the following quantity of water in any period of twelve months:
 - (i) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;
 - (ii) in all other cases, [^{F67}50 megalitres] ; and]]
 - (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.
 - (6) The Secretary of State may, after consulting the Director, make regulations amending subsection (5)(a) above by substituting, for the quantity of water for the time being specified there, such smaller quantity as he considers appropriate.

Textual Amendments

- F64** Words and para. (bb) in s. 7(4) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(1\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F65** S. 7(5)(6) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(2\)](#): Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F66** S. 7(5)(a) substituted (17.8.2000) by [S.I. 2000/1842, art. 2\(2\)](#)
- F67** Words in s. 7(5)(a)(ii) substituted (1.4.2005) by [The Water and Sewerage Undertakers \(Inset Appointments\) Regulations 2005 \(S.I. 2005/268\), reg. 2\(2\)](#)

8 Procedure with respect to appointments and variations.

- (1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.
- (2) Within fourteen days after making an application under this section, the applicant shall—
- (a) serve notice of the application ^{F68}on—
 - (i) the existing appointee,
 - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,

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- (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iv) the appropriate agency, and
 - (v) every] local authority whose area includes the whole or any part of the area to which the application relates; and
 - (b) publish a copy of the notice in such manner as may be prescribed.
- (3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall give notice—
 - (a) stating that he proposes to make the appointment or variation;
 - (b) stating the reasons why he proposes to make the appointment or variation; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made.
- (4) A notice under subsection (3) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
 - (b) by serving a copy of the notice [F69] on—
 - (i) the existing appointee,
 - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
 - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iv) the appropriate agency, and
 - (v) every] local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.
- (5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall—
 - (a) serve a copy of the appointment or variation on the existing appointee; and
 - (b) serve notice of the making of the appointment or variation [F70] on—
 - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
 - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iii) the appropriate agency, and
 - (iv) every] local authority whose area includes the whole or any part of the area to which the appointment or variation relates,

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and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to the Director.

(6) In this section “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

[^{F71}(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—

- (a) the Environment Agency, if the undertaker's area is wholly in England;
- (b) the NRBW, if the undertaker's area is wholly in Wales;
- (c) both the Environment Agency and the NRBW, if the undertaker's area is partly in England and partly in Wales.]

^{F72}[(7) The Secretary of State may by regulations impose such additional procedural requirements as he considers appropriate for any case where the conditions mentioned in section 7(5) above are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.]

Textual Amendments

- F68** Words in s. 8(2)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(2)**, 94(2)(b)
- F69** Words in s. 8(4)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(3)**, 94(2)(b)
- F70** Words in s. 8(5)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(4)**, 94(2)(b)
- F71** [S. 8\(6A\)](#) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(5)**, 94(2)(b)
- F72** [S. 8\(7\)](#) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 40(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

9 Duties affecting making of appointments and variations.

- (1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.
- (2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult the Director.
- (3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) above in relation to any part of an area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director—
 - (a) in making an appointment or variation replacing a company as a relevant undertaker; and
 - (b) where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or drainage charges,

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to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

(5) In this section—

“existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

“new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

“water or drainage charges” means

- (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or
- (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay.

10 Transitional provision with respect to replacement appointments.

[1] Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

^{F73}[2] Subsections (3) [^{F74}to (4)] below apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

(3) The following provisions of this Act shall (except where they are inapplicable to the kind of undertaker in question) apply in relation to the new undertaker as if the appointment or variation had come into force—

- (a) sections 18 to 24 and Schedule 3;
- (b) sections 32 to 35;
- (c) section 155 and Schedule 9;
- (d) sections 156, 158 to 161 and 163 to 167 and Schedule 11;
- (e) sections 168 to 171, 173, 174, 178 to 180 and Schedule 12;
- (f) sections 181 to 183 and Schedule 13;
- (g) sections 184 to 188 and Schedule 14;
- (h) sections 189 to 192, 197 to 200, 202, 203, 206, 208, 209, 211, 212 and 217.

[To the extent that charging rules issued under section 144ZA relate to charges imposed ^{F75}(3A) or security required by a relevant undertaker under section 185, those rules are to apply in relation to the new undertaker as if the appointment or variation had come into force.]

(4) Such of the conditions imposed on the new undertaker under section 11 below as the Director may specify in a written notice given by him to the undertaker shall have effect, in relation to the operation of any provision mentioned in subsection (3) above before the appointment or variation comes into force, as if the appointment or variation had come into force.

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- (5) The Secretary of State may by regulations amend subsection (3) above by adding to, removing or modifying references to provisions of this Act.]

Textual Amendments

- F73** S. 10(2)-(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 42](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F74** Words in s. 10(2) substituted (1.11.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 7\(2\)](#); S.I. 2016/1007, art. 2(h)(iii)
- F75** S. 10(3A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 7\(3\)](#); S.I. 2016/1007, art. 2(h)(iii)

Modifications etc. (not altering text)

- C15** S. 10 renumbered as subsection (1) of s. 10 (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 42](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- C16** S. 10(3A) transitional provisions for effects of 2014 c. 21, Sch. 7 para. 7 (22.3.2017) by [The Water Act 2014 \(Commencement No. 9 and Transitional Provisions\) Order 2017 \(S.I. 2017/462\), art. 14](#)

Conditions of appointments

11 Power to impose conditions.

- (1) An appointment under this Chapter may include—
- such conditions as appear to the Secretary of State or, as the case may be, the Director to be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
 - conditions for the purposes of section 7(4)(c) above; and
 - conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.
- (2) Conditions may be included by virtue of subsection (1)(a) above in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers.
- (3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.
- (4) Any provision included by virtue of subsection (3) above in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.
- (5) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of

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this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.

- (6) Where an instrument of appointment has been served under subsection (3) of section 6 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument.
- (7) If the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in subsection (6) above, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.
- (8) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

12 Determinations under conditions of appointment.

- (1) Without prejudice to the generality of paragraph (a) of section 11(1) above, conditions included in an appointment by virtue of that paragraph may—
 - (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified; and
 - (b) require the appointed company, except in so far as the Director consents to the company’s doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.
- (2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—
 - (a) the Secretary of State or the Director; or
 - (b) on a reference by the Director, the [F76CMA] ,
 of such questions arising under the appointment and of such other matters, including (in the case of references to [F77the CMA]) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.
- (3) Where any question or other matter falls to be determined by the [F78CMA] in pursuance of a provision contained in an appointment under this Chapter—
 - (a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to [F79the CMA] ; and
 - (b) it shall be the duty of [F79the CMA] to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—
 - (i) ^{F80}
 - (ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.

[F81(3A) For the purposes of subsection (3) above, where—

- (a) the question or matter referred to the [F82CMA] concerns the review of a price control imposed on the company holding the appointment; and

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(b) the [F82CMA] is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,

the [F82CMA] shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.

(3B) Subsections (4) and (5) of section 14, and [F83sections 14A and 14B], below apply to references to the [F84CMA] under this section as they apply to references under section 14.

(3C) A report of the [F84CMA] on a reference under this section—

(a) shall be made to the Authority; and

(b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of their reasons for those conclusions as, in the opinion of the [F84CMA], is expedient for facilitating a proper understanding of those questions or other matters and of their conclusions,

and subsections (5) and (6) of section 15 below apply to such a report as they apply to a report on a reference under section 14.]

[F85(3D) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by subsection (3B) read with section [F8614B].]

(4) F87

(5) F87

Textual Amendments

- F76** Words in s. 12(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F77** Word in s. 12(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F78** Word in s. 12(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F79** Words in s. 12(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F80** S. 12(3)(b)(i) repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 54(3), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(h)(u)** (with art. 4, Sch.)
- F81** S. 12(3A)-(3C) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 54(2)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.)
- F82** Word in s. 12(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F83** Words in s. 12(3B) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(a)**
- F84** Words in s. 12(3B)(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F85** S. 12(3D) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F86** Word in s. 12(3D) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(b)**
- F87** S. 12(4)(5) repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 54(3), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(h)(u)** (with art. 4, Sch.)

^{F88}Modification of appointment conditions: England

Textual Amendments

- F88** Ss. 12A-12I and cross-heading inserted (24.1.2022) by Environment Act 2021 (c. 30), **ss. 86(2), 147(3)** (with s. 144); S.I. 2022/48, **reg. 2(m)**

12A Modification by the Authority

- (1) This section and sections 12B to 12I apply in relation to a company appointed under this Chapter whose area is wholly or mainly in England.
- (2) The Authority may make modifications of the conditions of the company's appointment under this Chapter.
- (3) Before making any modifications under this section, the Authority must give notice—
 - (a) stating that it proposes to make modifications,
 - (b) setting out the proposed modifications and their effect,
 - (c) stating the reasons why it proposes to make the modifications, and
 - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (4) That time must not be less than 42 days from the date of publication of the notice.
- (5) A notice under subsection (3) must be given—
 - (a) by publishing the notice in a way the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the modifications, and
 - (b) by sending a copy of it to—
 - (i) each company holding an appointment under this Chapter the conditions of which the Authority proposes to modify,
 - (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Authority considers are likely to be materially affected by the modifications,
 - (iii) the Secretary of State,
 - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Authority considers are likely to be materially affected by the modifications, and
 - (v) the Consumer Council for Water.
- (6) The Authority must consider any representations which are duly made.

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- (7) If, within the time specified under subsection (3)(d), the Secretary of State directs the Authority not to make a modification, the Authority must comply with the direction.
- (8) Subsections (9) to (11) apply where, having complied with subsections (3) to (6), the Authority decides to proceed with making modifications.
- (9) The Authority must—
 - (a) publish the decision and the modifications in a way the Authority considers appropriate for bringing them to the attention of persons likely to be affected by the modifications,
 - (b) state the effect of the modifications,
 - (c) state how it has taken account of any representations duly made, and
 - (d) state the reason for any differences between the modifications and those set out in the notice under subsection (3).
- (10) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2ZA).
- (11) The date specified may not be less than 56 days from publication of the decision to make the modification (except as provided in section 12B).

12B Modification of conditions of appointment: early effective date

- (1) The date specified by virtue of section 12A(10) in relation to a modification under that section may be less than 56 days from the publication of the decision to make the modification if—
 - (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire, and
 - (b) the consultation condition is satisfied.
- (2) The consultation condition is that the notice under section 12A relating to the modification—
 - (a) stated the date from which the Authority proposed that the modification should have effect,
 - (b) stated the Authority’s reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and
 - (c) explained why, in the Authority’s view, that would not have a material adverse effect on any person holding an appointment under this Chapter.

12C Modifications of conditions under section 12A: supplementary

- (1) This section applies where under section 12A the Authority modifies the conditions of any appointment under this Chapter.
- (2) The Authority may make such incidental or consequential modifications of the conditions of any appointments as it considers necessary or expedient.
- (3) The modification of a condition of an appointment has effect subject to the giving of a direction under paragraph 2 of Schedule 2ZA in relation to the decision to which the modification relates.

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12D Appeal to the CMA

- (1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification under section 12A of a condition of an appointment under this Chapter.
- (2) An appeal may be brought under this section only by—
 - (a) a company holding an appointment under this Chapter the conditions of which the Authority has decided to modify,
 - (b) any other company holding an appointment under this Chapter, any water supply licensee or any sewerage licensee, whose interests are materially affected by the decision,
 - (c) a person whose functions are or include representing those within paragraph (a) or (b) in respect of interests of theirs which are materially affected by the decision, or
 - (d) the Consumer Council for Water.
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission only on one of the following grounds—
 - (a) in relation to an appeal brought by a company, water supply licensee or sewerage licensee within subsection (2)(b), that the interests of the company or licensee are not materially affected by the decision;
 - (b) in relation to an appeal brought by a person within subsection (2)(c), that the interests of the person represented are not materially affected by the decision;
 - (c) in relation to any appeal, that the appeal is brought for reasons that are trivial or vexatious, or has no reasonable prospect of success.

12E Procedure on appeal to CMA

- (1) Schedule 2ZA makes provision about the procedure for appeals under section 12D.
- (2) Except where specified otherwise in that Schedule, the functions of the CMA with respect to an appeal under section 12D are to be carried out by a group constituted for that purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

12F Determination by CMA of appeal

- (1) This section applies to an appeal brought under section 12D.
- (2) In determining an appeal, the CMA must have regard, to the same extent as is required of the Authority, to—
 - (a) the Authority's duties under section 2, and
 - (b) the Authority's strategic priorities and objectives as set out in a statement under section 2A.
- (3) In determining the appeal the CMA—
 - (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal, but
 - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

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- (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2),
 - (b) that the Authority failed to give appropriate weight to any matter mentioned in subsection (2),
 - (c) that the decision was based, wholly or partly, on an error of fact,
 - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 12A(9)(b),
 - (e) that the Authority did not follow the procedure required by sections 12A to 12C, or
 - (f) that the decision was otherwise wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

12G CMA’s powers on allowing an appeal

- (1) Where the CMA allows an appeal under section 12D to any extent, it must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.
- (2) A direction under subsection (1) must not require the Authority to do anything that it would not have power to do (apart from the direction).
- (3) The Authority must comply with a direction given to it under that subsection.

12H Time limits for CMA to determine an appeal

- (1) The CMA must determine an appeal within the period of 4 months beginning with the permission date, unless subsection (2) applies.
- (2) This subsection applies where—
- (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
 - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1).
- (3) Where subsection (2) applies, the CMA must determine an appeal within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (4) Where subsection (2) applies, the CMA must also—
- (a) inform the parties to the appeal of the time limit for determining the appeal, and
 - (b) publish that time limit in a way it considers appropriate to bring it to the attention of any other persons likely to be affected by the determination.
- (5) References in this section to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with section 12D(3).

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- (6) In this section and in section 12I any reference to a party to an appeal is to be read in accordance with Schedule 2ZA.

12I Determination of appeal by CMA: supplementary

- (1) A determination by the CMA on an appeal—
- (a) must be contained in an order made by the CMA;
 - (b) must set out the reasons for the determination;
 - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
 - (d) must be notified by the CMA to the parties to the appeal;
 - (e) must be published by the CMA—
 - (i) as soon as reasonably practicable after the determination is made;
 - (ii) in a way the CMA considers appropriate to bring it to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication any information it is satisfied is—
- (a) commercial information, the disclosure of which would, or in the CMA's opinion might, significantly harm the legitimate business interests of an undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or in the CMA's opinion might, significantly harm the individual's interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA under subsection (1)(a).
- (4) The steps must be taken—
- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
 - (b) in any other case, within a reasonable time.
- (5) Section 12C applies where a condition of a licence is modified in accordance with section 12G as it applies where a condition of a licence is modified under section 12A.]

[^{F89}Modification of appointment conditions: Wales]

Textual Amendments

F89 S. 13 cross-heading substituted (24.1.2022) by Environment Act 2021 (c. 30), ss. 86(3), 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

13 Modification by agreement.

[^{F90}(A1) This section and sections 14 to 16B apply in relation to a company appointed under this Chapter whose area is wholly or mainly in Wales.]

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.

Status: This version of this Act contains provisions that are prospective.

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- (2) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company and on the Secretary of State.
- (4) The Director shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed the Director not to make.
- (5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—
 - (a) the modification is a modification of provision contained in the appointment for the purposes of section 7(4)(c) above;
 - (b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
 - (c) it appears to the Secretary of State that the modification should be made, if at all, under section 16 below.

Textual Amendments

F90 S. 13(A1) inserted (24.1.2022) by [Environment Act 2021 \(c. 30\)](#), **ss. 86(4)**, 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

14 Modification references to ^{F91}CMA].

- (1) The Director may make to the ^{F92}CMA] a reference which is so framed as to require ^{F93}the CMA] to investigate and report on the questions—
 - (a) whether any matters which—
 - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
 - (ii) are specified in the reference,operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.

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- (2) The Director may, at any time, by notice given to the [F94CMA] vary a reference under this section by—
 - (a) adding to the matters specified in the reference; or
 - (b) excluding from the reference some or all of the matters so specified;
 and on receipt of any such notice [F95the CMA] shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [F96CMA] in carrying out the investigation on the reference—
 - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
 - (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director shall—
 - (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
 - (b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) It shall be the duty of the Director, for the purpose of assisting the [F97CMA] in carrying out an investigation on a reference under this section [F98or in carrying out functions under section 16A below], to give to [F99the CMA] —
 - (a) any information in his possession which relates to matters falling within the scope of the investigation [F100or the carrying out of those functions], and which is either—
 - (i) requested by [F99the CMA] for that purpose; or
 - (ii) information which, in his opinion, it would be appropriate for that purpose to give to [F99the CMA] without any such request;
 and
 - (b) any other assistance which [F99the CMA] may require, and which it is within his power to give, in relation to any such matters;
 and [F99the CMA], for the purpose of carrying out any such investigation [F101or such functions], shall take account of any information given to them for that purpose under this subsection.
- (6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [F102CMA] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by Part I of this Act.
- [F103(6A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 14B and 16B).]
- (7) ^{F104}

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- (7A) ^{F104}
- (8) ^{F105}
- (8A) ^{F105}

Textual Amendments

- F91** Word in s. 14 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F92** Word in s. 14(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F93** Words in s. 14(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F94** Word in s. 14(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F95** Words in s. 14(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F96** Word in s. 14(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F97** Word in s. 14(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F98** Words in s. 14(5) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 55(2)(a)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with savings in art. 4, Sch.)
- F99** Words in s. 14(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F100** Words in s. 14(5) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 55(2)(b)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with savings in art. 4, Sch.)
- F101** Words in s. 14(5) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 55(2)(c)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with savings in art. 4, Sch.)
- F102** Word in s. 14(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F103** S. 14(6A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 54(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F104** S. 14(7)(7A) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 25(4), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 8)
- F105** S. 14(8)(8A) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 53(3)(4), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/641, **art. 3(k)(z)(i)** (with art. 6, Sch. 3)

[^{F106}14A References under section 14: time limits

- (1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the [^{F107}CMA] on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.

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- (3) The Director may, if he has received representations on the subject from the [F107CMA] and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
 - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) send a copy of what has been published by him under paragraph (a) above to the company whose appointment is mentioned in the reference.

Textual Amendments

F106 Ss. 14A, 14B inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 25(5); S.I. 2003/1397, art. 2(1), Sch.

F107 Words in s. 14A(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 55; S.I. 2014/416, art. 2(1)(d) (with Sch.)

14B References under section 14: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [F108(1A),] (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).

[Section 109 shall, in its application by virtue of subsection (1) above, have effect as F109(1A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 14 of the Water Industry Act 1991.”, and

- (b) subsection (8A) were omitted.]

- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

- (a) subsection (2) were omitted; F110 ...

[after subsection (3), there were inserted—

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- ^{F111}(aa) “(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]
- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- [^{F112}(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

Textual Amendments

- F106** Ss. 14A, 14B inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F108** Word in s. 14B(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(2)** (with art. 3, Sch. 2 para. 2)
- F109** S. 14B(1A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(3)** (with art. 3, Sch. 2 para. 2)
- F110** Word in s. 14B(2)(a) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(4)(a)** (with art. 3, Sch. 2 para. 2)
- F111** S. 14B(2)(aa) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(4)(b)** (with art. 3, Sch. 2 para. 2)
- F112** S. 14B(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(5)** (with art. 3, Sch. 2 para. 2)

15 Reports on modification references.

- (1) In making a report on a reference under section 14 above, the [^{F113}CMA] —
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions and of their conclusions;

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- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.
- [^{F114}(1A) For the purposes of section 16 below, a conclusion contained in a report of the [^{F115}CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [^{F116}by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 14 above as the conclusions of the [^{F117}CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- [^{F118}(2)
- [^{F119}(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [^{F120}CMA] on a reference under section 14 above.
- (3A) In making any report on a reference under section 14 above the [^{F120}CMA] must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [^{F120}CMA] thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the [^{F120}CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the [^{F120}CMA] thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]
- (4) A report of the [^{F121}CMA] on a reference under section 14 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
- (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Secretary of State; and
 - (b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

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- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph; and the Director shall comply with any such direction.

Textual Amendments

- F113** Word in s. 15(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F114** S. 15(1A)(1B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F115** Word in s. 15(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F116** Word in s. 15(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F117** Word in s. 15(1B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F118** S. 15(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. IV para. 13(4), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F119** S. 15(3)-(3D) substituted (20.6.2003) for s. 15(3) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(6)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F120** Word in s. 15(3)-(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F121** Word in s. 15(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

16 Modification following report.

- (1) Where a report of the [F122CMA] on a reference under section 14 above—
- includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - specifies effects adverse to the public interest which those matters have or may be expected to have;
 - includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
 - specifies modifications by which those effects could be remedied or prevented,
- the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- stating that he proposes to make the modifications and setting out their effect;
 - stating the reasons why he proposes to make the modifications; and

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- (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.
- [^{F123}(4A) After considering any representations or objections made in response to proposals set out in a notice under subsection (3) above, the Authority shall give notice to the [^{F124}CMA] —
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
 - (b) stating the reasons for making the modifications.
- (4B) The Authority shall include with the notice under subsection (4A) above a copy of any representations or objections received in relation to the notice under subsection (3) above.
- (4C) If the period of four weeks from the date on which the notice under subsection (4A) above is given elapses without a direction under section 16A(1)(a) below having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
 - (b) if a direction under section 16A(1)(b) below has been given, make the modifications which are not specified in the direction.]
- (5) The Director shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 7(4)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

Textual Amendments

F122 Words in s. 16(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 57](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F123 S. 16(4A)-(4C) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(3\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#))

F124 Words in s. 16(4A) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 57](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[^{F125}16A [^{F126}CMA's] power of veto following report

- (1) [^{F127}The CMA] may, within the period of four weeks after the date on which it is given a notice under section 16(4A) above, direct the Authority—

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- (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction;
- and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the [F128CMA] is given a notice under section 16(4A) above and on the application of the [F128CMA], direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 16(4C) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 16(4A)(a) above as appear to the [F128CMA] not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the [F128CMA] gives a direction under subsection (1) above, it—
- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 16(4C)(b) above.
- (5) In exercising its power under subsection (4)(b) above, the [F128CMA] shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.
- (6) Before making modifications under subsection (4)(b) above the [F128CMA] shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the [F128CMA] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.
- (8) The [F128CMA] may not make any modification under this section which the Authority could not make under section 16 above.

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- (9) After making modifications under this section the [F128CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

F129(10)

Textual Amendments

- F125** Ss. 16A, 16B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with [art. 4](#), [Sch.](#))
- F126** Word in s. 16A heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(5)**; S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F127** Words in s. 16A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(2)**; S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F128** Words in s. 16A(2)-(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(3)**; S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F129** S. 16A(10) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(4)**; S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

16B [F130CMA's] power of veto following report: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the [F131CMA] must have regard to the following considerations before disclosing any information.
 - (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F131CMA] thinks is contrary to the public interest.
 - (4) The second consideration is the need to exclude from disclosure (so far as practicable)
 - (a) commercial information whose disclosure the [F131CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the [F131CMA] thinks might significantly harm the individual's interests.
 - (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
 - (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [F132(6A),] (7) and (8) below, for the purposes of any investigation by the [F133CMA] for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

[Section 109 shall, in its application by virtue of subsection (6) above, have effect as ^{F134}(6A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 16A of the Water Industry Act 1991.”, and

- (b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

- (a) subsection (2) were omitted;

[^{F135}(b) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—

(ii) if earlier, the day on which a notice is published by the [^{F136}CMA] under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [^{F136}CMA] under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

(10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

Textual Amendments

F125 Ss. 16A, 16B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with **art. 4**, Sch.)

Status: This version of this Act contains provisions that are prospective.

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- F130** Word in s. 16B heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F131** Word in ss. 16B(2)-(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F132** Word in s. 16B(6) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 76(2)** (with art. 3, Sch. 2 para. 2)
- F133** Word in s. 16B(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F134** S. 16B(6A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 76(3)** (with art. 3, Sch. 2 para. 2)
- F135** S. 16B(7)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 76(4)** (with art. 3, Sch. 2 para. 2)
- F136** Word in s. 16B(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

^{F137}Modification of appointment conditions: England and Wales]

Textual Amendments

- F137** S. 17 cross-heading inserted (24.1.2022) by Environment Act 2021 (c. 30), **ss. 86(5)**, 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

17 Modification by order under other enactments.

- ^{F138}(1) Where the [^{F139}CMA] or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may, subject to subsection (3), also provide for the modification of the conditions of a company’s appointment under this Chapter to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or
 - (b) an order under section 160 or 161 of the 2002 Act where the feature, or combination of features, of the market [^{F140}or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition is—
 - (i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or
 - (ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.]

Status: This version of this Act contains provisions that are prospective.

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- (3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 7(4)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

[^{F141}(4) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.]

Textual Amendments

- F138** S. 17(1)(2) substituted (20.6.2003 for all purposes subject to art. 3(1) of the first commencing S.I. and 29.12.2004 "for water purposes") by [Enterprise Act 2002 \(c. 40\)](#), s. 168(9), 279, [Sch. 9 para. 7\(2\)](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch.; S.I. 2004/3233, [art. 2](#), Sch. (with arts. 3-5)
- F139** Word in s. 17(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 60](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F140** Words in s. 17(2)(b) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 77](#) (with art. 3)
- F141** S. 17(4) substituted (20.6.2003 for all purposes subject to art. 3(1) of the first commencing S.I. and 29.12.2004 "for water purposes") by [Enterprise Act 2002 \(c. 40\)](#), s. 168(9), 279, [Sch. 9 para. 7\(3\)](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch.; S.I. 2004/3233, [art. 2](#), Sch. (with arts. 3-5)

Modifications etc. (not altering text)

- C17** S. 17(2)(a) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 16, [Sch. 4 para. 10](#)

[^{F142}CHAPTER 1A

[^{F143}WATER SUPPLY LICENCES AND SEWERAGE LICENCES]

Textual Amendments

- F142** Pt. 2 Ch. 1A inserted (1.4.2004 for specified provisions and purposes and 1.8.2005 for further specified provisions and purposes and 1.10.2005 for further specified provisions and 1.12.2005 otherwise) by [Water Act 2003 \(c. 37\)](#), ss. 56, 105(3), [Sch. 4 para. 2](#); S.I. 2004/641, [art. 3\(1\)](#), Sch. 1 (with art. 6, Sch. 3); S.I. 2005/968, [art. 3\(b\)](#) (with savings in art. 4, Sch. 1, 2); S.I. 2005/2714, [arts. 2\(h\)](#), [3\(a\)](#) (with Sch. para. 5)
- F143** Pt. 2 Ch. 1A heading substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 9](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(e\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C18** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 3\(1\)](#) (with reg. 1(1)(c))
- C19** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(1\)](#) (with reg. 1(1)(c))

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- C20** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\)](#), regs. 1(1), 3)
- C21** Pt. 2 Ch. 1A modified (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 3(2)** (with reg. 1(1)(c))

Granting of licences

[^{F144}17A Water supply licences

- (1) The Authority may grant to a person a licence in respect of the use of the supply system of a water undertaker (a “water supply licence”).
- (2) A water supply licence may give the holder of the licence one or more of the following authorisations and combination of authorisations—
 - (a) a retail authorisation;
 - (b) a wholesale authorisation;
 - (c) a restricted retail authorisation;
 - (d) a restricted retail authorisation and a supplementary authorisation.
- (3) Schedule 2A makes provision as to the authorisations (including their operation in England and Wales).
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 3.
- (5) The Authority may exercise the power to grant a water supply licence only in accordance with a general authorisation given by the Secretary of State.
- (6) Before giving a general authorisation as regards the Authority, the Secretary of State must consult the Welsh Ministers.
- (7) References in this Act to a water supply licensee are references to a person that is the holder for the time being of a water supply licence.]

Textual Amendments

F144 [Ss. 17A, 17AA](#) substituted for [s. 17A](#) (1.1.2016 for the substitution of [s. 17A\(2\)–\(6\)](#), 1.4.2016 for the substitution of [s. 17A\(1\)](#) for specified purposes and [ss. 17A\(7\), 17AA\(3\)–\(5\)](#), 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 1(1), 94(3)**; [S.I. 2015/1938](#), [art. 3\(a\)\(i\)](#) (with [art. 4](#)); [S.I. 2016/465](#), [art. 2\(a\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#)); [S.I. 2016/1007](#), [art. 2\(a\)](#) (with [arts. 3, 4](#))

[^{F144}17AA Water supply licences: restrictions on grants

- (1) Before the Authority grants a water supply licence giving a wholesale authorisation, it must consult—
 - (a) the Secretary of State;
 - (b) the Chief Inspector of Drinking Water;
 - (c) the Environment Agency;

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- (d) the NRBW.
- (2) Before the Authority grants a water supply licence giving a supplementary authorisation, it must consult—
 - (a) the Secretary of State;
 - (b) the Chief Inspector of Drinking Water;
 - (c) the Environment Agency;
 - (d) the Welsh Ministers;
 - (e) the Chief Inspector of Drinking Water for Wales if there is one;
 - (f) the NRBW.
- (3) A water supply licence may not be granted to a water undertaker.
- (4) A water supply licence may not be granted to a person unless that person is a limited company.
- (5) The restriction in subsection (4) does not apply if the water supply licence gives only—
 - (a) a retail authorisation,
 - (b) a restricted retail authorisation, or
 - (c) a retail authorisation and a restricted retail authorisation.]

Textual Amendments

F144 Ss. 17A, 17AA substituted for s. 17A (1.1.2016 for the substitution of s. 17A(2)-(6), 1.4.2016 for the substitution of s. 17A(1) for specified purposes and ss. 17A(7), 17AA(3)-(5), 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 1\(1\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 3\(a\)\(i\)](#) (with [art. 4](#)); [S.I. 2016/465](#), [art. 2\(a\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#)); [S.I. 2016/1007](#), [art. 2\(a\)](#) (with [arts. 3, 4](#))

17B [^{F145}Meaning of supply system]

- ^{F146}(1)
- ^{F146}(2)
- ^{F146}(3)
- ^{F146}(4)

[In this Chapter, references to the supply system of a water undertaker are, in the case ^{F147}(4A) of an undertaker whose area is wholly or mainly in England, references to the system comprising the following—

- (a) any reservoirs and other places of storage and any treatment works developed or maintained by the water undertaker for the purpose of complying with its duty under section 37, and
 - (b) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37.]
- (5) In this Chapter, references to the supply system of a water undertaker are [^{F148}, in the case of an undertaker whose area is wholly or mainly in Wales,] to the system comprising the following—
- (a) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37 below and which are used for

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- the purpose of conveying water from the undertaker’s treatment works to the premises of customers; and
- (b) any water mains and other pipes which—
- (i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and
 - (ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),
- and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.
- (6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.
- (7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.
- (8) A list of any works designated for the purposes of subsection (6) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

F149(9)

Textual Amendments

- F145** S. 17B title substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 10\(2\)](#); S.I. 2017/462, art. 3(k)(iii)
- F146** S. 17B(1)-(4) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 10\(3\)](#); S.I. 2017/462, art. 3(k)(iii)
- F147** S. 17B(4A) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), [ss. 2\(2\)](#), 94(3); S.I. 2017/462, art. 3(b)
- F148** Words in s. 17B(5) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), [ss. 2\(3\)](#), 94(3); S.I. 2017/462, art. 3(b)
- F149** S. 17B(9) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 10\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(f\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Sewerage licences

F150 17BA

- (1) The Authority may grant to a person a licence in respect of the use of the sewerage system of a sewerage undertaker whose area is wholly or mainly in England (a “sewerage licence”).
- (2) A sewerage licence may give the holder of the licence one or more of the following—
- (a) a retail authorisation;
 - (b) a wholesale authorisation;
 - (c) a disposal authorisation.
- (3) Schedule 2B makes provision as to the authorisations.
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 4.

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- (5) The Authority may exercise the power to grant a sewerage licence only in accordance with a general authorisation given by the Secretary of State.
- (6) References in this Act to a sewerage licensee are references to a person that is the holder for the time being of a sewerage licence.
- (7) References in this Chapter to the sewerage system of a sewerage undertaker are references to the system comprising—
 - (a) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the undertaker is required to provide by section 94, and
 - (b) the lateral drains that the undertaker is required to maintain by section 94.

Textual Amendments

F150 Ss. 17BA, 17BB inserted (1.1.2016 for the substitution of s. 17BA(2)-(5), 1.4.2016 for the insertion of s. 17BA(1) for specified purposes and ss. 17BA(7), 17BB(2)-(4) by [Water Act 2014 \(c. 21\)](#), [ss. 4\(1\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 3\(b\)\(i\)](#); [S.I. 2016/465](#), [art. 2\(b\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

17BB Sewerage licences: restrictions on grants

- (1) The Authority must consult the Secretary of State, the Environment Agency and the NRBW before granting a licence that gives—
 - (a) a wholesale authorisation, or
 - (b) a disposal authorisation.
- (2) A sewerage licence granted to a sewerage undertaker may not give the holder—
 - (a) a retail authorisation, or
 - (b) a wholesale authorisation.
- (3) A sewerage licence may not be granted to a person unless that person is a limited company.
- (4) The restriction in subsection (3) does not apply if the sewerage licence gives only a retail authorisation.]

Textual Amendments

F150 Ss. 17BA, 17BB inserted (1.1.2016 for the substitution of s. 17BA(2)-(5), 1.4.2016 for the insertion of s. 17BA(1) for specified purposes and ss. 17BA(7), 17BB(2)-(4) by [Water Act 2014 \(c. 21\)](#), [ss. 4\(1\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 3\(b\)\(i\)](#); [S.I. 2016/465](#), [art. 2\(b\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

17C Meaning of household premises

- (1) For the purposes of [^{F151}paragraphs 4 and 7(a) of Schedule 2A and paragraph 2 of Schedule 2B], “household premises” means premises in which, or in any part of which, a person has his home.

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- (2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.
- (3) The Secretary of State may by regulations make provision as to—
 - (a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and
 - (b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.
- (4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

Textual Amendments

F151 Words in s. 17C(1) substituted (1.1.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 11](#); [S.I. 2015/1938, art. 3\(f\)\(i\)](#)

17D The threshold requirement

- (1) This section applies for the purpose of construing the reference to the threshold requirement in [^{F152}paragraph 7(b) of Schedule 2A] in relation to the supply of water to any premises [^{F153}in accordance with a restricted retail authorisation].
- (2) The requirement is that, at the time when the [^{F154}water supply licensee] first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually pursuant to the undertaking [^{F155}is not less than—
 - (a) 5 megalitres, in the case of premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in England, and
 - (b) 50 megalitres, in the case of premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales].
- (3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued [^{F156}from time to time] by the Authority with the approval of [^{F157}the Welsh Ministers].
- (4) Any guidance issued under subsection (3) above may, in particular—
 - (a) specify—
 - (i) the factors to be, and not to be, taken into account;
 - (ii) the assumptions to be made; and
 - (iii) the method of calculation to be employed,
 in making estimates; and
 - (b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.

^{F158}(5)

^{F159}(6)

Status: This version of this Act contains provisions that are prospective.

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- (7) [^{F160}The Welsh Ministers] may make provision by regulations as to the circumstances in which a [^{F161}water supply licensee] is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises ^{F162}....
- (8) [^{F163}The Welsh Ministers] may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water ^{F164}....
- (9) Regulations under subsection (8) above—
- (a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and
 - (b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.
- (10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, [^{F165}the Assembly].
- (11) Before making regulations under subsection (8) above, [^{F166}the Welsh Ministers] shall consult—
- (a) the Authority; and
 - (b) such other persons (if any) as [^{F167}the Welsh Ministers think] it appropriate to consult.

^{F168}(12)

^{F169}(13)

Textual Amendments

- F152** Words in s. 17D(1) substituted (1.1.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(2\)\(a\); S.I. 2015/1938, art. 3\(f\)\(ii\)](#) (with art. 4)
- F153** Words in s. 17D(1) inserted (1.1.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(2\)\(b\); S.I. 2015/1938, art. 3\(f\)\(ii\)](#) (with art. 4)
- F154** Words in s. 17D(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(3\); S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(g\)](#) (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F155** Words in s. 17D(2) substituted (15.12.2011) by [The Water Supply \(Amendment to the Threshold Requirement\) Regulations 2011 \(S.I. 2011/3014\), regs. 1\(1\), 2](#) (with reg. 1(2))
- F156** Words in s. 17D(3) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(4\)\(a\); S.I. 2017/462, art. 3\(k\)\(iv\)](#) (with art. 11)
- F157** Words in s. 17D(3) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(4\)\(b\); S.I. 2017/462, art. 3\(k\)\(iv\)](#) (with art. 11)
- F158** S. 17D(5) repealed (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(5\); S.I. 2017/462, art. 3\(k\)\(iv\)](#) (with art. 11)
- F159** S. 17D(6) repealed (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(6\); S.I. 2017/462, art. 3\(k\)\(iv\)](#) (with art. 11)
- F160** Words in s. 17D(7) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(7\)\(a\); S.I. 2017/462, art. 3\(k\)\(iv\)](#) (with art. 11)
- F161** Words in s. 17D(7) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 12\(7\)\(b\); S.I. 2017/462, art. 3\(k\)\(iv\)](#) (with art. 11)

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- F162** Words in s. 17D(7) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(7\)\(c\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F163** Words in s. 17D(8) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(8\)\(a\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F164** Words in s. 17D(8) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(8\)\(b\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F165** Words in s. 17D(10) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(9\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F166** Words in s. 17D(11) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(10\)\(a\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F167** Words in s. 17D(11) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(10\)\(b\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F168** S. 17D(12) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(11\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)
- F169** S. 17D(13) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(11\)](#); S.I. 2017/462, art. 3(k)(iv) (with art. 11)

Guidance

F170 17DA

The Authority must publish guidance issued from time to time under—

- (a) section 17D(3),
- (b) paragraph 10 of Schedule 2A, or
- (c) paragraph 4 of Schedule 2B,

in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.]

Textual Amendments

- F170** S. 17DA inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 13](#); S.I. 2015/1938, art. 3(f)(iv)

17E Determinations by the Authority

[^{F171}(1) The Authority may determine, in a case referred to it by—

- (a) a water supply licensee or a potential customer of a water supply licensee, or
- (b) a sewerage licensee or a potential customer of a sewerage licensee,

whether a proposed supply of water to, or proposed sewerage services for, the customer would be in accordance with what is authorised by the licensee's licence.]

(2) The matters which the Authority may determine include the following matters—

- (a) the extent of the premises to be supplied for the purposes of [^{F172}paragraph 4 or 7(a) or (b) of Schedule 2A];

[the extent of the premises to be served for the purposes of paragraph 2 of

^{F173}(aa)

Schedule 2B;]

- (b) whether the premises to be supplied [^{F174}or served] are household premises (as defined in section 17C above); and
- (c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),

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and also include any other matter the determination of which is relevant to those matters.

Textual Amendments

- F171** S. 17E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 14\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F172** Words in s. 17E(2)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 14\(3\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F173** S. 17E(2)(aa) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 14\(3\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F174** Words in s. 17E(2)(b) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 14\(3\)\(c\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

17F Procedure for granting water supply [^{F175}and sewerage] licences

[^{F176}(1) The Authority must determine for each type of relevant application that may be made—

- (a) the form and manner in which an application is to be made;
- (b) the information it is to contain;
- (c) the documents that are to accompany it;
- (d) the fee that is to accompany it.

(1A) The fees may be different in different circumstances.

(1B) The Authority may make a new determination as to a matter referred to in subsection (1).

(1C) The Authority must publish a notice of what it has determined under subsection (1) or (1B) in such manner as it thinks appropriate for bringing the determination to the attention of those affected by the determination.

(1D) For the purposes of subsection (1) a relevant application is an application for—

- (a) the grant of a water supply or sewerage licence giving a particular authorisation or combination of authorisations;
- (b) the variation of a water supply or sewerage licence so that it gives—
 - (i) a particular authorisation only, or
 - (ii) a particular combination of authorisations.

(1E) A person making a relevant application must comply with such provisions of a notice published under subsection (1C) as relate to the application.]

^{F177}(2)

^{F178}(3)

(4) If ^{F179}... the Authority proposes to refuse [^{F180}a relevant application], ^{F181}... it shall give to the applicant a notice—

- (a) stating that ^{F181}... it proposes to refuse the application;
- (b) stating the reasons why ^{F181}... it proposes to refuse the application; and

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- (c) specifying the time within which representations or objections with respect to the proposed refusal may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- ^{F182}(5)
- (6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.
- (7) ^{F183}As soon as practicable after granting a licence or variation of a licence, ... the Authority shall serve a copy of the licence or licence as varied—
- (a) on the licence holder;
 - (b) on the Assembly;
 - (c) on the Chief Inspector of Drinking Water;
 - (d) on the Environment Agency;
 - [on the NRBW;]
 - ^{F184}(da)
 - (e) on the Council;
 - (f) on each relevant undertaker;
 - [^{F185}(g) on each water supply licensee and sewerage licensee (other than the holder of the licence in question);]
 - ^{F186}(h)
 - (i) ^{F187}... on the Secretary of State.
- (8) Any sums received ^{F188}... by the Authority by virtue of this section shall be paid into the Consolidated Fund.

Textual Amendments

- F175** Words in s. 17F title inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(i)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F176** S. 17F(1)-(1E) substituted for s. 17F(1) (1.4.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 25(2)**, 94(3); S.I. 2016/465, art. 2(f) (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F177** S. 17F(2) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 25(3)**, 94(2)(f)
- F178** S. 17F(3) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 25(3)**, 94(2)(f)
- F179** Words in s. 17F(4) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(3)(a)**; S.I. 2015/1938, art. 3(f)(v)
- F180** Words in s. 17F(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 25(4)**, 94(3); S.I. 2016/465, art. 2(f) (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F181** Words in s. 17F(4) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(3)(b)**; S.I. 2015/1938, art. 3(f)(v)
- F182** S. 17F(5) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 25(3)**, 94(2)(f)
- F183** Words in s. 17F(7) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(a)**; S.I. 2015/1938, art. 3(f)(v)
- F184** S. 17F(7)(da) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 227** (with **Sch. 7**)
- F185** S. 17F(7)(g) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(i)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F186** S. 17F(7)(h) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(c)**; S.I. 2015/1938, art. 3(f)(v)

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F187 Words in s. 17F(7)(i) repealed (1.1.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 15\(4\)\(d\)](#); [S.I. 2015/1938, art. 3\(f\)\(v\)](#)

F188 Words in s. 17F(8) repealed (1.1.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 15\(5\)](#); [S.I. 2015/1938, art. 3\(f\)\(v\)](#)

Applications forwarded by the Water Industry Commission for Scotland

F189 **17FA**

- (1) The Secretary of State may by regulations make provision about—
- (a) treating a 2005 Act application for the grant of a water services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a water supply licence giving only a retail authorisation or a restricted retail authorisation or both;
 - (b) treating a 2005 Act application for the grant of a sewerage services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a sewerage licence giving only a retail authorisation.
- (2) The regulations may in particular make provision about—
- (a) the circumstances in which, and the conditions subject to which, a 2005 Act application is to be treated as an application under section 17F for a water supply or sewerage licence giving a particular authorisation or particular authorisations;
 - (b) the time at which an application is to be treated as having been made;
 - (c) the processing of an application by the Authority.
- (3) Provision under subsection (2)(a) may require a 2005 Act application that is forwarded to the Authority—
- (a) to contain, or to be accompanied by, such information or information of such description as is specified by the regulations;
 - (b) to be accompanied by such documents or documents of such descriptions as are specified by the regulations;
 - (c) to be accompanied by a fee, or a fee of a description, specified by the regulations.
- (4) In this section and section 17FB—
- “the 2005 Act” means the Water Services etc. (Scotland) Act 2005;
 - “2005 Act application” means an application under paragraph 1 of Schedule 2 to the 2005 Act.

Textual Amendments

F189 Ss. 17FA, 17FB inserted (18.12.2015 for the insertion of s. 17FA, 1.4.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\), ss. 6\(2\), 94\(3\)](#); [S.I. 2015/1938, art. 2\(a\)\(ii\)](#); [S.I. 2016/465, art. 2\(c\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

17FB Applications forwarded to the Water Industry Commission for Scotland

- (1) If the conditions in subsection (2) are satisfied, the Authority must—
- (a) forward to the Commission a copy of an application under section 17F for the grant of a water supply licence or sewerage licence, and

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- (b) send to the Commission such information and such fee as appear to the Authority to be required in order that the application may be treated by the Commission as a 2005 Act application for the grant of—
 - (i) a water services licence under section 6 of the 2005 Act, or
 - (ii) a sewerage services licence under section 6 of the 2005 Act, as the case may be.
- (2) The conditions are that—
 - (a) the Authority is requested to do so by the applicant;
 - (b) the application under section 17F appears to the Authority to be an application that would be treated by the Commission as a 2005 Act application for the grant of—
 - (i) a water services licence under section 6 of the 2005 Act, or
 - (ii) a sewerage services licence under section 6 of the 2005 Act, as the case may be;
 - (c) the applicant has given the Authority—
 - (i) such information as is mentioned in subsection (1)(b), and
 - (ii) a means of sending to the Commission such fee as is mentioned in subsection (1)(b).
- (3) The Authority must—
 - (a) forward a copy of the application, and
 - (b) send such information and fee as are mentioned in subsection (1)(b), before the end of the agreed period for an application of that description.
- (4) In this section—
 - “the agreed period”, in relation to an application under section 17F of a particular description, means the period agreed between the Authority and the Commission as the period applying to an application of that description for the purposes of subsection (3);
 - “the Commission” means the Water Industry Commission for Scotland.]

Textual Amendments

F189 Ss. 17FA, 17FB inserted (18.12.2015 for the insertion of s. 17FA, 1.4.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 6\(2\)](#), 94(3); [S.I. 2015/1938](#), [art. 2\(a\)\(ii\)](#); [S.I. 2016/465](#), [art. 2\(c\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

Licence conditions

17G ^{F190}**Licence conditions**

- (1) ^{F191}[A licence under this Chapter] may include—
 - (a) such conditions as appear to ^{F192}... the Authority to be requisite or expedient having regard to the duties imposed on ^{F193}... it by Part 1 of this Act;
 - (b) conditions requiring the rendering to ^{F194}[the Authority] of a payment on the grant of a ^{F195}[licence under this Chapter], or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.

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- (2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker’s supply system.
- [Conditions may be included by virtue of subsection (1)(a) in a sewerage licence^{F196}(2A) whether or not they are connected with—
- (a) effectual dealing with the contents of sewers, or
 - (b) the use of the sewerage system of a sewerage undertaker.]
- (3) Conditions included in a [^{F197}licence under this Chapter] may—
- (a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;
 - (b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder’s not doing or doing them; and
 - (c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.
- (4) For the purposes of subsection (3) above—
- (a) the following are relevant persons—
 - (i) the Secretary of State;
 - (ii) the Authority;
 - (iii) [^{F198}so far as subsection (3) applies to water supply licences,] the Assembly;
 - (iv) the Environment Agency; ^{F199}...
[the NRBW; and]
 - ^{F200}(v)
 - (b) “specified” means specified in the licence in question.
- (5) Conditions included in a [^{F201}licence under this Chapter] may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined in accordance with the conditions.
- (6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.
- (7) Any sums received by [^{F202}the Authority] by virtue of this section shall be paid into the Consolidated Fund.

Textual Amendments

F190 S. 17G title substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(2\)](#); S.I. 2015/1938, art. 3(f)(vii)

F191 Words in s. 17G(1) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(3\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)

F192 Words in s. 17G(1)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(3\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)

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- F193** Words in s. 17G(1)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(3\)\(c\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F194** Words in s. 17G(1)(b) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(3\)\(d\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F195** Words in s. 17G(1)(b) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(3\)\(e\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F196** S. 17G(2A) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(4\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F197** Words in s. 17G(3) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(5\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F198** Words in s. 17G(4)(a)(iii) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(6\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F199** Word in s. 17G(4)(a)(iv) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 228\(2\)](#) (with Sch. 7)
- F200** S. 17G(4)(a)(v) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 228\(3\)](#) (with Sch. 7)
- F201** Words in s. 17G(5) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(7\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)
- F202** Words in s. 17G(7) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 16\(8\)](#); [S.I. 2015/1938](#), art. 3(f)(vii)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

17H Standard conditions of water supply licences

- [^{F203}(1) The Secretary of State may determine the conditions that are to be the standard conditions of water supply licences granted by the Authority.
- (1A) Before determining the standard conditions, the Secretary of State must consult the Welsh Ministers as regards conditions relating to a restricted retail authorisation or a supplementary authorisation.
- (1B) The Secretary of State is to publish the standard conditions in such manner as the Secretary of State considers appropriate.
- (2) The standard conditions may be different depending on the different authorisations or combinations of authorisations to which the conditions are to relate.
- (3) The power to determine standard conditions in relation to water supply licences giving a particular authorisation or a particular combination of authorisations may be exercised only before the grant of the first licence to give that authorisation or that particular combination of authorisations (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).]
- (4) The standard conditions for the purposes of water supply licences [^{F204}giving any particular authorisation or combination of authorisations] may contain provision—
- (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and
 - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).
- (6) Subject to the following provisions of this section, ^{F205}... the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as ^{F206}... it considers requisite to meet the circumstances of a particular case.
- (7) Before excluding any standard conditions or making any modifications under subsection (6) above, ^{F207}... the Authority shall give notice—
- (a) stating that ^{F208}... it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
 - (b) stating the reasons why ^{F209}... it proposes to exclude the conditions or make the modifications; and
 - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (8) A notice under subsection (7) above shall be given—
- (a) by publishing the notice in such manner as ^{F210}... the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
 - (b) by serving a copy of the notice—
 - ^{F211}(i) if the notice relates to a water supply licence giving a restricted retail authorisation or a restricted retail authorisation and a supplementary authorisation, on the Welsh Ministers;]
 - (ii) on the Chief Inspector of Drinking Water;
 - ^{F212}(iii)
 - (iv) ^{F213}... on the Secretary of State.
 - [on the Water Industry Commission for Scotland.]
 - ^{F214}(v)
- (9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting [^{F215}the Welsh Ministers in a case where notice was served on them under subsection (8)(b)(i)]) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.
- (10) The ^{F216}... Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless ^{F217}... it is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and

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Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.

Textual Amendments

- F203** S. 17H(1)-(3) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(2\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F204** Words in s. 17H(4) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(3\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F205** Words in s. 17H(6) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(4\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F206** Words in s. 17H(6) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(4\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F207** Words in s. 17H(7) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(5\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F208** Words in s. 17H(7)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(5\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F209** Words in s. 17H(7)(b) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(5\)\(c\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F210** Words in s. 17H(8)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F211** S. 17H(8)(b)(i) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F212** S. 17H(8)(b)(iii) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(c\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F213** Words in s. 17H(8)(b)(iv) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(d\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F214** S. 17H(8)(b)(v) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(e\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F215** Words in s. 17H(9) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(7\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F216** Words in s. 17H(10) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(8\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F217** Words in s. 17H(10) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(8\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

Standard conditions of sewerage licences

- F218** **17HA**
 (1) The Secretary of State may determine the conditions that are to be the standard conditions of sewerage licences granted by the Authority.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) The Secretary of State is to publish the standard conditions in such manner as the Secretary of State considers appropriate.
- (3) The standard conditions may be different depending on the different authorisations or combinations of authorisations to which the conditions are to relate.
- (4) The power to determine standard conditions in relation to sewerage licences giving a particular authorisation or a particular combination of authorisations may be exercised only before the grant of the first licence to give that authorisation or that particular combination of authorisations (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).
- (5) The standard conditions for the purposes of sewerage licences giving any particular authorisation or combination of authorisations may contain provision—
 - (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
 - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and
 - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (6) Subject to subsection (7), each condition which is a standard condition is to be incorporated by reference in each sewerage licence (or in each such licence to which the standard condition applies).
- (7) Subject to the following provisions of this section, the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as the Authority considers requisite to meet the circumstances of a particular case.
- (8) Before excluding any standard conditions or making any modifications under subsection (7), the Authority must give notice—
 - (a) stating that the Authority proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
 - (b) stating the reasons why the Authority proposes to exclude the conditions or make the modifications; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (9) A notice under subsection (8) must be given—
 - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
 - (b) by serving a copy of the notice—
 - (i) on the Secretary of State;
 - (ii) on the Environment Agency;
 - (iii) on the NRBW;

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- (iv) on the Water Industry Commission for Scotland.
- (10) If, within the time specified in the notice under subsection (8), the Secretary of State directs the Authority not to exclude or modify any standard condition, the Authority must comply with the direction.
- (11) The Authority may not exclude any conditions, or make any modifications, under subsection (7) unless the Authority is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of sewerage licences; and
 - (b) no other holder of a sewerage licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being granted).
- (12) The modification under subsection (7) of part of a standard condition is not to prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.]

Textual Amendments

F218 S. 17HA inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 18](#); [S.I. 2015/1938](#), art. 3(f)(vii)

171 [F219 Modification of licences by agreement]

- (1) Subject to the following provisions of this section, the Authority may modify the [F220 conditions of—
- (a) a particular water supply licence, or
 - (b) a particular sewerage licence.]
- (2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—
- (a) are requisite to meet the circumstances of the particular case; and
 - (b) are such that—
 - (i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences [F221 or, as the case may be, sewerage licences]; and
 - (ii) no other holder of a water supply licence [F222 or, as the case may be, a sewerage licence] would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (3) Before making modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on—
 - (i) the licence holder;
 - (ii) the Council;
 - (iii) the Secretary of State;
 - (iv) [^{F223}if the notice relates to a water supply licence,] the Assembly; and
 - (v) the Chief Inspector of Drinking Water.
- (5) If, within the period specified in the notice under subsection (3) above, the Secretary of State ^{F224}... directs the Authority not to make any modification, the Authority shall comply with the direction.

[The Secretary of State is to consult the Welsh Ministers before giving a direction under ^{F225}(5A) subsection (5) in relation to a water supply licence.]

- (6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

Textual Amendments

- F219** S. 17I title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F220** Words in s. 17I(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F221** Words in s. 17I(2)(b)(i) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(4\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F222** Words in s. 17I(2)(b)(ii) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(4\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F223** Words in s. 17I(4)(b)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(5\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F224** Words in s. 17I(5) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(6\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F225** S. 17I(5A) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(7\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

17J [F226 **Modification of standard conditions**]

- (1) Subject to the following provisions of this section, the Authority [F227 may modify—
- (a) the standard conditions of water supply licences, or
 - (b) the standard conditions of sewerage licences.]
- [Modifications may relate to—
- ^{F228}(1A) (a) standard conditions contained in all water supply licences or sewerage licences, or
- (b) standard conditions contained in those water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations.]
- (2) Where at any time the Authority modifies the standard conditions of [F229 water supply licences or sewerage licences] under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of [F230 any licence so affected].
- (3) Before making any modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; and
 - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on—
 - (i) each relevant licence holder;
 - (ii) the Council;
 - (iii) the Secretary of State;
 - (iv) [F231 if the notice relates to a water supply licence,] the Assembly; and
 - (v) the Chief Inspector of Drinking Water.
- (5) If, within the time specified in the notice under subsection (3) above, the Secretary of State ^{F232}... directs the Authority not to make any modification, the Authority shall comply with the direction.
- [The Secretary of State is to consult the Welsh Ministers before giving a direction under
- ^{F233}(5A) subsection (5) in relation to a water supply licence.]
- (6) The Authority may not under this section make any modifications of the standard conditions of [F234 water supply licences or sewerage licences] unless—
- (a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;
 - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—

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- (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and
 - (ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or
 - (c) subsection (8) below applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
 - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
 - (c) the modifications are such that no holder of a water supply licence [^{F235}or, as the case may be, a sewerage licence] would be unduly disadvantaged in competing with other holders of such licences.
- (9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (10) Before making an order under subsection (6) above [^{F236}in relation to the standard conditions of water supply licences], the Secretary of State shall consult the Assembly.
- (11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) Where the Authority modifies the standard conditions of [^{F237}water supply licences or sewerage licences], the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in [^{F238}water supply licences or, as the case may be, sewerage licences] granted after that time; and
 - (b) publish the modifications in such manner as it considers appropriate.
- [^{F239}Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.]
- (13) In this section “relevant licence holder”, in relation to proposed modifications of standard conditions of [^{F240}water supply licences or sewerage licences or of such of those licences as grant a particular authorisation or combination of authorisations], means the holder of a licence of that description—
- (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
 - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything

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done under section 17H(4) above) at the time specified in the notice under subsection (3) above.

Textual Amendments

- F226** S. 17J title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F227** Words in s. 17J(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(3)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F228** S. 17J(1A) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F229** Words in s. 17J(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(5)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F230** Words in s. 17J(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(5)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F231** Words in s. 17J(4)(b)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F232** Words in s. 17J(5) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(7)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F233** S. 17J(5A) inserted (1.4.2016) by [Explanatory Note 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(8)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F234** Words in s. 17J(6) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(9)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F235** Words in s. 17J(8)(c) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(10)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F236** Words in s. 17J(10) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(11)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F237** Words in s. 17J(12) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(12)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F238** Words in s. 17J(12)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(12)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F239** Words in s. 17J(12) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(12)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F240** Words in s. 17J(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 20(13)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))

17K [F241 Modification references to competition authority]

- (1) The Authority may make to the [F242 CMA] a reference which is so framed as to require the [F243 CMA to] investigate and report on the questions—

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- (a) whether any matters which—
 - (i) relate to the carrying on of activities authorised or regulated by [^{F244}a particular water supply or sewerage licence]; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Authority may make to the Commission a reference which is so framed as to require the [^{F245}CMA] to investigate and report on the questions—
- (a) whether any matters which—
 - (i) relate to the carrying on of activities authorised or regulated by [^{F246}water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations]; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the standard conditions of licences of that description.
- (3) The Authority may, at any time, by notice given to the [^{F245}CMA] vary a reference under this section by—
- (a) adding to the matters specified in the reference; or
 - (b) excluding from the reference some of the matters so specified,
- and on receipt of any such notice the [^{F245}CMA] shall give effect to the variation.
- (4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [^{F245}CMA] in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
 - (b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.
- (5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—
- (a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
 - (b) serve a copy of the reference or variation on—
 - (i) the licence holder or, as the case may be, the relevant licence holders;
 - (ii) the Council;
 - (iii) the Secretary of State;
 - (iv) [^{F247}in a case relating to a water supply licence or licences,] the Assembly; and
 - (v) the Chief Inspector of Drinking Water.
- (6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the [^{F248}CMA]—

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- (a) not to proceed with the reference; or
 (b) not to give effect to the variation,
 the [F248CMA] shall comply with the direction.
- (7) It shall be the duty of the Authority, for the purpose of assisting the [F248CMA] in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the [F248CMA]—
- (a) any information in the Authority’s possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—
- (i) requested by the [F248CMA] for that purpose; or
 (ii) information which, in the Authority’s opinion, it would be appropriate for that purpose to give to the [F248CMA] without any such request; and
- (b) any other assistance which the [F248CMA] may require, and which it is within the Authority’s power to give, in relation to any such matters,
 and the [F248CMA], for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.
- (8) In this section and the following provisions of this Chapter—
- “relevant conditions”—
- (a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and
 (b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and
- “relevant licence holder” means the holder of a licence to which a reference under subsection (2) above relates.
- (9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [F249CMA] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.
- [The functions of the CMA with respect to a reference under this section are to be
 F250(10) carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 17M and 17Q).]

Textual Amendments

- F241** S. 17K title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 21(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F242** Word in s. 17K(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F243** Words in s. 17K(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F244** Words in s. 17K(1)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 21(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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- F245** Words in ss. 17K(2)-(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 61(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F246** Words in s. 17K(2)(a)(i) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 21(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F247** Words in s. 17K(5)(b)(iv) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 21(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F248** Words in s. 17K(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 61(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F249** Word in s. 17K(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 61(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F250** S. 17K(10) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 61(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))
- C23** S. 17K applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 5(2)** (with reg. 1(1)(c)) (as amended (10.1.2015) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2015 (S.I. 2015/22), regs. 1(1), **4(a)**)

17L References under section 17K: time limits

- (1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the [F251CMA] on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the [F251CMA] and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
 - (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

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Textual Amendments

F251 Words in s. 17L(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 62](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

C22 Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

C24 Ss. 17L, 17M applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(3\)](#) (with reg. 1(1)(c))

17M References under section 17K: powers of investigation

(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [^{F252}(1A),] (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

[Section 109 shall, in its application by virtue of subsection (1) above, have effect as ^{F253}(1A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 17K of the Water Industry Act 1991.”, and

- (b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

- (a) subsection (2) were omitted; ^{F254}...

[^{F255}(aa) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

[^{F256}(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

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“(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]

- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

Textual Amendments

- F252** Word in s. 17M(1) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(2)** (with art. 3, Sch. 2 para. 2)
- F253** S. 17M(1A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(3)** (with art. 3, Sch. 2 para. 2)
- F254** Word in s. 17M(2)(a) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(4)(a)** (with art. 3, Sch. 2 para. 2)
- F255** S. 17M(2)(aa) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(4)(b)** (with art. 3, Sch. 2 para. 2)
- F256** S. 17M(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(5)** (with art. 3, Sch. 2 para. 2)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))
- C24** Ss. 17L, 17M applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 5(3)** (with reg. 1(1)(c))

17N [F257 Reports on modification references]

- (1) In making a report on a reference under section 17K above, the [F258 CMA] —
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;
- (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and

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- (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) For the purposes of section 17O below, a conclusion contained in a report of the [F259CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [F260] by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].
- (3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the [F261CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [F261CMA] on a reference under section 17K above.
- (5) In making any report on a reference under section 17K above the [F261CMA] must have regard to the following considerations before disclosing any information.
- (6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F261CMA] thinks is contrary to the public interest.
- (7) The second consideration is the need to exclude from disclosure (so far as practicable) —
- (a) commercial information whose disclosure the [F261CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the [F261CMA] thinks might significantly harm the individual's interests.
- (8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.
- (9) A report of the [F262CMA] on a reference under section 17K above shall be made to the Authority.
- (10) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—
 - (i) the licence holder;
 - (ii) the Council;
 - (iii) the Secretary of State; and
 - (iv) [F263:if the report relates to a water supply licence,] the Assembly; and
 - (b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (11) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—
 - (i) the Secretary of State; and
 - (ii) [F264:if the report relates to water supply licences,] the Assembly; and
 - (b) not earlier than the relevant time—

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- (i) serve another copy on each relevant licence holder; and
 - (ii) not less than twenty-four hours after complying with subparagraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (12) For the purposes of subsections (10) and (11) above, the “relevant time” means—
- (a) fourteen days after the copy of the report in question is received by the Secretary of State and [F265, if the report relates to water supply licences,] the Assembly, or
 - (b) if copies are received by them on different days, fourteen days after the later day.
- (13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—
- (a) the public interest; or
 - (b) the commercial interests of any person.
- (14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.

Textual Amendments

- F257** S. 17N title substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 22\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F258** Word in s. 17N(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 63\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F259** Word in s. 17N(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 63\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F260** Words in s. 17N(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 63\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F261** Word in s. 17N(3)-(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 63\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F262** Word in s. 17N(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 63\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F263** Words in s. 17N(10)(a)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 22\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F264** Words in s. 17N(11)(a)(ii) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 22\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F265** Words in s. 17N(12)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 22\(5\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 4](#) (with [reg. 1\(1\)\(c\)](#))

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C25 S. 17N applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(4\)](#) (with reg. 1(1)(c))

170 [F266] **Modification of licences following report**

- (1) Where a report of the [F267]CMA] on a reference under section 17K above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
 - (d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Where at any time it modifies under subsection (1) above [F268]—
- (a) the standard conditions of water supply licences or sewerage licences, or
 - (b) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,

in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

- (3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.
- (4) Before making modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (5) A notice under subsection (4) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications;
 - (b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and
 - (c) by serving a copy of the notice on—
 - (i) the Council;
 - (ii) the Secretary of State;
 - (iii) [F269]in a case relating to a water supply licence or licences,] the Assembly; and

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- (iv) the Chief Inspector of Drinking Water.
- (6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the ^{F270}CMA]—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
 - (b) stating the reasons for making the modifications.
- (7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.
- (8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
 - (b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.
- (9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where at any time it modifies under subsection (1) above the standard conditions of ^{F271}water supply licences or sewerage licences] in consequence of a reference under section 17K(2) above, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in ^{F272}water supply licences or, as the case may be, sewerage licences] granted after that time; and
 - (b) publish the modifications made for those purposes in such manner as it considers appropriate.
- ^{F273}Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.]

Textual Amendments

- F266** S. 17O title substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 23\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F267** Word in s. 17O(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\)](#), [Sch. 6 para. 64](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F268** Words in s. 17O(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 23\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F269** Words in s. 17O(5)(c)(iii) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 23\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F270** Word in s. 17O(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\)](#), [Sch. 6 para. 64](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

Status: This version of this Act contains provisions that are prospective.

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- F271** Words in s. 17O(10) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 23\(5\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F272** Words in s. 17O(10)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 23\(5\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F273** Words in s. 17O(10) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 23\(5\)\(c\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))
- C26** S. 17O applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(5\)](#) (with reg. 1(1)(c))

17P [^{F274}**Power of veto following report**]

- (1) The [^{F275}CMA] may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—
- (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction;
- and the Authority shall comply with any such direction.
- (2) The Secretary of State may—
- (a) within the period of four weeks after the date on which the [^{F275}CMA] is given a notice under section 17O(6) above; and
 - (b) on the application of the [^{F275}CMA] ,
- direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the [^{F275}CMA] not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the [^{F275}CMA] gives a direction under subsection (1) above, it shall—
- (a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.

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- (5) In exercising its power under subsection (4)(b) above the [F275CMA] shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.
- (6) Before making modifications under subsection (4)(b) above the [F275CMA] shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the [F275CMA] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;
 - (b) by serving a copy of the notice on—
 - (i) the Authority;
 - (ii) the holder of the licence in question or, as the case may be, the relevant licence holders;
 - (iii) the Council;
 - (iv) the Secretary of State;
 - (v) [F276if the reference relates to water supply licences,] the Assembly;and
 - (vi) the Chief Inspector of Drinking Water.
- (8) After making modifications under this section the [F275CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where, in consequence of a reference under section 17K(2) above, the [F277CMA] modifies under subsection (4)(b) above [F278—
- (a) the standard conditions of water supply licences or sewerage licences, or
 - (b) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,]
- the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (11) Where, in consequence of a reference under section 17K(2) above, the [F277CMA] modifies under subsection (4)(b) above the standard conditions of [F279water supply licences or sewerage licences], the Authority shall—
- (a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in [F280water supply licences or, as the case may be, sewerage licences] granted after that time, and

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- (b) publish the modifications made for those purposes in such manner as it considers appropriate.

[^{F281}Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.]

Textual Amendments

- F274** S. 17P title substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), **Sch. 7 para. 24(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F275** Words in s. 17P(1)-(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\)](#), **Sch. 6 para. 65(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F276** Words in s. 17P(7)(b)(v) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), **Sch. 7 para. 24(3)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F277** Words in s. 17P(10)-(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\)](#), **Sch. 6 para. 65(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F278** Words in s. 17P(10) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), **Sch. 7 para. 24(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F279** Words in s. 17P(11) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), **Sch. 7 para. 24(5)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F280** Words in s. 17P(11)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), **Sch. 7 para. 24(5)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F281** Words in s. 17P(11) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), **Sch. 7 para. 24(5)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))
- C27** S. 17P applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 5(6)** (with reg. 1(1)(c)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\)](#), regs. 1(1), **4(b)**)

17Q Section 17P: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the [^{F282}CMA] must have regard to the following considerations before disclosing any information.
 - (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [^{F282}CMA] thinks is contrary to the public interest.
 - (4) The second consideration is the need to exclude from disclosure (so far as practicable)

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- (a) commercial information whose disclosure the [^{F282}CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the [^{F282}CMA] thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [^{F283}(6A),] (7) and (8) below, for the purposes of any investigation by the [^{F284}CMA] for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).

[Section 109 shall, in its application by virtue of subsection (6) above, have effect as ^{F285}(6A) if—

- (a) for subsection (A1), there were substituted—
 - “(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 17P of the Water Industry Act 1991.”, and
- (b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

- (a) subsection (2) were omitted,
- [^{F286}(b) after subsection (3), there were inserted—
 - “(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 17P(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]
- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—

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- (ii) if earlier, the day on which a notice is published by the [F287CMA] under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [F287CMA] under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.
- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

Textual Amendments

- F282** Words in ss. 17Q(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 66\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F283** Word in s. 17Q(6) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 79\(2\)](#) (with art. 3, Sch. 2 para. 2)
- F284** Word in s. 17Q(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 66\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F285** S. 17Q(6A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 79\(3\)](#) (with art. 3, Sch. 2 para. 2)
- F286** S. 17Q(7)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 79\(4\)](#) (with art. 3, Sch. 2 para. 2)
- F287** Word in s. 17Q(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 66\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 4](#) (with reg. 1(1)(c))
- C28** S. 17Q applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 5\(7\)](#) (with reg. 1(1)(c))

17R [F288 Modification by order under other enactments]

- (1) Where the [F289CMA] or the Secretary of State (the “relevant authority”) makes a relevant order, the order may also provide for the modification of—
- [F290(a) the conditions of a particular water supply or sewerage licence,
 (b) the standard conditions of water supply licences or sewerage licences, or
 (c) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,]

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to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by [^{F291}a water supply licence or sewerage licence]; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by [^{F292}a water supply licence or sewerage licence]; or
 - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [^{F293}or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by [^{F294}a water supply licence or sewerage licence].
- (3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (4) Where at any time the relevant authority modifies under [^{F295}subsection (1)(b) or (c)] above [^{F296}the standard conditions of water supply licences or sewerage licences or of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations], the relevant authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
 - (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences of that description granted before that time.
- (5) Where at any time the relevant authority modifies standard conditions of [^{F297}water supply licences or sewerage licences] under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.
- (6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.]

Textual Amendments

- F288** S. 17R title substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 25\(2\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F289** Word in s. 17R(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\)](#), [Sch. 6 para. 67](#); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F290** Ss. 17R(1)(a)-(c) substituted for s. 17R(1)(a)(b) (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 25\(3\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

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- F291** Words in s. 17R(2)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 25\(4\)\(a\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F292** Words in s. 17R(2)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 25\(4\)\(b\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F293** Words in s. 17R(2)(b) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 80](#) (with art. 3)
- F294** Words in s. 17R(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 25\(4\)\(c\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F295** Words in s. 17R(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 25\(5\)\(a\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F296** Words in s. 17R(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 25\(5\)\(b\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F297** Words in s. 17R(5) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 25\(6\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C22** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 4](#) (with reg. 1(1)(c))
- C29** S. 17R applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 5\(8\)](#) (with reg. 1(1)(c))

CHAPTER II

ENFORCEMENT OF INSOLVENCY

Enforcement orders

18 Orders for securing compliance with certain provisions.

- (1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part [^{F298} or [^{F299} any person holding] a licence under Chapter 1A of this Part] the Secretary of State or the Director is satisfied—
- (a) that that company [^{F300} or that person] is contravening—
- (i) any condition of the company's appointment [^{F301} or [^{F302} the person's] licence] in relation to which he is the enforcement authority; or
- (ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority;
- or
- (b) that that company [^{F303} or that person][^{F304} is likely to contravene any such condition or requirement],

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he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

[^{F305}(1A) Subject to subsection (2) and sections 19 and 20 below, where—

- (a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—
 - (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by [^{F306}a person] holding a licence under Chapter 1A of this Part; or
 - (ii) is likely to cause or contribute to any such contravention; or
- (b) in the case of [^{F307}any person] holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that [^{F308}the person]—
 - (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or
 - (ii) is likely to cause or contribute to any such contravention,

he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.]

(2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part [^{F309}or [^{F310}any person holding] a licence under Chapter 1A of this Part]—

- (a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) [^{F311}or (1A)] above; and
- (b) it appears to him that it is requisite that a provisional enforcement order be made,

he may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional enforcement order be made, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to sections 19 and 20 below, where the Secretary of State or the Director has made a provisional enforcement order, he shall confirm it, with or without modifications, if—

- (a) he is satisfied that the company to which the order relates—
 - (i) is contravening any condition or statutory or other requirement in relation to which he is the enforcement authority; or
 - [^{F312}(ii) is likely to contravene any such condition or requirement;][^{F313}or
 - (iii) is causing or contributing to a contravention of any such condition or requirement; or
 - (iv) is likely to cause or contribute to any such contravention;]

and

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- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) An enforcement order—
- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the enforcement authority who made it.
- (6) For the purposes of this section and the following provisions of this Act—
- (a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part [^{F314}or [^{F315}a person holding] a licence under Chapter 1A of this Part] shall be such of the requirements of any enactment or of any subordinate legislation as—
 - (i) are imposed in consequence of that appointment [^{F316}or licence]; and
 - (ii) are made so enforceable by that enactment or subordinate legislation;
 - (b) the Director shall be the enforcement authority in relation to the conditions of an appointment under Chapter I of this Part [^{F317}or of a licence under Chapter 1A of this Part]; and
 - (c) the enforcement authority in relation to each of the statutory and other requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable.
- (7) In this section and the following provisions of this Chapter—
- “enforcement order” means a final enforcement order or a provisional enforcement order;
- “final enforcement order” means an order under this section other than a provisional enforcement order;
- “provisional enforcement order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- [^{F318}(8) Where any act or omission—
- (a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or
 - (b) causes or contributes to a contravention of any such condition or requirement, the only remedies for, or for causing or contributing to, that contravention (apart from those available by virtue of this section) shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting, or causing or contributing to, such a contravention.]

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Textual Amendments

- F298** Words in s. 18(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(2\)\(a\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F299** Words in s. 18(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F300** Words in s. 18(1)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F301** Words in s. 18(1)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(2\)\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F302** Words in s. 18(1)(a)(i) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(c\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F303** Words in s. 18(1)(b) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(d\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F304** Words in s. 18(1)(b) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. [49\(2\)\(a\)](#), 105(3); [S.I. 2004/2528, art. 2\(f\)](#) (with [art. 4, Sch.](#))
- F305** S. 18(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(3\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F306** Words in s. 18(1A)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(3\)\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F307** Words in s. 18(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(3\)\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F308** Words in s. 18(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(3\)\(c\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F309** Words in s. 18(2) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(4\)\(a\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F310** Words in s. 18(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(4\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F311** Words in s. 18(2)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(4\)\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F312** S. 18(4)(a)(ii) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. [49\(2\)\(b\)](#), 105(3); [S.I. 2004/2528, art. 2\(f\)](#) (with savings in [art. 4](#))
- F313** S. 18(4)(iii)(iv) and preceding word inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(5\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F314** Words in s. 18(6)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(6\)\(a\)\(i\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F315** Words in s. 18(6)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(5\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F316** Words in s. 18(6)(a)(i) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(6\)\(a\)\(ii\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F317** Words in s. 18(6)(b) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(6\)\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F318** S. 18(8) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(7\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. 2 para. 8](#))

Modifications etc. (not altering text)

- C30** S. 18 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), ss. [20\(3\)](#), [225\(2\)](#).
- C31** S. 18 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), ss. [197\(6\)](#), [225\(2\)](#).

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- C32** S. 18 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 203(5)**, 225(2).
- C33** S. 18: power to extend conferred (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 219(2)(a)**, 225(2).
- C34** S. 18 extended (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(2)**.
- C35** S. 18 extended (prosp.) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), **ss. 52(3)**, 66
- C36** S. 18 extended (prosp.) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), **ss. 25(7)**, 66
- C37** S. 18 extended (20.4.2010) by [The Water Supply \(Water Quality\) Regulations 2010 \(S.I. 2010/994\)](#), regs. 1(1), **38** (with reg. 1(2)(3))
- C38** S. 18 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(1)** (with reg. 1(1)(c))
- C39** S. 18 applied (27.6.2016) by [The Water Supply \(Water Quality\) Regulations 2016 \(S.I. 2016/614\)](#), regs. 1(1), **38** (with reg. 1(2)(3))
- C40** S. 18 applied (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **27(3)**
- C41** S. 18 applied (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **30(4)**
- C42** S. 18 applied (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), reg. 1(2), **Sch. 1 para. 3(7)**
- C43** S. 18 applied (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **9(6)**

19 Exceptions to duty to enforce.

- (1) ^{F319}Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000]Neither the Secretary of State nor the Director shall be required to make an enforcement order in relation to any ^{F320}person], or to confirm a provisional enforcement order so made, if he is satisfied—
 - (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
 - ^{F321}(aa) that the extent to which the ^{F320}person] caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;]
 - (b) that the ^{F320}person] has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the ^{F320}person] to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.
- ^{F322}(1A) Before making an enforcement order or confirming a provisional enforcement order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order if it considers that it would be more appropriate to proceed under the Competition Act 1998.]
- (2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement enforceable under section 18 above—
 - (a) by the Secretary of State; or

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- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) Where the Secretary of State or the Director, having notified a [F320 person] that he is considering the making in relation to the [F320 person] of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), [F323(aa),(b) or (c) of subsection (1) above [F324 or, in the case of the Director, [F325 has decided that it would be more appropriate to proceed under the Competition Act 1998]], he shall—
- (a) serve notice that he is so satisfied [F326 or has so decided] on the [F320 person];
- [F327(b) publish in such manner as the Secretary of State or the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them—
- (i) a copy of the notice, and
- (ii) where the Secretary of State or the Authority is satisfied as mentioned in paragraph (b) of subsection (1), a summary of the undertaking describing the steps to be taken under it; and]
- (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director.
- [F328(3A) In a case where notice under subsection (3)(a) falls to be served by the Welsh Ministers, references to the Secretary of State in subsection (3)(b) are to be read as references to the Welsh Ministers.]
- (4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Textual Amendments

- F319** Words in s. 19(1) inserted (14.6.2000) by S.I. 2000/1297, **art. 8**
- F320** Word in s. 19 substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 27**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F321** S. 19(1)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(2)**; S.I. 2005/2714, **art. 3(c)** (with **Sch. para. 8**)
- F322** S. 19(1A)(1B) substituted for s. 19(1A) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(2)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F323** Words in s. 19(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(3)**; S.I. 2005/2714, **art. 3(c)** (with **Sch. para. 8**)
- F324** Words in s. 19(3) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(7)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F325** Words in s. 19(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(3)(a)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F326** Words in s. 19(3)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(3)(b)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F327** S. 19(3)(b) substituted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(2)**
- F328** S. 19(3A) inserted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(3)**

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Modifications etc. (not altering text)

- C44** S. 19 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))
- C45** S. 19(1)(b) restricted (14.6.2000) by [S.I. 2000/1297](#), **art. 2**
- C46** S. 19(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672](#), **art. 2**, **Sch. 1**

20 Procedure for enforcement orders.

- (1) Before making a final enforcement order [^{F329}under section 18(1) above] or confirming a provisional enforcement order [^{F330}in a case in which section 18(4)(a)(i) or (ii) above applies], the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out the effect of the order;
 - (b) setting out—
 - (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order;
- and
- (c) specifying the period (not being less than [^{F331}twenty-one] days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- [^{F332}(1A) Before making a final enforcement order under section 18(1A) above or confirming a provisional enforcement order in a case in which section 18(4)(a)(iii) or (iv) above applies, the Secretary of State or the Authority shall give notice—
- (a) stating that he or it proposes to make or confirm the order and setting out the effect of the order;
 - (b) setting out—
 - (i) the condition or requirement for the purposes of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his or its opinion, cause or contribute to or would cause or contribute to the contravention of that condition or requirement; and
 - (iii) the other facts which, in his or its opinion, justify the making or confirmation of the order; and
 - (c) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections to the proposed order or proposed confirmation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.]
- (2) A notice under subsection (1) [^{F333}or (1A)] above shall be given—

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- (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the [^{F334}person to whom] the order relates and, where the notice is given by the Secretary of State, on the Director.
- (3) Neither the Secretary of State nor the Director shall make a final enforcement order with modifications, or confirm a provisional enforcement order with modifications, except—
 - (a) with the consent to the modifications of the [^{F334}person to whom] the order relates; or
 - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—
 - (a) serve on the [^{F334}person to whom] the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than [^{F335}twenty-one] days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making an enforcement order or confirming a provisional enforcement order, the Secretary of State or, as the case may be, the Director shall—
 - (a) serve a copy of the order on the [^{F334}person to whom] the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and
 - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking an enforcement order, other than an unconfirmed provisional order, the Secretary of State or the Director shall give notice—
 - (a) stating that he proposes to revoke the order and setting out its effect; and
 - (b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.
- (8) A notice under subsection (6) or (7) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

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- (b) by serving a copy of the notice on the [^{F334}person to whom] the order relates and, where the notice is given by the Secretary of State, on the Director.
- (9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Textual Amendments

- F329** Words in s. 20(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F330** Words in s. 20(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F331** Words in s. 20(1)(c) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(3)(4)**, 105(3); S.I. 2004/2528, **art. 2(f)**
- F332** S. 20(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F333** Words in s. 20(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F334** Words in s. 20 substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 28**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(j)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F335** Words in s. 20(4)(b) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(3)(4)**, 105(3); S.I. 2004/2528, **art. 2(f)**

Modifications etc. (not altering text)

- C47** S. 20 applied (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))
- C48** S. 20(9): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

21 Validity of enforcement orders.

- (1) If the [^{F336}person to whom] an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers of section 18 above; or
 - (b) that any of the requirements of section 20 above have not been complied with in relation to it,
- the [^{F337}person] may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the [^{F338}person] have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of an enforcement order shall not be questioned in any legal proceedings whatsoever.

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Textual Amendments

- F336** Words in s. 21(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 29\(2\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F337** Word in s. 21(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 29\(2\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F338** Word in s. 21(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 29\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

22 Effect of enforcement order.

- (1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.
- (2) Where a duty is owed by virtue of subsection (1) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
- (3) In any proceedings brought against any [^{F339}person] in pursuance of subsection (2) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 68(1)(a) [^{F340}or (1A)(a)] below, it shall be a defence for the [^{F339}person] to show that [^{F341}the person] took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.
- (5) In subsection (4) above “the relevant enforcement authority”, in relation to any enforcement order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

Textual Amendments

- F339** Word in s. 22(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 30\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F340** Words in s. 22(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\)](#), [Sch. 8 para. 7](#); S.I. 2005/2714, [art. 3\(e\)](#) (with [Sch. para. 8](#))
- F341** Words in s. 22(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 30\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C49** S. 22 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(2\)](#) (with reg. 1(1)(c))

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[^{F342}Financial penalties

Textual Amendments

F342 Ss. 22A-22F and preceding cross-heading inserted (1.10.2004 for specified purposes and otherwise 1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 48(1)**, 105(3); S.I. 2004/2528, **art. 2(e)** (with savings in [art. 4](#)); S.I. 2005/968, **art. 2(i)** (with savings in [art. 4](#), [Sch. 1](#), 2)

22A Penalties

(1) Where the Authority is satisfied—

- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
 - (i) has contravened or is contravening any condition of the appointment;
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a [^{F343}person] holding a licence under Chapter 1A of this Part of any condition of the licence; or
 - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or
- (b) in the case of any [^{F344}person] holding a licence under Chapter 1A of this Part, that the [^{F344}person]—
 - (i) has contravened or is contravening any condition of the licence; ^{F345}...
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment, [^{F346}or
 - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38ZA or 95ZA,]

the Authority may, subject to section 22C below, impose on [^{F347}that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where the Authority, the Secretary of State or the Assembly is satisfied—

- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
 - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a [^{F348}person] holding a licence under Chapter 1A of this Part of any such requirement; or
- (b) in the case of any [^{F349}person] holding a licence under Chapter 1A of this Part, that the [^{F349}person]—
 - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on [^{F350}that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.

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- (3) In a case in which—
- (a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or
 - (b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,
- references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.
- (4) Before imposing a penalty on a [^{F351}person] under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement authority”) shall give notice—
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
 - (b) setting out the condition, requirement or standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
 - (d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—
- (a) setting out the proposed variation and the reasons for it; and
 - (b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (6) As soon as practicable after imposing a penalty [^{F352}on a person], the enforcement authority shall give notice—
- (a) stating that he or it has imposed a penalty on the [^{F353}person] and its amount;
 - (b) setting out the condition, requirement or standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
 - (d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the [^{F354}person], by which the penalty is required to be paid.
- (7) The [^{F355}person on whom the penalty has been imposed] may, within twenty-one days of the date of service ^{F356}... of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this section shall be given—

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- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
 - (b) by serving a copy of the notice on the [^{F357}person on whom the penalty is to be or has been imposed];
 - (c) by serving a copy of the notice on the Council; and
 - (d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.
- (9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.
- (11) No penalty imposed by an enforcement authority under this section may exceed [^{F358}—
- (a) 10% of the turnover of the company, or
 - (b) in a case where the person on whom the penalty is imposed is not a company, 10% of the turnover of the business of the person,
- (determined] in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).
- (12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [^{F359}(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

Textual Amendments

- F343** Word in s. 22A(1)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 31\(2\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F344** Word in s. 22A(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 31\(2\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F345** Word in s. 22A(1)(b)(i) omitted (31.3.2017) by virtue of [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), [6\(3\)\(a\)](#)
- F346** S. 22A(1)(b)(iii) and word inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), [6\(3\)\(b\)](#)
- F347** Words in s. 22A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 31\(2\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F348** Word in s. 22A(2)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 31\(3\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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- F349** Word in s. 22A(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(3)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F350** Words in s. 22A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(3)(c)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F351** Word in s. 22A(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(4)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F352** Words in s. 22A(6) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(5)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F353** Word in s. 22A(6)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(5)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F354** Word in s. 22A(6)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(5)(c)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F355** Words in s. 22A(7) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(6)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F356** Words in s. 22A(7) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(6)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F357** Words in s. 22A(8)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(7)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F358** Words in s. 22A(11) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 31(8)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F359** S. 22A(13)(14) substituted for s. 22A(13) (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 14 para. 10**; S.I. 2014/416, art. 2(1)(e) (with **Sch.**)

Modifications etc. (not altering text)

- C50** S. 22A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(3)** (with reg. 1(1)(c))

22B Statement of policy with respect to penalties

- (1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure an enforcement authority shall have regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.

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Modifications etc. (not altering text)

- C51** S. 22B applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

22C Time limits on the imposition of financial penalties

- (1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty [^{F360}on a person] in respect of the contravention or failure later than the end of the period of [^{F361}five years] from the time of the contravention or failure, unless before the end of that period—
- (a) the notice under section 22A(4) above relating to the penalty is served on the [^{F362}person] under section 22A(8) above; or
 - (b) a notice relating to the contravention or failure is served on the [^{F363}person] under section 203(2) below.
- (2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty [^{F364}on a person] in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the [^{F365}person] under section 22A(8) above—
- (a) within three months from the confirmation of the provisional order or the making of the final order; or
 - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

Textual Amendments

- F360** Words in s. 22C(1) inserted (1.4.2016) by [Water Act 2014](#) (c. 21), s. 94(3), **Sch. 7 para. 32(2)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F361** Words in s. 22C(1) substituted (14.7.2014) by [Water Act 2014](#) (c. 21), **ss. 26(1), 94(2)(g)** (with s. 26(2))
- F362** Word in s. 22C(1)(a) substituted (1.4.2016) by [Water Act 2014](#) (c. 21), s. 94(3), **Sch. 7 para. 32(2)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F363** Words in s. 22C(1)(b) substituted (1.4.2016) by [Water Act 2014](#) (c. 21), s. 94(3), **Sch. 7 para. 32(2)(c)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F364** Words in s. 22C(2) inserted (1.4.2016) by [Water Act 2014](#) (c. 21), s. 94(3), **Sch. 7 para. 32(3)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F365** Word in s. 22C(2) substituted (1.4.2016) by [Water Act 2014](#) (c. 21), s. 94(3), **Sch. 7 para. 32(3)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C52** S. 22C applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

Status: This version of this Act contains provisions that are prospective.

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22D Interest and payment of instalments

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the enforcement authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

Modifications etc. (not altering text)

C53 S. 22D applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(4\)](#) (with reg. 1(1)(c))

22E Appeals

- (1) If the [^{F366}person on whom] a penalty is imposed is aggrieved by—
 - (a) the imposition of the penalty;
 - (b) the amount of the penalty; or
 - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,the company may make an application to the court under this section.
- (2) An application under subsection (1) above must be made—
 - (a) within forty-two days from the date of service on the [^{F367}person] of a notice under section 22A(6) above; or
 - (b) where the application relates to a decision of an enforcement authority on an application by the [^{F368}person] under section 22A(7) above, within forty-two days from the date the [^{F368}person] is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4) below, the court—
 - (a) may quash the penalty;
 - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
 - (c) in the case of an application under subsection (1)(c) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
 - (a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;
 - (b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty

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- and the interests of the [F369 person] have been substantially prejudiced by the non-compliance; or
- (c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means the High Court.

Textual Amendments

- F366** Words in s. 22E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F367** Word in s. 22E(2)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F368** Word in s. 22E(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F369** Word in s. 22E(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

Modifications etc. (not altering text)

- C54** S. 22E applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(4\)](#) (with reg. 1(1)(c))

22F Recovery of penalties

Where a penalty imposed under section 22A(1) or (2) above, or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 22E above during the period within which such an application can be made; or
- (b) an application has been made under that section and determined,
- the enforcement authority may recover from the [F370 person], as a civil debt due to him or it, any of the penalty and any interest which has not been paid.]

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Textual Amendments

F370 Word in s. 22F substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 34](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

Modifications etc. (not altering text)

C55 S. 22F applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 6\(4\)](#) (with [reg. 1\(1\)\(c\)](#))

Special administration orders

23 Meaning and effect of special administration order.

- (1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part [^{F371}or which is [^{F372}a qualifying water supply licensee or a qualifying sewerage licensee]] and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—
- for the achievement of the purposes of such an order; and
 - in a manner which protects the respective interests of the members and creditors of the company.
- (2) The purposes of a special administration order made in relation to any company [^{F373}holding an appointment under Chapter 1 of this Part] shall be—
- the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
 - the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).
- [^{F374}(2A) The purposes of a special administration order made in relation to any company which is [^{F375}a qualifying water supply licensee] shall be—
- the transfer to another company or companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction or introductions of water mentioned in [^{F376}subsection (7)] below may be properly carried on; and
 - the carrying on of those activities pending the making of the transfer.]
- [^{F377}(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—
- a purpose of the special administration order is to rescue the company as a going concern, and
 - the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—

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- (i) it is not likely to be possible to rescue the company as a going concern, or
 - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).
- (2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.
- (2D) For the purpose of rescuing the company as a going concern a special administrator may propose—
- (a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or
 - (b) a compromise or arrangement in accordance with Part 26 [^{F378}or 26A] of the Companies Act 2006.
- (2E) The Secretary of State may by regulations made by statutory instrument—
- (a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;
 - (b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).
- (2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—
- (a) the Secretary of State,
 - (b) the Welsh Ministers, or
 - (c) the Authority.
- (2G) Regulations under subsection (2E) may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]
- [^{F379}(2H) A transfer under subsection (2) or (2A) may be effected by—
- (a) transferring all or part of the company's undertaking to a wholly-owned subsidiary of the company, and
 - (b) then transferring securities in the subsidiary to another company.]
- [^{F380}(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).
- (3A) The Secretary of State may make regulations about special administration which—
- (a) apply (with or without modification) an insolvency provision;
 - (b) disapply an insolvency provision;
 - (c) modify the effect of an insolvency provision;
 - (d) make provision similar to, and in place of, an insolvency provision.
- (3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration, (ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules).

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- (3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).
- (3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]
- (4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which
- [^{F381}(a) a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter 1 of this Part; or
 - [^{F382}(b) a company carries on activities relating to—
 - (i) the introduction or introductions of water mentioned in subsection (7) formerly carried on by another company; or
 - (ii) the removal or removals of matter mentioned in subsection (9) formerly carried on by another company,]in pursuance of a special administration order.]
- (5) In this section “business” and “property” have the same meanings as in the ^{M6}Insolvency Act 1986.
- [^{F383}(6) For the purposes of this section, sections 24 to 26 below and Schedule 2 to this Act, a [^{F384}water supply licensee] is a [^{F385}qualifying water supply licensee] if—
- [^{F386}(a) it is the holder of a water supply licence giving it a wholesale or supplementary authorisation (within the meaning of Chapter 1A of this Part), and
 - (b) the condition in subsection (7) is satisfied in relation to it.]
- [The condition in this subsection is that—
- ^{F387}(7) (a) the introduction of water by the licence holder which is permitted under section 66B or 66C is designated as a strategic supply under section 66G, or
- (b) the introductions of water by the licence holder which are permitted under section 66B or 66C are designated as a collective strategic supply under section 66H.]]

Textual Amendments

- F371** Words in s. 23(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 8\(2\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F372** Words in s. 23(1) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 35\(2\)](#); [S.I. 2017/462](#), art. 3(k)(bb)(v)
- F373** Words in s. 23(2) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 8\(3\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F374** S. 23(2A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 8\(3\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F375** Words in s. 23(2A) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 35\(3\)\(a\)](#); [S.I. 2017/462](#), art. 3(k)(cc)(v)
- F376** Words in s. 23(2A) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 35\(3\)\(b\)](#); [S.I. 2017/462](#), art. 3(k)(cc)(v)

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- F377** S. 23(2B)-(2G) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 3** (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2024/35, art. 2(b)
- F378** Words in s. 23(2D)(b) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 11** (with ss. 2(2), 5(2))
- F379** S. 23(2H) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 5(1)** (with s. 49(1)(6), Sch. 5 para. 5(4)); S.I. 2010/2169, art. 4; S.I. 2024/35, art. 2(b)
- F380** S. 23(3)-(3D) substituted for s. 23(3) (1.10.2010 for specified purposes, 15.3.2024 in so far as not already in force) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 6(1)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2024/363, art. 2(b)
- F381** Words in s. 23(4) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F382** S. 23(4)(b) substituted (1.4.2017 so far as it substitutes s. 23(4)(b)(i), otherwise prosp.) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(7)**; S.I. 2017/462, art. 3(k)(dd)(v)
- F383** S. 23(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F384** Words in s. 23(6) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(8)(a)**; S.I. 2017/462, art. 3(k)(ee)(v)
- F385** Words in s. 23(6) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(8)(b)**; S.I. 2017/462, art. 3(k)(ee)(v)
- F386** S. 23(6)(a)(b) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(8)(c)**; S.I. 2017/462, art. 3(k)(ee)(v)
- F387** S. 23(7) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(9)**; S.I. 2017/462, art. 3(k)(ee)(v)

Modifications etc. (not altering text)

- C56** S. 23 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 7(2)** (with reg. 1(1)(c))
- C57** S. 23(1) restricted (15.11.1999) by S.I. 1999/2787, **art. 4**

Marginal Citations

- M6** 1986 c. 45.

24 Special administration orders made on special petitions.

(1) If, on an application made to the High Court by petition presented—

- (a) by the Secretary of State; or
- (b) with the consent of the Secretary of State, by the Director,

that Court is satisfied in relation to any company which holds an appointment under Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

^{F388}(1A) If on an application made to the High Court by petition presented—

- (a) by the Secretary of State [^{F389}(after consulting the Assembly)]; or
- (b) with the consent of the Secretary of State [^{F390}(after consulting the Assembly)], the Authority,

the Court is satisfied in relation to any company which is a [^{F391}qualifying water supply licensee or qualifying sewerage licensee] that any one or more of the grounds specified

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in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.]

[^{F392}(1B) Before presenting a petition under subsection (1A) in relation to a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Secretary of State or the Authority (as the case may be) must consult the Welsh Ministers.]

(2) The grounds mentioned in [^{F393}subsections (1) and (1A)] above are, in relation to any company—

(a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment [^{F394}or licence];

(b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—

(i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and

(ii) if it is a provisional enforcement order, has been confirmed,

as is serious enough to make it inappropriate for the company to continue to hold its appointment [^{F394}or licence];

[^{F395}(bb) in the case of a company which is a [^{F396}qualifying water supply licensee], that—

(i) action taken by the company has caused a contravention by a water undertaker of any principal duty; and

(ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;]

[^{F397}(bc) in the case of a company which is a qualifying sewerage licensee, that—

(i) action taken by the company has caused a contravention by a sewerage undertaker of any principal duty; and

(ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;]

(c) that the company is or is likely to be unable to pay its debts;

(d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under [^{F398}section 124A of the Insolvency Act 1986] (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under Chapter I of this Part or was not a [^{F399}qualifying water supply licensee or a qualifying sewerage licensee]; or

(e) [^{F400}in the case of a company holding an appointment under Chapter 1 of this Part,] that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.

(3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the ^{M7}Insolvency Act 1986 (“the 1986 Act”); and no such petition shall be withdrawn except with the leave of the High Court.

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^{F401}(4)

^{F401}(5)

- (6) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
 - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).

[^{F402}(7) In this section “principal duty” means—

- (a) in relation to a company holding an appointment under Chapter 1 of this Part, a requirement imposed on the company by section 37 or 94 below;
- (b) in relation to a company which is a [^{F403}qualifying water supply licensee or a qualifying sewerage licensee], any condition of its licence or any statutory requirement imposed on it in consequence of its licence.]

Textual Amendments

- F388** S. 24(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F389** Words in s. 24(1A)(a) repealed (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(2)(a)**; S.I. 2017/462, **art. 3(k)(vi)**
- F390** Words in s. 24(1A)(b) repealed (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(2)(a)**; S.I. 2017/462, **art. 3(k)(vi)**
- F391** Words in s. 24(1A) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(2)(c)**; S.I. 2017/462, **art. 3(k)(vi)**
- F392** S. 24(1B) inserted (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(3)**; S.I. 2017/462, **art. 3(k)(vi)**
- F393** Words in s. 24(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F394** Words in s. 24(2)(a)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F395** S. 24(2)(bb) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(c)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F396** Words in s. 24(2)(bb) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(4)(a)**; S.I. 2017/462, **art. 3(k)(vi)**
- F397** S. 24(2)(bc) inserted (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(4)(b)**; S.I. 2017/462, **art. 3(k)(vi)**
- F398** Words in s. 24(2)(d) substituted (1.10.2010 for specified purposes, 15.3.2024 in so far as not already in force) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 6(4)** (with s. 49(1)(6)); S.I. 2010/2169, **art. 4**; S.I. 2024/363, **art. 2(b)**
- F399** Words in s. 24(2)(d) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 36(4)(c)**; S.I. 2017/462, **art. 3(k)(vi)**
- F400** Words in s. 24(2)(e) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(e)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F401** S. 24(4)(5) ceases to have effect (1.10.2010 for specified purposes, 15.3.2024 in so far as not already in force) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 6(2)** (with s. 49(1)(6)); S.I. 2010/2169, **art. 4**; S.I. 2024/363, **art. 2(b)**
- F402** S. 24(7) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F403 Words in s. 24(7)(b) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 36\(5\)](#); S.I. 2017/462, art. 3(k)(vi)

Modifications etc. (not altering text)

C58 S. 24 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 7\(3\)](#) (with reg. 1(1)(c))

C59 S. 24(1) excluded (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\), arts. 1, 15\(1\)](#) (with Sch. 8 para. 20)

Marginal Citations

M7 1986 c. 45.

25 Power to make special administration order on winding-up petition.

On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part or is a [F404qualifying licensed water supplier ||F404qualifying water supply licensee or a qualifying sewerage licensee] —

- (a) the court shall not make a winding-up order in relation to the company; but
- (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment or a [F404qualifying licensed water supplier][F404qualifying water supply licensee or a qualifying sewerage licensee] , it shall, instead, make a special administration order in relation to the company.

Textual Amendments

F404 Words in s. 25 substituted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 37](#); S.I. 2017/462, art. 3(k)(vi)

Modifications etc. (not altering text)

C60 S. 25 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 7\(5\)](#) (with reg. 1(1)(c))

Restrictions on voluntary winding up and insolvency proceedings

26 Restrictions on voluntary winding up and insolvency proceedings.

(1) Where a company holds an appointment under Chapter I of this Part or is a [F405qualifying water supply licensee or a qualifying sewerage licensee]—

- (a) the company shall not be wound up voluntarily;
- [F406(b) an administrator may not be appointed in relation to the company, whether by court order or otherwise, under Schedule B1 to the Insolvency Act 1986;
- (ba) any step taken by any person for the purported purpose of appointing an administrator of the company under Schedule B1 to the Insolvency Act 1986 has no legal effect;]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (c) no step shall be taken by any person to enforce any security over the company's property except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on the Director.
- (2) In this section "security" and "property" have the same meanings as in Parts I to VII of the ^{M8}Insolvency Act 1986.

Textual Amendments

- F405** Words in s. 26(1) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 38](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F406** S. 26(1)(b)(ba) substituted for s. 26(1)(b) (15.3.2024) by [The Water Industry \(Special Administration\) Regulations 2024 \(S.I. 2024/205\)](#), regs. 2(2), [54\(2\)](#) (with reg. 64)

Modifications etc. (not altering text)

- C61** S. 26 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 7\(6\)](#) (with reg. 1(1)(c))

Marginal Citations

- M8** 1986 c. 45.

CHAPTER III

PROTECTION OF CUSTOMERS ETC..

General provisions

27 General duty of Director to keep matters under review.

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which
- [^{F407}(a) water undertakers or sewerage undertakers carry out functions; and
 (b) [^{F408}water supply licensees or sewerage licensees] carry on activities authorised by their licences.]
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time to do so, to collect information with respect to—
- (a) the carrying out by companies appointed under Chapter I of this Part of the functions of relevant undertakers; or
- [^{F409}(aa) the carrying on by [^{F410}persons] holding licences under Chapter 1A of this Part of the activities authorised by their licences; or]
- (b) any [^{F411}company mentioned in paragraph (a) or (aa) above] ,
- with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on him by or under any enactment.
- (3) The Secretary of State may give general directions indicating—

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- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1) or (2) above; and
 - (b) considerations to which, in cases where it appears to the Director that any of his powers under Parts II to V and VII of this Act are exercisable, he should have particular regard in determining whether to exercise those powers;
- and it shall be the duty of the Director to comply with any such directions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or [^{F412}the CMA] to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to—
- (a) the functions of either description of relevant undertaker; or
 - (b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part [^{F413} or
 - (c) the activities authorised by [^{F414}the authorisations or combinations of authorisations given by licences under Chapter 1A of this Part (see sections 17A and 17BA)]; or
 - (d) the carrying on of any such activities by a [^{F415}person] holding any such licence.]

Textual Amendments

- F407** S. 27(1)(a)(b) substituted (1.12.2005) for words by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F408** Words in s. 27(1)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 39(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F409** S. 27(2)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(3)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F410** Word in s. 27(2)(aa) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 39(3)(a)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F411** Words in s. 27(2)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(3)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F412** Words in s. 27(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1)**, **Sch. 1 para. 81** (with **art. 3**)
- F413** S. 27(4)(c)(d) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F414** Words in s. 27(4)(c) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 39(4)(a)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F415** Word in s. 27(4)(d) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 39(4)(b)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

Modifications etc. (not altering text)

- C62** S. 27 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), **reg. 1(1)(b)**, **Sch. 1 para. 8** (with **reg. 1(1)(c)**) (as amended (10.1.2015) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2015 (S.I. 2015/22), **regs. 1(1), 5**)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

C63 S. 27(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672](#), art. 2, [Sch. 1](#)

[^{F416}**27ZA** Power to require information for purpose of monitoring

- (1) The Authority may, for the purpose of performing its duty under section 27(1) or (2), serve a notice under subsection (2) on—
 - (a) a water undertaker or sewerage undertaker;
 - (b) a water supply licensee or sewerage licensee.
- (2) A notice under this subsection is a notice which requires the person on whom it is served—
 - (a) to produce to the Authority, at a time and place specified in the notice (which must be reasonable), any documents specified or described in the notice which are in that person’s custody or under that person’s control, or
 - (b) to provide to the Authority, at a time and place and in the form and manner specified in the notice (which must be reasonable), information specified or described in the notice.
- (3) The requirements imposed by a notice under subsection (2) are enforceable by the Authority under section 18.
- (4) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duty imposed by this section).
- (5) In subsection (4) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).]

Textual Amendments

F416 S. 27ZA inserted (10.5.2022 for specified purposes) by [Environment Act 2021 \(c. 30\)](#), [ss. 85](#), [147\(3\)\(4\)](#) (with [s. 144](#)); [S.I. 2022/518](#), [regs. 1\(2\)](#), [2\(e\)](#)

[^{F417}*The Consumer Council for Water*

Textual Amendments

F417 Ss. 27A, 27B and preceding cross-heading inserted (1.8.2005 for specified provisions and purposes and 1.10.2005 for further specified provisions and purposes and 1.4.2006 otherwise) by [Water Act 2003 \(c. 37\)](#), [ss. 35\(1\)](#), [105\(3\)](#); [S.I. 2005/968](#), [art. 3\(a\)](#); [S.I. 2005/2714](#), [arts. 2\(a\)](#), [4\(b\)](#) (with [Sch. para. 8](#))

27A Establishment of the Council and committees

- (1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as “the Council”) for the purpose of carrying out the functions of the Council under this Act.
- (2) In Welsh the Council may be known as “Cyngor Defnyddwyr Dŵr”.

Status: This version of this Act contains provisions that are prospective.

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- (3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) The Council shall establish such committees of the Council—
 - (a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and
 - (b) as the Secretary of State may direct, for other relevant undertakers.
- (5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.
- (6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.
- (7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—
 - (a) establish such committees for relevant undertakers as it considers appropriate; or
 - (b) alter the allocation of a relevant undertaker to a committee established under this section.
- (8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.
- (9) A committee established under this section is referred to in this Act as a “regional committee”.
- (10) The purposes of a regional committee shall be—
 - (a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;
 - (b) such other purposes as the Council may determine.
- (11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.
- (12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.
- (13) In this Chapter—

“consumers” includes both existing and future consumers;

“the interests of consumers” means the interests of consumers in relation to—

 - (a) the supply of water by means of a water undertaker’s supply system to premises either by water undertakers or by [^{F418}water supply licensees] acting in their capacity as such; and
 - (b) the provision of sewerage services [^{F419}either by sewerage undertakers or by sewerage licensees acting in their capacity as such]; and

“consumer matter” means any matter connected with the interests of consumers.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

- F418** Words in s. 27A(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 40\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F419** Words in s. 27A(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 40\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

27B Co-operation between Council and other authorities

- (1) This section imposes duties on—
 - (a) the Authority and the Council;
 - (b) the Council and the Secretary of State; and
 - (c) the Council and the Assembly.
- (2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—
 - (a) co-operation and the exchange of information between them; and
 - (b) the consistent treatment of matters which affect both of them.
- (3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.
- (4) Arrangements under this section shall be kept under review by the parties.
- (5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.
- (6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).
- (7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.]

[^{F420}General functions of the Council

Textual Amendments

- F420** Ss. 27C-27G and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\), ss. 43\(1\), 105\(3\)](#); [S.I. 2005/2714, art. 2\(e\)](#) (with [Sch. 2 para. 8](#))

27C The interests of consumers

- (1) In considering the interests of consumers, the Council shall have regard to the interests of—
 - (a) individuals who are disabled or chronically sick;
 - (b) individuals of pensionable age;
 - (c) individuals with low incomes;
 - (d) individuals residing in rural areas; ^{F421} ...

Status: This version of this Act contains provisions that are prospective.

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- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are [^{F422}household premises (as defined in section 17C)]^{F423} and
- (f) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are below the consumption threshold and in the area of a relevant undertaker whose area is wholly or mainly in Wales.]

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

- (2) For the purposes of subsection (1) above, premises are [^{F424}below the consumption threshold if the total quantity] of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.

Textual Amendments

- F421** Word in s. 27C(1) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(2\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F422** Words in s. 27C(1)(e) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(2\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F423** S. 27C(1)(f) and word inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(2\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F424** Words in s. 27C(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

27D Acquisition and review of information

The Council shall have the function of obtaining and keeping under review—

- (a) information about consumer matters (including matters affecting consumers in different areas); and
- (b) information about the views of consumers on such matters (including the views of consumers in different areas).

27E Provision of advice and information to public authorities

- (1) The Council shall have the function of—

- (a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and
- (b) representing the views of consumers on such matters (including the views of consumers in different areas),

to public authorities, companies holding an appointment under Chapter 1 of this Part, [^{F425}water supply licensees, sewerage licensees] and other persons whose activities may affect the interests of consumers.

- (2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

Status: This version of this Act contains provisions that are prospective.

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- (3) Information relating to a particular individual or body may be disclosed if—
- (a) the individual or body has consented to the disclosure;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
- (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the [F426CMA] or any other public authority.
- (8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

Textual Amendments

- F425** Words in s. 27E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 42](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F426** Word in s. 27E(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 82](#) (with [art. 3](#))

27F Provision of information to consumers

- (1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.
- (2) That function may be exercised by—
- (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
 - (b) furnishing information to any consumer (whether in response to a request or otherwise).

Status: This version of this Act contains provisions that are prospective.

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- (3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.
- (4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

27G Power to publish information and advice about consumer matters

- (1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
 - (a) the individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).

^{F427}27H Provision of information to the Council

- (1) The Council may direct—
 - (a) the Authority;
 - (b) a company holding an appointment under Chapter 1 of this Part; ^{F428} ...
 - (c) [^{F429}a water supply licensee, or],

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[a sewerage licensee,]
^{F430}(d)

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

- (2) A body [^{F431}or person] to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.
- (3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body [^{F432}or person] to whom the direction is given.
- (4) If a body [^{F433}or person] to whom a direction under this section is given fails to comply with the direction [^{F434}the body or person] shall, if so required by the Council, give notice to the Council of the reasons for [^{F435}the] failure.

Textual Amendments

- F427** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))
- F428** Word in s. 27H(1)(b) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(a)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F429** Words in s. 27H(1)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(b)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F430** S. 27H(1)(d) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(c)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F431** Words in s. 27H(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F432** Words in s. 27H(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F433** Words in s. 27H(4) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F434** Words in s. 27H(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(4)(a)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F435** Word in s. 27H(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(4)(b)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

271 Publication of notice of reasons

- (1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) that individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
- (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

Textual Amendments

F427 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

27J Provision of information by the Council

- (1) Any of—
- (a) the Authority;
 - (b) the Secretary of State; or
 - (c) the Assembly,
- may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.
- (2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.
- (3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

Textual Amendments

F427 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44, 105(3)**; [S.I. 2005/2714](#), **art. 2(d)** (with [Sch. 2 para. 8](#))

27K Sections 27H to 27J: supplementary

- (1) The Secretary of State may make regulations prescribing—
- (a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or
 - (b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.
- (2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment [^{F436}, a water supply licensee or a sewerage licensee] to comply with a direction under section 27H above to the Authority.
- (3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.
- (4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—
- (a) consider any representations made by either party;
 - (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
 - (c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.
- (5) The duty of a company holding an appointment [^{F437}, a water supply licensee and a sewerage licensee] to comply with an order under this section shall be enforceable by the Authority under section 18 above.
- (6) A notice under subsection (4) above may be published by either party to the reference.
- (7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.]

Textual Amendments

F427 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44, 105(3)**; [S.I. 2005/2714](#), **art. 2(d)** (with [Sch. 2 para. 8](#))

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F436** Words in s. 27K(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 44\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F437** Words in s. 27K(5) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 44\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

^{x1}28 Customer service committees.

F438

Editorial Information

- X1** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F438** S. 28 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 35(4), 105(3), [Sch. 9 Pt. 2](#); S. I. 2005/2714, [art. 2\(a\)\(m\)](#)

^{x2}^{F439}29 Consumer complaints

- (1) This section applies to a complaint which any person (“the complainant”) has against a relevant undertaker [^{F440}, a water supply licensee or a sewerage licensee] in relation to any matter connected with the functions of that undertaker or the services provided [^{F441}by that water supply licensee or that sewerage licensee].
- (2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.
- (3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.
- (4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.
- (5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—
 - (a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided^{F442}—
 - (i) by a water supply licensee using the supply system of a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) by a sewerage licensee using the supply system of a sewerage undertaker whose area is wholly or mainly in Wales]; or
 - (b) to the Secretary of State, in any other case.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.
- (7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.
- (8) The Council is not required to investigate any matter if it appears to the Council that—
- (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker [^{F443}, the water supply licensee or the sewerage licensee];
 - (b) the relevant undertaker [^{F444}, the water supply licensee or the sewerage licensee] has not been given a reasonable opportunity to deal with the complaint; or
 - (c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.
- (9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker [^{F445}, the water supply licensee or the sewerage licensee] about anything to which the complaint relates.
- (10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.
- (11) A report under subsection (10) above may include information about—
- (a) any representations made by the Council under subsection (9) above; and
 - (b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.
- (12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.
- (13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—
- (a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and
 - (b) to have been made by or on behalf of the complainant,
- that person shall refer the matter to the Council.]

Editorial Information

- X2** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F439** S. 29 substituted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 46(1)**, 105(3); S.I. 2005/2714, **art. 2(f)** (with [Sch. paras. 3, 8](#))
- F440** Words in s. 29(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(2)(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F441** Words in s. 29(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(2)(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F442** Words in s. 29(5)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F443** Words in s. 29(8)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F444** Words in s. 29(8)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F445** Words in s. 29(9) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

^{F446}29A **Power of Council to investigate other matters**

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.
- (2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.
- (3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the [^{F447}CMA], the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (4) Subject to subsection (5) below, the Council may—
- send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
 - publish any such report in such manner as the Council thinks appropriate.
- (5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
- shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and
 - shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.
- (6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—
- that individual or body has consented to the disclosure;
 - it is information that is available to the public from some other source; or
 - it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—
 - (a) that individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

- (8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

- (9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

- (10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.]

Textual Amendments

F446 S. 29A inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 47, 105(3); S.I. 2005/2714, art. 2(g) (with Sch. 2 para. 8)

F447 Word in s. 29A(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 83](#) (with art. 3)

X³30 Duties of Director with respect to complaints

F448]

Editorial Information

X3 The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F448 S. 30 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 46(2), 105(3), [Sch. 9 Pt. 2](#); S.I. 2005/2714, art. 2(f)(m) (with Sch. paras. 3, 8)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F449}Further functions of Authority

Textual Amendments

F449 Ss. 30ZA, 30ZB and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 43(2), 105(3)**; S.I. 2005/2714, **art. 2(c)** (with Sch. 2 para. 8)

30ZA Duty to consult Council

- (1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—
 - (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
 - (b) the Authority considers that it would be clearly inappropriate to consult the Council.
- (2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

30ZB Copies of notices

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.

^{x4}[**^{F450}Determination of disputes by the Director.**

30A

- (1) In this section “relevant dispute” means a dispute which, by virtue of any provision of this Act, may be referred to the Director for determination under this section.
- (2) The practice and procedure to be followed in connection with the reference to the Director of any relevant dispute shall be such as he considers appropriate.
- (3) Where the Director determines any dispute under this section he shall give his reasons for reaching his decision with respect to the dispute.
- (4) On making a determination under this section the Director may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Director) as he considers appropriate.
- (5) A determination under this section—
 - (a) shall be final; and
 - (b) shall be enforceable as if it were a judgment of [^{F451}the county court], in so far as it includes such provision as to costs or expenses as is mentioned in subsection (4) above.
- (6) The Director shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.
- (7) In including in any determination under this section any provision as to costs or expenses, the Director shall have regard to the conduct and means of the parties and any other relevant circumstances.]]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Editorial Information

- X4** The insertion of the new cross-heading "Further functions of Authority" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F450** S. 30A inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.34](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II
- F451** Words in s. 30A(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 52](#); [S.I. 2014/954](#), [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

Provisions with respect to competition

31 Functions of Director with respect to competition.

- (1) ^{F452}
- ^{F453}(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the ^{F454}CMA].
- (2A) This subsection applies to the functions of the ^{F455}CMA] under Part 4 of the 2002 Act (other than sections 166 ^{F456}171 and 174E]) so far as ^{F457}those functions—
- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
 - (b) relate to] commercial activities connected with the supply of water or the provision of sewerage services.]
- ^{F458}(3) The Director shall be entitled to exercise, concurrently with the ^{F459}CMA], the functions of the ^{F459}CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) ^{F460}, 40B(1) to (4)] and 51), so far as relating to —
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
 - (b) conduct of the kind mentioned in section 18(1) of that Act, ^{F461}or]
- ^{F462}(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),]
- which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.]
- ^{F463}(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) ^{F464}above—
- (a) references] in Part 4 of the 2002 Act to the ^{F465}CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 ^{F466}, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise ^{F467}requires);
 - (b) references in that Part to section 5 of the 2002 Act are to be construed as including references to section 27(1) and (2) of this Act.]

Status: This version of this Act contains provisions that are prospective.

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[^{F468}(4ZA) Section 130A of the 2002 Act is to have effect in its application in relation to the Authority] by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

“(1) Where the Water Services Regulation Authority—

(a) is proposing to carry out its functions under section 27(1) and (2) of the Water Industry Act 1991 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

(b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the supply of water or the provision of sewerage services (within the meaning given by section 219(1) of the Water Industry Act 1991)”.]

^{F469}[(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [^{F470}the CMA] are to be read as including a reference to the Director ([^{F471}except in sections 31D(1) to (6), 38(1) to (6)][^{F460}, 40B(1) to (4)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[^{F472}(5) Before the [^{F473}CMA] or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the [^{F473}CMA] nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]

(7) It shall be the duty of the Director, for the purpose of assisting [^{F474}a CMA group] in carrying out an investigation on a [^{F475}market investigation reference made by the Authority (under section 131 of the 2002 Act)] by virtue of subsection (2) ^{F476} . . . above, to give to the [^{F477}group] —

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the [^{F477}group] for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the [^{F477}group] without any such request; and

(b) any other assistance which the [^{F477}group] may require, and which it is within his power to give, in relation to any such matters;

and the [^{F477}group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

[^{F478}(7A) In subsection (7) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

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- (8) If any question arises as to whether subsection (2) or (3) above ^{F479} . . . applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) [^{F480}Part 4 of the 2002 Act]; or
- ^{F481}(b) Part I of the Competition Act 1998 ([^{F482}other than sections 31D(1) to (6), 38(1) to (6)][^{F483}, 40B(1) to (4)] and 51),]
- by or in relation to the Director on the ground that it should have been done by or in relation to [^{F484}the CMA] .
- ^{F485}(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [^{F486}CMA] included references to the Director.]
- (9) ^{F487}

Textual Amendments

- F452** S. 31(1) ceases to have effect (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, Sch. 25 para. (8) (a), Sch. 26; [S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provisions in art. 3)
- F453** S. 31(2)(2A) substituted (20.6.2003) for s. 31(2) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, **Sch. 9 para. 19(2)**; [S.I. 2003/ 1397, {art. 2\(1\)}](#), Sch.
- F454** Word in s. 31(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(2)** (with art. 3)
- F455** Word in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(3)(a)** (with art. 3)
- F456** Words in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(3)(b)** (with art. 3)
- F457** Words in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(3)(c)** (with art. 3)
- F458** S. 31(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, **Sch. 2 para.4(2)(a)**
- F459** Word in s. 31(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(4)** (with art. 3)
- F460** Words in s. 31(3)(4A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 5**; [S.I. 2014/416, art. 2\(1\)\(f\)](#) (with Sch.); [S.I. 2014/416, art. 2\(1\)\(f\)](#) (with Sch.)
- F461** Word in s. 31(3)(b) inserted (31.12.2020) by [S.I. 2019/93, Sch. 1 para. 4\(2\)](#) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **16**)
- F462** S. 31(3)(c) substituted for s. 31(3)(c)(d) by [S.I. 2019/93, Sch. 1 para. 4\(3\)](#) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **16**)
- F463** S. 31(4) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, **Sch. 9 para. 19(3)**; [S.I. 2003/ 1397, {art. 2\(1\)}](#), Sch.
- F464** Words in s. 31(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(5)(a)** (with art. 3)

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- F465** Word in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(b)** (with art. 3)
- F466** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(c)** (with art. 3)
- F467** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(d)** (with art. 3)
- F468** S. 31(4ZA) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(6)** (with art. 3)
- F469** S. 31(4A) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(8)** (with s. 73); S.I. 1997/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F470** Words in s. 31(4A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(7)** (with art. 3)
- F471** Words in s. 31(4A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), **reg. 5**, Sch. 2 para. 4(2)(b)
- F472** S. 31(5)(6) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(4)**; S.I. 2003/1397, art. 2(1), Sch.
- F473** Word in s. 31(5)(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(8)** (with art. 3)
- F474** Words in s. 31(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(a)(i)** (with art. 3)
- F475** Words in s. 31(7) substituted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(a)(ii)** (with art. 3)
- F476** Words in s. 31(7) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. II para. 5(5)(11), **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F477** Word in s. 31(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(b)** (with art. 3)
- F478** S. 31(7A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(10)** (with art. 3)
- F479** Words in s. 31(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 178, 179, Sch. 9 para. 19(5)(a), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 10)
- F480** Words in s. 31(8) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(5)(b)**; S.I. 2003/1397, art. 2(1), Sch.
- F481** S. 31(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(12)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F482** Words in s. 31(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 5, **Sch. 2 para. 4(2)(c)**
- F483** Words in s. 31(8)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 5**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F484** Words in s. 31(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(11)** (with art. 3)

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- F485** S. 31(8A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, Sch. 9 para. 19(6); S.I. 2003/1397, art. 2(1), Sch.
- F486** Word in s. 31(8A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(12) (with art. 3)
- F487** S. 31(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 278, 279, Sch. 9 para. 19(7), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with savings in art. 10)

Modifications etc. (not altering text)

- C64** S. 31(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), Sch. 10 para. 5(1) (with s. 73); S.I. 1998/2750, art. 2(1); S.I. 2000/344, art. 2 Sch.
- S. 31(3) amended (1.3.2000) by 1998 c. 41, ss. 54, 66(5), Sch. 10 Pt. I para. 5(1) (with s. 73); S.I. 2000/344, art. 2 Sch.

[^{F488}32 Duty to refer merger of water or sewerage undertakings.

[^{F489}Subject to sections 33 and 33A below,] it shall be the duty of the [^{F490}CMA to make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes] that it is or may be the case—

- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
- (b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.]

Textual Amendments

- F488** Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), ss. 70(1), 279; S.I. 2004/3233, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F489** Words in s. 32 substituted (18.12.2015) by Water Act 2014 (c. 21), ss. 14(1), 94(3); S.I. 2015/1938, art. 2(d)
- F490** Words in s. 32 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 85 (with art. 3)

[^{F491}33 Exclusion of small mergers from duty to make reference.

- (1) The [^{F492}CMA] shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the [^{F492}CMA] —
 - (a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or
 - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.
- (2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—

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- (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or
 - (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.
- (3) For the purposes of subsection (1)(b) above—
- (a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and
 - (b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.
- (4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) above may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and
 - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the [^{F493}CMA] to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).
- [^{F494}(6A) The CMA must—
- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
 - (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.]
- (7) The Secretary of State may by regulations amend subsection (1) above so as—
- (a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or
 - (b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.
- (8) Regulations under subsection (7) above—
- (a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and
 - (b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.
- (9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.]

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Textual Amendments

- F491** Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), ss. 70(1), 279; S.I. 2004/3233, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)
- F492** Word in s. 33(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 86 (with art. 3)
- F493** Word in s. 33(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 86 (with art. 3)
- F494** S. 33(6A) inserted (14.7.2014) by Water Act 2014 (c. 21), ss. 15, 94(2)(c)

[^{F495}33A Exceptions to duty to make reference

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—
 - (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a merger reference;
 - (b) the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
 - (c) the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that—
 - (a) the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
 - (b) the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the CMA must—
 - (a) request the Authority to give an opinion under section 33B, and
 - (b) consider that opinion.
- (4) The CMA may not make a merger reference under section 32 if—
 - (a) it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
 - (b) it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference.
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA.

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Textual Amendments

F495 Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

33B Opinion of the Authority

- (1) Where the CMA makes a request under section 33A(3), the Authority must give its opinion on—
 - (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and
 - (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger.
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made.
- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

Textual Amendments

F495 Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

33C Statement of methods

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
- (2) The statement must in particular set out—
 - (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
 - (b) the relative weight to be given to the criteria.
- (3) Before preparing or altering the statement, the Authority must consult—
 - (a) the Secretary of State,
 - (b) the Welsh Ministers,
 - (c) the CMA, and
 - (d) relevant undertakers.
- (4) The Authority must from time to time publish the statement as it has effect for the time being.]

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Textual Amendments

F495 Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); [S.I. 2015/773](#), art. 2(2)(a); [S.I. 2015/1938](#), art. 2(d)

[^{F496}33D Undertakings in lieu of a merger reference

- (1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.
- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—
 - (a) is to disregard the effect of section 33A(4)(a), but
 - (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.
- (4) In proceeding under subsection (1), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises.
- (5) In proceeding under subsection (1), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.
- (6) Before deciding whether or not to accept an undertaking under this section, the CMA must—
 - (a) request the Authority to give its opinion on the effect of the undertakings offered, and
 - (b) consider the Authority's opinion.
- (7) Where the CMA makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered.
- (8) An undertaking under this section—
 - (a) comes into force when accepted;
 - (b) may be varied or superseded by another undertaking under this section;
 - (c) may be released by the CMA.
- (9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking.
- (10) The CMA must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.

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- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of subsection (7) as references to what the Authority believes.]

Textual Amendments

F496 S. 33D inserted (18.12.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 14(3)**, 94(3); S.I. 2015/1938, art. 2(d)

[^{F497}34 Application of provisions of Enterprise Act 2002

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.]

Textual Amendments

F497 Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in **arts. 3-5**)

[^{F498}35 Construction of merger provisions.

- (1) In this Chapter (including Schedule 4ZA)—
“enterprise” has the same meaning as in Part 3 of the 2002 Act; and
“water enterprise” means an enterprise carried on by a [^{F499}relevant undertaker].
- (2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.
- (3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the [^{F500}CMA] or the Secretary of State, in a case in which, or to any extent to which, the [^{F500}CMA] is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.
- (4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.
- (5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the [^{F501}CMA] is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.]

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Textual Amendments

- F498** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\), ss. 70\(1\), 279; S.I. 2004/3233, art. 2, Sch.](#) (with transitional provisions and savings in [arts. 3-5](#))
- F499** S. 35(1): words in definition of "water enterprise" substituted (29.12.2004) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(2\); S.I. 2004/2528, art. 3](#) (with savings in [art. 4](#))
- F500** Word in s. 35(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 87](#) (with [art. 3](#))
- F501** Word in s. 35(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 87](#) (with [art. 3](#))

^{F502}Disclosure of arrangements for remuneration

Textual Amendments

- F502** S. 35A and preceding cross-heading inserted (1.10.2004) by [Water Act 2003 \(c. 37\), ss. 50, 105\(3\); S.I. 2004/2528, art. 2\(g\)](#)

35A Remuneration and standards of performance

- (1) This section applies to any company holding an appointment under Chapter 1 of this Part.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
 - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and
 - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.
- (4) A description under subsection (2)(b) above must include in particular—
 - (a) a statement of when the arrangements were made;
 - (b) a description of the standards of performance in question;
 - (c) an explanation of the means by which the standards of performance are assessed; and
 - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) above must also state—
 - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or
 - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

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and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.

- (6) A description under subsection (5) above must—
- (a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and
 - (b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2) above—
- (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
 - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
- “remuneration” in relation to a director of a company—
- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
 - (b) includes remuneration in respect of any of his services while a director of the company;
- “standards of performance”, in relation to any company, include any standards which are—
- (a) set by or under any conditions of the company’s appointment under Chapter 1 of this Part;
 - (b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or
 - (c) set or agreed to by the company.
- (11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.]

Modifications etc. (not altering text)

C65 S. 35A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 9** (with reg. 1(1)(c))

Status: This version of this Act contains provisions that are prospective.

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CHAPTER IV

INTERPRETATION OF PART II

36 Interpretation of Part II.

- (1) In this Part—
- [^{F503}“the 1973 Act” means the ^{M9}Fair Trading Act 1973; and]
“the 1980 Act” means the ^{M10}Competition Act 1980.
[^{F504}“the 2002 Act” means the Enterprise Act 2002;]
- (2) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following, that is to say—
- (a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or
- (b) a variation by virtue of which the area for which a company holds an appointment under Chapter I of this Part is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.
- (3) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I of this Part—
- (a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises—
- (i) are supplied with water by means of a connection with a distribution main of that company; or
- ^{F505}(ii)
- and
- (b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises—
- (i) are drained by means of a relevant sewer [^{F506}or drain] ; or
- ^{F507}(ii)
- (4) In this section—
- “distribution main” means a water main that is not a trunk main; and
- [^{F508}“relevant sewer or drain”, in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—
- (a) a public sewer or lateral drain vested in that company;
- (b) a sewer or lateral drain in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;
- (c) a sewer or lateral drain in relation to which that company has entered into an agreement under section 104 below.]

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Textual Amendments

- F503** Words in s. 36(1) ceased to have effect (29.12.2004) and repealed (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 278, 279, **Sch. 9 para. 8(a)**, Sch. 26; S.I. 2004/3233, **art. 2**, Sch. (with arts. 3-5)
- F504** Words in s. 36(1) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, **Sch. 9 para. 8(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F505** S. 36(3)(a)(ii) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 40(5)(a), 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F506** Words in s. 36(3)(b)(i) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(2)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with **art. 6**, Sch. 3)
- F507** S. 36(3)(b)(ii) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 40(5)(b), 56(7), **Sch.2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F508** S. 36(4): definition substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(2)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with **art. 6**, Sch. 3)

Marginal Citations

- M9** 1973 c. 41.
M10 1980 c. 21.

[^{F509}PART 2A

REGULATION OF PROVISION OF INFRASTRUCTURE

Textual Amendments

- F509** Pt. 2A inserted (1.10.2010 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 35(1)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.

36A Regulations

- (1) The Minister may make regulations about the provision of infrastructure for the use of water undertakers or sewerage undertakers.
- (2) The regulations may in particular—
 - (a) confer regulatory functions on the Authority;
 - (b) apply provisions of Part 2 with or without modification;
 - (c) make provision similar to a provision of Part 2.
- (3) The regulations must specify the activities to which they apply; in particular, the regulations may—
 - (a) apply to designing, constructing, owning and operating infrastructure, and
 - (b) define “infrastructure”.
- (4) The regulations—
 - (a) may make provision only in relation to projects or works that in the Minister's opinion are of a size or complexity that threatens the undertaker's ability to provide services for its customers, and

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- (b) in conferring powers, must restrict them to projects or works that, in the opinion of the person exercising the power, are of a size or complexity that threatens the undertaker's ability to provide services for its customers.
- (5) Sections 36B to 36D and 36F specify other kinds of provision that the regulations may make; and in those sections “infrastructure project” means a project, or part of a project, in connection with any of the things specified in subsection (3)(a).

36B Tendering

- (1) Regulations under section 36A may—
- (a) allow the Minister to specify one or more infrastructure projects which must be put out to tender;
 - (b) allow the Authority to specify one or more infrastructure projects which must be put out to tender;
 - (c) allow the Minister to delegate the power under paragraph (a) to the Authority.
- (2) The regulations must prohibit a water undertaker or sewerage undertaker from undertaking an infrastructure project which is to be put out to tender in accordance with the regulations.
- (3) But the regulations may permit or require a water or sewerage undertaker to undertake preparatory work of a specified kind or for a specified purpose.
- (4) The regulations must make provision about the extent to which companies associated with a water undertaker or sewerage undertaker (as defined by the regulations) are permitted to bid in a tender process.
- (5) The regulations must specify the procedure to be followed in a tender process; in particular, the regulations—
- (a) may require the undertaker to consult the Authority or the Minister about the terms on which an infrastructure project is put out to tender;
 - (b) may specify factors to be taken into account in considering bids;
 - (c) must provide for the water or sewerage undertaker responsible for the tender process to determine which bid to accept (if any).

36C Criteria for tendering

- (1) Regulations under section 36A must specify criteria to be used by the Minister or the Authority in determining whether to exercise a power by virtue of section 36B(1).
- (2) The regulations may—
- (a) provide that the Authority must consult the Minister before exercising a power by virtue of section 36B(1);
 - (b) require the Authority to publish guidance to be followed by it in determining whether to exercise a power by virtue of section 36B(1).

36D Designation as an infrastructure provider

- (1) Regulations under section 36A may enable the Minister or the Authority to designate as an “infrastructure provider” a person who appears to the Minister or Authority to be wholly or partly responsible for an infrastructure project that was put out to tender in accordance with regulations by virtue of section 36B.

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- (2) The regulations may—
- (a) confer powers and impose duties on designated infrastructure providers (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act on water or sewerage undertakers),
 - (b) confer powers and impose duties on the Authority, the Minister or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act in respect of water or sewerage undertakers),
 - (c) relieve water or sewerage undertakers of specified duties to a specified extent,
 - (d) provide for designation to be conditional,
 - (e) provide, or enable the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under paragraph (a),
 - (f) include provision about enforcement of powers, duties, conditions and limitations, and
 - (g) include provision for variation or revocation of designation.

36E Ministerial responsibility

- (1) In this Part “the Minister” means—
- (a) the Secretary of State, in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers,
 - (b) the Welsh Ministers, in relation to infrastructure which is provided or to be provided for the use of one or more Welsh undertakers, and
 - (c) the Secretary of State and the Welsh Ministers acting jointly in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers and one or more Welsh undertakers.
- (2) In this section and section 36F—
- (a) “an English undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in England, and
 - (b) “a Welsh undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in Wales.

36F Cross-border infrastructure projects

- (1) Regulations under section 36A may make provision about cross-border infrastructure projects.
- (2) In this section “cross-border infrastructure project” means an infrastructure project which—
- (a) relates to infrastructure in Wales which is for the use of an English undertaker, or
 - (b) relates to infrastructure in England which is for the use of a Welsh undertaker.
- (3) Regulations made by the Secretary of State about cross-border infrastructure projects—
- (a) may confer functions on the Welsh Ministers, and

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- (b) must require the Secretary of State or the Authority to consult the Welsh Ministers before exercising any power under section 36B(1) to specify projects which must be put out to tender.
- (4) Regulations made by the Welsh Ministers about cross-border infrastructure projects—
 - (a) may confer functions on the Secretary of State, and
 - (b) must require the Welsh Ministers or the Authority to consult the Secretary of State before exercising any power under section 36B(1) to specify projects which must be put out to tender.

36G Regulations: procedure

- (1) Regulations under section 36A may not be made unless a draft has been laid before and approved by resolution of—
 - (a) each House of Parliament, in the case of regulations made by the Secretary of State,
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers, or
 - (c) each House of Parliament and the National Assembly for Wales, in the case of regulations made by the Secretary of State and the Welsh Ministers acting jointly.
- (2) Before laying a draft under subsection (1) the Minister must consult persons who in the Minister's opinion represent interests likely to be affected by the regulations.
- (3) Section 213 applies to regulations made by the Welsh Ministers under section 36A as it applies to regulations made by the Secretary of State.]

PART III

WATER SUPPLY

Modifications etc. (not altering text)

- C66** Part III: definition of "consumer" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 176\(7\)](#), [225\(2\)](#).
- C67** Part III: definition of "water fittings" applied (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), [ss. 15\(1\)](#), [17\(2\)](#).
- C68** Pt. 3 modified (E.) (24.3.2011) by [The Hull and Goole Port Health Authority Order 2011 \(S.I. 2011/939\)](#), [arts. 1\(1\)](#), [9](#), [Sch. 2](#)
- C69** Pt. 3 functions transferred and modified (14.6.2016) by [The River Tees Port Health Authority Order 2016 \(S.I. 2016/644\)](#), [arts. 1\(1\)](#), [9](#), [Sch. 2](#)
- C70** Pt. 3: functions etc. assigned to the port health authority and modified (31.3.2017) by [The Weymouth Port Health Authority Order 2017 \(S.I. 2017/558\)](#), [arts. 1\(1\)](#), [9](#), [Sch. 2](#) (with [art. 9\(3\)](#))

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CHAPTER I

GENERAL DUTIES OF WATER UNDERTAKERS [^{F510}ETC]

Textual Amendments

F510 Word in Pt. 3 Ch. 1 heading inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 46](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

37 General duty to maintain water supply system etc.

- (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—
- for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
 - for maintaining, improving and extending the water undertaker's water mains and other pipes,
- as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.
- (2) The duty of a water undertaker under this section shall be enforceable under section 18 above—
- by the Secretary of State; or
 - with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 38 below and shall not be in any way qualified by any such provision.

Modifications etc. (not altering text)

- C71** S. 37 saved (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 19\(2\)](#), 225(2).
- C72** S. 37 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 10\(1\)](#) (with reg. 1(1)(c))

[^{F511}37A Water resources management plans: preparation and review

- (1) It shall be the duty of each water undertaker to prepare [^{F512}, publish] and maintain a water resources management plan.
- (2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.
- (3) A water resources management plan shall address in particular—

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- (a) the water undertaker’s estimate of the quantities of water required to meet those obligations;
 - (b) the measures which the water undertaker intends to take or continue for the purpose set out in subsection (2) above (also taking into account for that purpose the introduction of water into the undertaker’s supply system by or on behalf of [^{F513}water supply licensees]);
 - (c) the likely sequence and timing for implementing those measures; and
 - (d) such other matters as the Secretary of State may specify in directions [^{F514}(and see also section 37AA).]
- (4) The procedure for preparing [^{F515}and publishing] a water resources management plan (including a revised plan) is set out in section 37B below.
- (5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall —
- (a) review its plan; and
 - (b) send a statement of the conclusions of its review to the Secretary of State.
- (6) The water undertaker shall prepare [^{F516}and publish] a revised plan in each of the following cases—
- (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
 - (b) if directed to do so by the Secretary of State;
 - (c) in any event, not later than the end of the period of five years beginning with the date when the plan (or revised plan) was last published,
- and shall follow the procedure in section 37B below (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).
- (7) The Secretary of State may give directions specifying—
- (a) the form which a water resources management plan must take;
 - (b) the planning period to which a water resources management plan must relate.
- (8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—
- (a) the Environment Agency [^{F517}, if the plan (or revised plan) would affect water resources in England;]
 - ^{F518}(aa) [the NRBW, if the plan (or revised plan) would affect water resources in Wales;]
 - (b) the Authority;
 - (c) the Secretary of State; and
 - (d) any [^{F519}water supply licensee] which supplies water to premises in the undertaker’s area via the undertaker’s supply system.
- [^{F520}(9) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—
- (a) the Environment Agency, if the revised plan would affect water resources in England, and
 - (b) the NRBW, if the revised plan would affect water resources in Wales.
- (9A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—
- (a) the NRBW, if the revised plan would affect water resources in Wales, and

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(b) the Environment Agency, if the revised plan would affect water resources in England.]

(10) In this section, in relation to a water resources management plan, “published” means published in accordance with section 37B(8)(a) below.

Textual Amendments

- F511** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), [ss. 62](#), [105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984](#), [art. 2\(q\)](#) (with [art. 3](#), [Sch.](#)); [S.I. 2007/1021](#), [art. 2\(a\)](#)
- F512** Word in s. 37A(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(2\)\(a\)](#), [94\(2\)\(g\)](#)
- F513** Words in s. 37A(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 47\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F514** Words in s. 37A(3) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 27\(2\)](#), [94\(2\)\(g\)](#)
- F515** Words in s. 37A(4) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(2\)\(b\)](#), [94\(2\)\(g\)](#)
- F516** Words in s. 37A(6) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(2\)\(c\)](#), [94\(2\)\(g\)](#)
- F517** Words in s. 37A(8)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 229\(2\)\(a\)](#) (with [Sch. 7](#))
- F518** S. 37A(8)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 229\(2\)\(b\)](#) (with [Sch. 7](#))
- F519** Words in s. 37A(8)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 47\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F520** S. 37A(9)(9A) substituted for s. 37A(9) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 229\(3\)](#) (with [Sch. 7](#))

Modifications etc. (not altering text)

- C73** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\)](#) ([7](#)), [105\(3\)](#)); [S.I. 2004/2528](#), [art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021](#), [art. 2\(c\)](#)

Water resources management plans for England: resilience

- F521** **37AA**
- (1) The Secretary of State may give a direction about the basis on which a water resources management plan for England is to be prepared.
- (2) A direction under this section may be given only where the Secretary of State considers it appropriate to do so with a view to securing that a water undertaker is able to meet the need for the supply of water to consumers in particular circumstances.
- (3) A direction under this section may, in particular, require a plan to be prepared on the basis of a specified assumption, including—
- an assumption as to whether, and how often, specified circumstances are likely to arise;
 - an assumption that a specified power would or would not be exercised by the water undertaker or another person in specified circumstances.
- (4) Before giving a direction under this section, the Secretary of State must consult—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) the Authority,
- (b) the Welsh Ministers,
- (c) each water undertaker to which the direction would apply,
- (d) the Environment Agency,
- (e) the NRBW, and
- (f) such other persons as the Secretary of State considers appropriate.

(5) In this section—

“specified” means specified in a direction under this section;

“water resources management plan for England” means a water resources management plan prepared by a water undertaker whose area is wholly or mainly in England.]

Textual Amendments

F511 Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003](#) (c. 37), **ss. 62**, 105(3); [S.I. 2004/2528](#), **art. 2(j)** (with [art. 4](#)); [S.I. 2005/2714](#), **art. 2(i)** (with [Sch. paras. 6, 8](#)); [S.I. 2006/984](#), **art. 2(q)** (with [art. 3](#), [Sch.](#)); [S.I. 2007/1021](#), **art. 2(a)**

F521 S. 37AA inserted (14.7.2014) by [Water Act 2014](#) (c. 21), **ss. 27(3)**, 94(2)(g)

37B Water resources management plans: publication and representations

(1) A water undertaker shall—

- (a) send a draft water resources management plan to the Secretary of State;
- (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
- (c) give the Secretary of State the name of each such other person and his address for service of a notice under subsection (2)(a) below.

(2) If the water undertaker states that it so appears in relation to any such information, the Secretary of State shall—

- (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless subsection (10) below applies, is required to be published under this section; and
- (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
 - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
 - (ii) of making representations to the Secretary of State for the purpose of justifying any such objection,

and shall determine, taking any objections and representations under paragraph (b) into account, whether the information is or is not commercially confidential.

(3) A water undertaker shall—

- (a) (subject to subsection (10) below) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) publish with it a statement—
 - (i) whether any information has been excluded from the published draft plan by virtue of subsection (10) below and, if it has, the general nature of that information; and
 - (ii) that any person may make representations in writing about the plan to the Secretary of State before the end of a period specified in the statement; and
 - (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.
- (4) The Secretary of State shall send to the water undertaker a copy of any representations he receives following publication of the draft plan under subsection (3) above and shall give it a reasonable period of time within which to comment on the representations.
- (5) The Secretary of State may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.
- (6) Regulations under subsection (5) above—
- (a) may provide for the Secretary of State to cause an inquiry or other hearing to be held in connection with the draft water resources management plan; and
 - (b) if they do so provide, may provide for subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) to apply with prescribed modifications to such an inquiry or hearing as they apply to inquiries under that section.
- (7) The Secretary of State may direct a water undertaker that its water resources management plan must differ from the draft sent to him under subsection (1) above in ways specified in his direction, and (subject to subsection (9) below) it shall be the duty of the water undertaker to comply with the direction.
- (8) The water undertaker shall—
- (a) (subject to subsection (10) below) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
 - (b) publish with it a statement whether any information has been excluded from the published plan by virtue of subsection (10) below and, if it has, the general nature of that information.
- (9) If the water undertaker considers that publishing a water resources management plan complying with a direction under subsection (7) above would mean including in the published plan any information (other than any information in relation to which the Secretary of State has already made a determination under subsection (2) above) which might be commercially confidential (as regards itself or another person)—
- (a) the water undertaker shall send the Secretary of State a notice saying so, and giving the Secretary of State the name of any such other person and his address for service of a notice under subsection (2)(a) above as applied by paragraph (b) below; and
 - (b) subsection (2) above shall apply in relation to that information as it applies in relation to the information referred to there;
- and the Secretary of State may either confirm his direction under subsection (7) above (which is to be treated as a new direction under subsection (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (10) The published version of a draft water resources management plan published under subsection (3)(a) above, and a water resources management plan published under subsection (8)(a) above, shall exclude any information which the Secretary of State—
- (a) has determined under subsection (2) above (or that subsection as applied by subsection (9) above) is commercially confidential; or
 - (b) directs the water undertaker to exclude on the ground that it appears to him that its publication would be contrary to the interests of national security.
- (11) Any steps to be taken by a water undertaker under this section shall be completed by such time or within such period as the Secretary of State may direct.

Textual Amendments

F511 Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\), ss. 62, 105\(3\)](#); S.I. 2004/2528, [art. 2\(j\)](#) (with [art. 4](#)); S.I. 2005/2714, [art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); S.I. 2006/984, [art. 2\(q\)](#) (with [art. 3, Sch.](#)); S.I. 2007/1021, [art. 2\(a\)](#)

Modifications etc. (not altering text)

C74 Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\), ss. 100\(3\) \(7\), 105\(3\)](#)); S.I. 2004/2528, [art. 2\(s\)](#) (with savings in [art. 4](#)); S.I. 2005/2714, [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); S.I. 2007/1021, [art. 2\(c\)](#)

37C Water resources management plans: provision of information

- (1) It shall be the duty of each [^{F522}water supply licensee] to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its water resources management plan.
- (2) In the event of any dispute between a water undertaker and a [^{F522}water supply licensee] as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above, the water undertaker shall identify in its statement under that paragraph any information—
- (a) provided by a [^{F522}water supply licensee] pursuant to subsection (1) above; and
 - (b) contained in the water undertaker's draft water resources management plan, which the [^{F522}water supply licensee] has (at the time of providing it to the water undertaker) specifically identified as being, in the [^{F523}water supply licensee's] opinion, commercially confidential.
- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
- (a) “unpublished information” means confidential information which—
 - (i) is provided to the water undertaker by a [^{F522}water supply licensee] under this section;

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (ii) relates to the affairs of any individual or to any particular business;
and
 - (iii) by virtue of section 37B above, is not published;
- (b) “the other consolidation Acts” has the same meaning as in section 206 below.

Textual Amendments

- F511** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), [ss. 62, 105\(3\)](#); [S.I. 2004/2528, art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714, art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984, art. 2\(q\)](#) (with [art. 3, Sch.](#)); [S.I. 2007/1021, art. 2\(a\)](#)
- F522** Words in s. 37C substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 48\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F523** Words in s. 37C(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 48\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

Modifications etc. (not altering text)

- C75** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672, Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\) \(7\)](#), [105\(3\)](#); [S.I. 2004/2528, art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714, art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021, art. 2\(c\)](#))

37D Water resources management plans: supplementary

- (1) Directions given under section 37A [^{F524} 37AA] or 37B above may be—
- (a) general directions applying to all water undertakers; or
 - (b) directions applying only to one or more water undertakers specified in the directions,
- and shall be given by an instrument in writing.
- (2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
- (3) The duties of—
- (a) a water undertaker under sections 37A to 37C above and under this section;
and
 - (b) a [^{F525} water supply licensee] under section 37C above,
- shall be enforceable by the Secretary of State under section 18 above.
- [The Minister may by order made by statutory instrument amend the period for the ^{F526}(4) time being specified in section 37A(6)(c).
- (5) In subsection (4), “the Minister” means—
- (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (6) A statutory instrument containing an order made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (7) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the Assembly.
- (8) Subsection (9) applies in relation to a statutory instrument containing both—
- (a) an order made by the Secretary of State under subsection (4), and
 - (b) an order made by the Welsh Ministers under subsection (4).
- (9) If in accordance with subsection (6) or (7) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
 - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
- the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.]]

Textual Amendments

- F511** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), **ss. 62**, 105(3); [S.I. 2004/2528](#), **art. 2(j)** (with art. 4); [S.I. 2005/2714](#), **art. 2(i)** (with Sch. paras. 6, 8); [S.I. 2006/984](#), **art. 2(q)** (with art. 3, Sch.); [S.I. 2007/1021](#), **art. 2(a)**
- F524** Word in s. 37D(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 27(4)**, 94(2)(g)
- F525** Words in s. 37D(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 49**; [S.I. 2016/465](#), **art. 2(m)**, **Sch. 1 para. 1(k)** (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F526** S. 37D(4)-(9) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(3)**, 94(2)(g)

Modifications etc. (not altering text)

- C76** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), **Sch. 2** (as amended by [Water Act 2003 \(c. 37\)](#), **ss. 100(3)** (7), 105(3); [S.I. 2004/2528](#), **art. 2(s)** (with savings in art. 4); [S.I. 2005/2714](#), **art. 2(k)** (with Sch. 2 para. 8); [S.I. 2007/1021](#), **art. 2(c)**)

38 Standards of performance in connection with water supply.

- (1) For the purpose-
- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Part are to amount to breaches of the duty imposed by section 37 above; or
 - (b) of supplementing that duty by establishing overall standards of performance in relation to that duty,
- the Secretary of State may, in accordance with section 39 below, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may, in accordance with section 39 below, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in his opinion, ought to be achieved in individual cases.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) Regulations under subsection (2) above may provide that if a water undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
- (a) include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
 - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.
- ^{F527}[(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.]

Textual Amendments

F527 S. 38(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 18](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

^{F528}**38ZA Standards of performance in connection with the supply of water: water supply licensees**

- (1) For the purpose of establishing overall standards of performance in connection with the supply of water by water supply licensees in accordance with their retail authorisations or restricted retail authorisations, the Minister may, in accordance with section 39ZA, by regulations—
- (a) impose requirements in connection with such supplies of water;
 - (b) provide for a requirement so imposed to be enforceable under section 18 by—
 - (i) the Minister, or
 - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Minister may, in accordance with section 39ZA, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in the Minister's opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a water supply licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
- (a) is affected by the failure, and
 - (b) is of a prescribed description.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
- (a) include in a standard of performance a requirement for a water supply licensee, in prescribed circumstances, to inform a person of that person's rights by virtue of any such regulations;
 - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a water supply licensee is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.
- (6) In this section—
- “the Minister” means—
- (a) the Secretary of State, in relation to supplies of water made in accordance with a retail authorisation;
 - (b) the Welsh Ministers, in relation to supplies of water made in accordance with a restricted retail authorisation;
- “prescribed” means prescribed by regulations made by the Minister.]

Textual Amendments

F528 S. 38ZA inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), ss. **29(1)**, 94(3); S.I. 2016/1007, art. 2(d)

[38A ^{F529} **Information with respect to levels of performance.**

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation paid by water undertakers under regulations under section 38(2) above; ^{F530} ...
 - ^{F531} [the compensation paid by water supply licensees under regulations under section 38ZA(2); and]
 - (b) the levels of overall performance achieved by water undertakers [^{F532} or water supply licensees] in connection with the provision of water supplies.
- (2) At such times as the Director may direct, each water undertaker shall give the following information to the Director—
- (a) as respects each standard prescribed by regulations under section 38(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
 - (b) as respects each standard established by regulations under section 38(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

^{F533} [At such times as the Authority may direct, each water supply licensee is to give the (2A) following information to the Authority—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) as respects each standard established by regulations under section 38ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
- (b) as respects each standard prescribed by regulations under section 38ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.]

[The requirements in subsections (2) and (2A) are enforceable by the Authority under ^{F534}(3) section 18.]

- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of water undertakers [^{F535}or water supply licensees].
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
 - (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

Textual Amendments

- F529** S. 38A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.27](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F530** Word in s. 38A(1) repealed (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(3\)\(a\)](#), 94(3); S.I. 2016/1007, art. 2(d)
- F531** S. 38A(aa) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(3\)\(b\)](#), 94(3); S.I. 2016/1007, art. 2(d)
- F532** Words in s. 38A(b) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(3\)\(c\)](#), 94(3); S.I. 2016/1007, art. 2(d)
- F533** S. 38A(2A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(4\)](#), 94(3); S.I. 2016/1007, art. 2(d)
- F534** S. 38A(3) substituted (1.1.2015 for specified purposes, 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(5\)](#), 94(3); S.I. 2014/3320, art. 2(2)(a); S.I. 2016/1007, art. 2(d)
- F535** Words in s. 38A(4) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(6\)](#), 94(3); S.I. 2016/1007, art. 2(d)

[^{F536}38B Publication of statistical information about complaints

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of water undertakers or [^{F537}water supply licensees] and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to water undertakers or [^{F538}water supply licensees] (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

- F536** S. 38B inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 45(1)**, 105(3); S.I. 2005/2714, **art. 2(e)** (with [Sch. para. 8](#))
- F537** Words in s. 38B(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 50(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F538** Words in s. 38B(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 50(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

39 Procedure for regulations under section 38.

- ^{F539}(A1) The Secretary of State may make regulations under section 38 above—
- (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
 - (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.]
- (1) ^{F540}Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 38 above if—
- ^{F541}(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—
 - (i) on every water undertaker specified in the application,^{F542} . . .
 - (ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;]
 - ^{F543}(iii) on the Council; and
 - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;]
 - (c) such period as the Secretary of State considers appropriate has been allowed for the making—
 - (i) by the Director; and
 - (ii) by any affected water undertaker ^{F544}or person or body on whom a copy of the application has been served under paragraph ^{F545}(b) above],
 of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
 - (d) the Secretary of State has considered ^{F546}the summary mentioned in subsection (2)(bb) below,] the Director’s reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- ^{F547}[(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.]
- (2) An application made by the Director to the Secretary of State complies with this subsection if it—

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- (a) sets out [^{F548}the Authority’s proposals for the making of] regulations under section 38 above;
 - (b) specifies the water undertaker or undertakers in relation to which it is proposed [^{F549}the regulations] should apply
 - ^{F550}[(b) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;] ; and
 - (c) summarises the Director’s reasons for his proposals.
- (3) The Secretary of State shall not make any regulations [^{F551}on an application by the Authority under this section] except where—
- (a) the only provisions of the regulations are [^{F552}those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority’s application or to those proposals] with such modifications as the Secretary of State considers appropriate; and
 - (b) each of the modifications (if any) of the Director’s proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
 - (i) to the Director,^{F553} . . .
 - (ii) to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications [^{F554}and
 - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.]
- ^{F555}(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 38 above only if he considers—
- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
 - (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 38 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;
 - (b) consider the results of the research carried out in accordance with subsection (7) below; and
 - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State’s reasons for his proposals;
 - (b) specify the water undertaker or undertakers in relation to which it is proposed the regulations should apply; and
 - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;

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- (b) the Council;
- (c) every water undertaker to which the regulations will apply;
- (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
- (e) such other persons or bodies as the Secretary of State may consider appropriate.]

Textual Amendments

- F539** S. 39(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F540** S. 39(1): words substituted (1.4.2005) for para. (a) and preceding words by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F541** S. 39(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 19(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F542** Word in s. 39(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(b)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4, Sch. 1, 2](#))
- F543** S. 39(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F544** Words in s. 39(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 19(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F545** Words in s. 39(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F546** Words in s. 39(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(2); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F547** S. 39(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(3); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F548** Words in s. 39(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(4)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F549** Words in s. 39(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(4)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F550** S. 39(2)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(4); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F551** Words in s. 39(3) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F552** Words in s. 39(3)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F553** Word in s. 39(3)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(c)**, 105(3), 101(2), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4, Sch. 1, 2](#))
- F554** S. 39(3)(b)(iii) and preceding word inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F555** S. 39(4)-(8) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(6)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))

[^{F556}39ZA] Procedure for regulations under section 38ZA

- (1) Section 39 applies for the purposes of making regulations under section 38ZA as it applies for the purposes of making regulations under section 38.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) In the application of section 39 by virtue of subsection (1)—
 - (a) a reference to a water undertaker is to be treated as a reference to a water supply licensee, and
 - (b) a reference to the Secretary of State is to be treated as a reference to the Minister (as defined in section 38ZA(6)).
- (3) Regulations under section 38ZA are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under section 38ZA is subject to annulment in pursuance of a resolution of—
 - (a) either House of Parliament, in the case of regulations made by the Secretary of State;
 - (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (5) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 38ZA as it applies to regulations made by the Secretary of State.]

Textual Amendments

F556 S. 39ZA inserted (15.7.2015) by [Water Act 2014 \(c. 21\)](#), ss. **29(7)**, 94(3); S.I. 2015/1469, art. 2(c) (with art. 5(1)(5))

Modifications etc. (not altering text)

C77 S. 39ZA(2)(a) modified (temp.) (1.7.2015) by [The Water Act 2014 \(Commencement No. 4 and Transitional Provisions\) Order 2015 \(S.I. 2015/1469\)](#), art. **5(1)(5)**

[39A ^{F557} **Information to be given to customers about overall performance.**

- (1) Each water undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers [^{F558}, and, if the direction so specifies, [^{F559}water supply licensees] using the undertaker's supply system for the purpose of supplying water to the premises of customers or those customers,] of—
 - (a) the standards of overall performance established under section 38(1)(b) above which are applicable to that undertaker; and
 - (b) that undertaker's level of performance as respects each of those standards.
- [Each water supply licensee must, in such form and manner and with such frequency
- ^{F560}(1A) as the Authority may direct, take steps to inform the licensee's customers of—
- (a) the standards of overall performance established under section 38ZA(1) which are applicable to that licensee;
 - (b) that licensee's level of performance as regards those standards.
- (1B) The Authority may direct that the requirement in subsection (1A) is not to apply to such water supply licensees as may be specified in the direction.]
- (2) In giving [^{F561}a direction under subsection (1) or (1A)] , the Director shall not specify a frequency of less than once in every period of twelve months.
- [The [^{F563}water supply licensees] referred to in subsection (1) above shall, if the
- ^{F562}(2A) Authority so directs, pass on the information about the matters mentioned in that subsection to their customers.

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- (2B) In subsection (1) above, the reference to the water undertaker’s supply system shall be construed in accordance with [F564 section 17B] above.]
- (3) The duty of a water undertaker [F565 or [F566 water supply licensee]] to comply with this section shall be enforceable by the Director under section 18 above.]

Textual Amendments

- F557** S. 39A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 28](#); Competition and Service (Utilities) Act. 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F558** Words in s. 39A(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 13\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F559** Words in s. 39A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(2\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F560** S. 39A(1A)(1B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(3\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F561** Words in s. 39A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(4\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F562** S. 39A(2A)(2B) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 13\(3\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F563** Words in s. 39A(2A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(2\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F564** Words in s. 39A(2B) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(5\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F565** Words in s. 39A(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 13\(4\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F566** Words in s. 39A(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(6\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

[F567] 39B Drought plans: preparation and review

- (1) It shall be the duty of each water undertaker to prepare [F568, publish] and maintain a drought plan.
- (2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits under Chapter 3 of Part 2 of the Water Resources Act 1991.
- (3) The duties referred to in subsection (2) above include in particular those imposed under or by virtue of—
- (a) section 37 above;
 - (b) sections 67 to 69 below.
- (4) A drought plan shall address, in particular, the following matters—
- (a) what measures the water undertaker might need to take to restrain the demand for water within its area;
 - (b) what measures the water undertaker might need to take to obtain extra water from other sources (also taking into account for that purpose the introduction

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- of water into the undertaker's supply system by or on behalf of [^{F569}water supply licensees]);
- (c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;
 - (d) such other matters as the Secretary of State may specify in directions.
- (5) Section 37B above (water resources management plans: publication and representations), including any power in that section to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.
- (6) Each water undertaker shall review (or further review) its drought plan and prepare [^{F570}and publish] a revised plan in each of the following cases—
- (a) if there is a material change of circumstances;
 - (b) if directed to do so by the Secretary of State;
 - (c) in any event, not later than the end of the period of [^{F571}five years] beginning with the date when the plan (or revised plan) was last published in accordance with section 37B(8)(a) above as applied by subsection (5) above,
- and shall follow the procedure in section 37B above as applied by subsection (5) above (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).
- (7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—
- (a) the Environment Agency [^{F572}, if the plan (or revised plan) would affect water resources in England;]
 - ^{F573}(aa) [the NRBW, if the plan (or revised plan) would affect water resources in Wales;]
 - (b) the Authority;
 - (c) the Secretary of State; and
 - (d) any [^{F574}water supply licensee] which supplies water to premises in the undertaker's area via the undertaker's supply system.
- (8) The Secretary of State may give directions specifying the form which a drought plan must take.
- (9) Directions given under this section (including directions given under section 37B above as applied by subsection (5) above) may be—
- (a) general directions applying to all water undertakers; or
 - (b) directions applying only to one or more water undertakers specified in the directions,
- and shall be given by an instrument in writing.
- (10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
- ^{F575}(11) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—
- (a) the Environment Agency, if the revised plan would affect water resources in England, and
 - (b) the NRBW, if the revised plan would affect water resources in Wales.
- (11A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—

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- (a) the NRBW, if the revised plan would affect water resources in Wales, and
- (b) the Environment Agency, if the revised plan would affect water resources in England.]

(12) The duty of a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.

Textual Amendments

- F567** Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 63](#), [105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(j\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(j\)](#) (with [Sch. 2 para. 8](#))
- F568** Word in s. 39B(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(a\)](#), [94\(2\)\(g\)](#)
- F569** Words in s. 39B(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 52\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F570** Words in s. 39B(6) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(b\)\(i\)](#), [94\(2\)\(g\)](#)
- F571** Words in s. 39B(6)(c) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(b\)\(ii\)](#), [94\(2\)\(g\)](#)
- F572** Words in s. 39B(7)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(2\)\(a\)](#) (with [Sch. 7](#))
- F573** S. 39B(7)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(2\)\(b\)](#) (with [Sch. 7](#))
- F574** Words in s. 39B(7)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 52\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F575** S. 39B(11)(11A) substituted for s. 39B(11) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(3\)](#) (with [Sch. 7](#))

Modifications etc. (not altering text)

- C78** S. 39B modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\)\(7\)](#), [105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021](#), [art. 2\(c\)](#))

39C Drought plans: provision of information

- (1) It shall be the duty of each [^{F576}water supply licensee] to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its drought plan.
- (2) In the event of any dispute between a water undertaker and a [^{F576}water supply licensee] as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above as applied by section 39B(5) above, the water undertaker shall identify in its statement under that paragraph any information—
 - (a) provided by a [^{F576}water supply licensee] pursuant to subsection (1) above; and
 - (b) contained in the water undertaker's draft drought plan,

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which the [^{F576}water supply licensee] has (at the time of providing it to the water undertaker) specifically identified as being, in the [^{F577}water supply licensee's] opinion, commercially confidential.

- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
 - (a) “unpublished information” means confidential information which—
 - (i) is provided to the water undertaker by a [^{F576}water supply licensee] under this section;
 - (ii) relates to the affairs of any individual or to any particular business; and
 - (iii) by virtue of section 37B above as applied by section 39B(5) above, is not published;
 - (b) “the other consolidation Acts” has the same meaning as in section 206 below.
- (6) The duties of a [^{F576}water supply licensee] and a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.]

Textual Amendments

F567 Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 63](#), [105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(j\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(j\)](#) (with [Sch. 2 para. 8](#))

F576 Words in s. 39C substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 53\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

F577 Words in s. 39C(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 53\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

Modifications etc. (not altering text)

C79 S. 39C modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\)\(7\)](#), [105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021](#), [art. 2\(c\)](#))

[^{F578}39D Drought plans: supplementary

- (1) The Minister may by order made by statutory instrument amend the period for the time being specified in section 39B(6)(c).
- (2) In subsection (1), “the Minister” means—
 - (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (3) A statutory instrument containing an order made by the Secretary of State under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) A statutory instrument containing an order made by the Welsh Ministers under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly.
- (5) Subsection (6) applies in relation to a statutory instrument containing both—
- (a) an order made by the Secretary of State under subsection (1), and
 - (b) an order made by the Welsh Ministers under subsection (1).
- (6) If in accordance with subsection (3) or (4) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
 - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
- the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.]

Textual Amendments

F578 S. 39D inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), ss. **28(5)**, **94(2)(g)**

CHAPTER II

SUPPLY DUTIES

Major supplies

[^{F579}40 Bulk supplies.

- (1) This section applies where—
- (a) a qualifying person requests a water undertaker to provide a supply of water in bulk to the qualifying person, or
 - (b) a water undertaker proposes such an arrangement;
- and references in this section to the supplier are references to the water undertaker who is to provide the supply of water.
- (2) In this section “qualifying person” means—
- (a) a water undertaker;
 - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the supplier, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the supplier should give a supply of water in bulk to the qualifying person, and
 - (b) if the Authority is satisfied that the supplier and qualifying person cannot reach agreement within a reasonable time,

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- by order require the supplier to give and the qualifying person to take a supply of water in bulk for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency, in particular about whether the proposed supply of water would secure an efficient use of water resources, taking into account the effect on the environment of the proposed supply.
 - (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the supplier and the qualifying person.
 - (6) If the Authority makes an order under subsection (3) that affects a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
 - (a) the person becomes a water undertaker for the area specified in the order, or
 - (b) the person becomes a water undertaker for an area that includes the area specified in the order (in the case of a water undertaker applying for a variation).
 - (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the supply of water in bulk by a water undertaker to a qualifying person, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
 - (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement for the supply of water in bulk by a water undertaker to a qualifying person, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
 - (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
 - (a) facilitating effective competition within the water supply industry;
 - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
 - (10) In this section and section 40A “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 40A(1) which would result in, or which would vary or terminate, a bulk supply agreement, means—
 - (a) the Environment Agency, in a case where all parties to the bulk supply agreement are or would be—
 - (i) a water undertaker whose area is wholly in England, or

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- (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the NRBW, in a case where all parties to the bulk supply agreement are or would be—
 - (i) a water undertaker whose area is wholly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 40A to 40J “bulk supply agreement” means an agreement with one or more water undertakers for the supply of water in bulk and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
 - (b) any agreement which has been varied by order under section 40A(1).]

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. 8(1), 94(3) (with s. 8(2)); S.I. 2015/773, art. 2(1)(a)(i) (with art. 4); S.I. 2016/1007, art. 2(b); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a)

[^{F579}40A] Variation and termination of bulk supply agreements.

- (1) On the application of any party to a bulk supply agreement, the Authority may—
 - (a) if it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, that the bulk supply agreement should be varied or terminated, and
 - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement within a reasonable time,
 by order vary or terminate the bulk supply agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency, in particular about whether the proposed variation or termination of the bulk supply agreement would secure an efficient use of water resources, taking into account the effect on the environment of what is proposed.
- (3) If an order under subsection (1) is made in relation to a bulk supply agreement, the agreement—
 - (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a bulk supply agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).

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- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement to vary or terminate a bulk supply agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement in question and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
 - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- (8) In this section and sections 40B to 40J—
- “qualifying person” has the meaning given by section 40;
 - “supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.]

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. [8\(1\)](#), [94\(3\)](#) (with s. [8\(2\)](#)); S.I. [2015/773](#), art. [2\(1\)\(a\)\(i\)](#) (with art. [4](#)); S.I. [2016/1007](#), art. [2\(b\)](#); S.I. [2017/1288](#), art. [3\(a\)](#); S.I. [2018/397](#), art. [2\(a\)](#)

[^{F579} 40B Codes in respect of bulk supply agreements

- (1) The Authority may issue one or more codes in respect of bulk supply agreements.
- (2) A code may make provision about—
- (a) procedures in connection with making a bulk supply agreement;
 - (b) procedures in connection with varying or terminating a bulk supply agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 40(3) or 40A(1);
 - (d) the terms and conditions of a bulk supply agreement, including terms as to the duration of such an agreement;
 - (e) principles for determining the terms and conditions that should or should not be incorporated into a bulk supply agreement;
 - (f) the steps to be taken by the Authority in determining whether a person is complying with a code.

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- (3) A code must include provision requiring persons proposing to make, vary or terminate a bulk supply agreement to consult the appropriate agency.
- (4) If the Authority considers that a water undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a water undertaker to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make different provision for different persons or different descriptions of person.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to bulk supply agreements made before the revised code comes into force.
- (10) In this section “the appropriate agency”, in relation to a bulk supply agreement or proposed bulk supply agreement, means the body that would be consulted by the Authority under section 40(4) or 40A(2) if an order under section 40(3) or 40A(1) were being considered in relation to the agreement or proposed agreement.

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. 8(1), 94(3) (with s. 8(2)); S.I. 2015/773, art. 2(1)(a)(i) (with art. 4); S.I. 2016/1007, art. 2(b); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a)

40C Codes under section 40B: procedure

- (1) Before issuing a code under section 40B, the Authority must—
 - (a) prepare a draft of the proposed code under section 40B;
 - (b) consult the appropriate agency;
 - (c) consult such other persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed code.
- (3) Before a code under section 40B prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In subsection (3) “the Minister” means—
 - (a) the Secretary of State, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—

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- (i) a water undertaker whose area is wholly or mainly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to bulk supply agreements to which—
 - (i) a person falling within paragraph (a)(i) or (ii) is party, and
 - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such bulk supply agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such bulk supply agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) In this section “the appropriate agency” means—
 - (a) the Environment Agency, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(a)(i) or (ii);
 - (b) the NRBW, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(b)(i) or (ii);
 - (c) both the Environment Agency and the NRBW, in any other case.
- (10) This section is subject to section 40D.

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#)); [S.I. 2016/1007](#), [art. 2\(b\)](#); [S.I. 2017/1288](#), [art. 3\(a\)](#); [S.I. 2018/397](#), [art. 2\(a\)](#)

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40D Codes under section 40B: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 40B and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 40C does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

Textual Amendments

F579 *Ss. 40-40J* substituted for *ss. 40, 40A* (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by *Water Act 2014 (c. 21)*, **ss. 8(1), 94(3)** (with s. 8(2)); *S.I. 2015/773*, **art. 2(1)(a)(i)** (with *art. 4*); *S.I. 2016/1007*, **art. 2(b)**; *S.I. 2017/1288*, **art. 3(a)**; *S.I. 2018/397*, **art. 2(a)**

40E Rules about charges for the supply of water in bulk

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a bulk supply agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—

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- (a) make different provision for different water undertakers or different descriptions of water undertaker;
 - (b) make different provision for different purposes;
 - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
- (a) guidance is issued under section 40I, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of their revisions to bulk supply agreements made before the revised rules come into effect.

Textual Amendments

F579 *Ss. 40-40J* substituted for *ss. 40, 40A* (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by *Water Act 2014 (c. 21), ss. 8(1), 94(3)* (with s. 8(2)); *S.I. 2015/773, art. 2(1)(a)(i)* (with art. 4); *S.I. 2016/1007, art. 2(b)*; *S.I. 2017/1288, art. 3(a)*; *S.I. 2018/397, art. 2(a)*

40F Rules under section 40E: provision about the reduction of charges

- (1) Rules under section 40E may provide for the reduction of charges payable for a supply of water under a bulk supply agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
- (a) specify conditions that affect any party to a bulk supply agreement;
 - (b) require that steps be taken for the purpose of reducing or managing water consumption;
 - (c) specify conditions about reducing charges payable by a person who—
 - (i) is not party to the agreement, and
 - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
- (a) make provision as to the content of the notice;
 - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
- (a) the provision of the rules that brings about the reduction in the charge;
 - (b) the amount of the charge, with and without the reduction;
 - (c) the period for which the reduction has effect.

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Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by Water Act 2014 (c. 21), ss. 8(1), 94(3) (with s. 8(2)); S.I. 2015/773, art. 2(1)(a)(i) (with art. 4); S.I. 2016/1007, art. 2(b); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a)

40G Rules under section 40E: procedure

- (1) Before issuing rules under section 40E, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 40I in making rules under section 40E.
- (4) Before rules under section 40E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
 - (a) the Secretary of State, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to bulk supply agreements to which—
 - (i) a person falling within paragraph (a)(i) or (ii) is party, and
 - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) This section is subject to section 40H.

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in

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so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 8(1), 94(3)** (with s. 8(2)); S.I. 2015/773, art. 2(1)(a)(i) (with art. 4); S.I. 2016/1007, art. 2(b); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a)

40H Rules under section 40E: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 40E and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 40G does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 40G.

Textual Amendments

F579 **Ss. 40-40J** substituted for **ss. 40, 40A** (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 8(1), 94(3)** (with s. 8(2)); S.I. 2015/773, art. 2(1)(a)(i) (with art. 4); S.I. 2016/1007, art. 2(b); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a)

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40I Rules under section 40E: guidance

- (1) The Minister may issue guidance as to the content of rules under section 40E.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, in relation to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the Welsh Ministers, in relation to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to bulk supply agreements to which—
 - (i) a person falling within paragraph (a)(i) or (ii) is party, and
 - (ii) a person falling within paragraph (b)(i) or (ii) is party.

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#)); [S.I. 2016/1007](#), [art. 2\(b\)](#); [S.I. 2017/1288](#), [art. 3\(a\)](#); [S.I. 2018/397](#), [art. 2\(a\)](#)

40J Duty to provide information about bulk supplies

- (1) A supplier under a bulk supply agreement must provide such information as the appropriate agency may request in relation to water supplied under the agreement.
- (2) The requirement in subsection (1) is enforceable by the Authority under section 18.

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- (3) In subsection (1) “the appropriate agency” means the body that would be consulted by the Authority under section 40A(2) if the agreement were to be varied or terminated by an order under section 40A(1).]

Textual Amendments

F579 Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J, 1.11.2016 for the insertion of s. 40E for specified purposes and s. 40I, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by Water Act 2014 (c. 21), ss. 8(1), 94(3) (with s. 8(2)); S.I. 2015/773, art. 2(1)(a)(i) (with art. 4); S.I. 2016/1007, art. 2(b); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a)

41 Duty to comply with water main requisition.

- (1) It shall be the duty of a water undertaker (in accordance with section 44 below) to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if-
- (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under subsection (2) below are entitled to require the provision of the main for that locality;
 - (b) the premises in that locality to which those supplies would be provided by means of that main are—
 - (i) premises consisting in buildings or parts of buildings; or
 - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out;
- and
- (c) the conditions specified in section 42 below are satisfied in relation to that requirement.
- (2) Each of the following persons shall be entitled to require the provision of a water main for any locality, that is to say—
- (a) the owner of any premises in that locality;
 - (b) the occupier of any premises in that locality;
 - (c) any local authority within whose area the whole or any part of that locality is situated;
 - ^{F580}(ca) where the whole or any part of that locality is situated within a Mayoral development area, the Mayoral development corporation;]
 - (d) where the whole or any part of that locality is situated in a new town, within the meaning of the ^{M11}New Towns Act 1981—
 - (i) the ^{F581}new towns residuary body]; and
 - (ii) ^{F582} . . . the development corporation for the new town, ^{F582} . . . ;
- and
- (e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the ^{M12}Local Government, Planning and Land Act 1980, the urban development corporation.

^{F583}(2A)

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- (3) The duty of a water undertaker under this section to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of the persons who joins in doing so.
- (4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (5) In this section “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

Textual Amendments

- F580** S. 41(2)(ca) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\), s. 240\(1\)\(l\), Sch. 22 para. 40](#)
- F581** Words in s. 41(2)(d)(i) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\), ss. 56, 325, Sch. 8 para. 56; S.I. 2008/3068, art. 2\(1\)\(w\)](#) (with savings and transitional provisions in arts. 6-13)
- F582** Words in s. 41(2)(d)(ii) repealed (1.10.1998) by [1998 c. 38, s. 152, Sch. 18 Pt.IV](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244, art. 4](#)
- F583** S. 41(2A) omitted (E.) (31.10.2021) by virtue of [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\), regs. 1\(2\), 2\(2\)](#)

Marginal Citations

- M11** 1981 c. 64.
M12 1980 c. 65.

42 Financial conditions of compliance.

- (1) The conditions mentioned in section 41(1)(c) above are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—
 - (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) below have been given by the person or persons who have required the provision of the main; and
 - (b) [^{F584}such security as charging rules allow and the undertaker may have required] has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3) below, may be required to secure his undertakings.
- (2) The undertakings which a water undertaker may require for the purposes of subsection (1) above in respect of any water main are undertakings which—
 - [^{F585}(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and]
 - (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

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(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a water main if—

- (a) it was by virtue of section 41(2)(a) or (b) above that he required, or joined in requiring, the provision of the main; and
- (b) he is not a public authority.

^{F586}(4)

^{F587}(5)

(6) Any dispute between a water undertaker and any other person as to—

- (a) the undertakings or security required by the undertaker for the purposes of this section; or
- (b) the amount [^{F588}or amounts by way of charges] required to be paid in pursuance of any such undertaking,

[^{F589}may be referred to the Authority for determination under section 30A above by either party to the dispute.]

[^{F590}(7) [^{F591}In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 43 and 43A below, respectively.]]

Textual Amendments

- F584** Words in s. 42(1)(b) substituted (1.4.2018) by Water Act 2014 (c. 21), ss. 18(2)(a), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F585** S. 42(2)(a) substituted (1.4.2018) by Water Act 2014 (c. 21), ss. 18(2)(b), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F586** S. 42(4) repealed (1.4.2018) by Water Act 2014 (c. 21), ss. 18(2)(c), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F587** S. 42(5) repealed (1.4.2018) by Water Act 2014 (c. 21), ss. 18(2)(c), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F588** Words in s. 42(6)(b) inserted (1.4.2018) by Water Act 2014 (c. 21), ss. 18(2)(d), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F589** Words in s. 42(6) substituted (28.5.2004) by Water Act 2003 (c. 37), ss. 90(3)(5), 105(3); S.I. 2004/641, art. 4(a) (with art. 6, Sch. 3)
- F590** S. 42(7) substituted (28.5.2004) by Water Act 2003 (c. 37), ss. 90(4)(5), 105(3); S.I. 2004/641, art. 4(a) (with art. 6, Sch. 3)
- F591** S. 42(7) repealed (1.4.2018 for specified purposes) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 54; S.I. 2017/462, art. 5(e)(ii) (with art. 14) (as amended by S.I. 2017/926, art. 2(3))

43 Calculation of “relevant deficit” for the purposes of section 42.

[^{F592}(1) For the purposes of section 42 above the relevant deficit for any year on a water main is the amount (if any) by which the [^{F593}relevant revenue in respect of that main for that year is] exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

(2) The annual borrowing costs of a loan of the amount required for the provision of a water main is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that main as were not incurred in the provision

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of additional capacity had been borrowed, by the water undertaker providing the main, on terms—

- (a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
- (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.

(3) A determination for the purposes of subsection (2) above shall be made either—

- (a) by the undertaker with the approval of the Director; or
- (b) in default of such a determination, by the Director.

(4) For the purposes of this section the costs reasonably incurred in providing a water main (“the new main”) shall include—

- (a) the costs reasonably incurred in providing such other water mains and such tanks, service reservoirs and pumping stations as it is necessary to provide in consequence of the provision of the new main; and
- (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing [^{F594}or procuring the provision of] any such additional capacity in an earlier main as falls to be used in consequence of the provision of the new main.

[^{F595}(5) In subsection (4) above the reference to an earlier main, in relation to the new main, is a reference to any water main which—

- (a) has been provided in pursuance of a water main requisition; or
- (b) has been vested (by virtue of a declaration made under this Chapter) in the water undertaker,

in the period of twelve years immediately before the provision of the new main.]

(6) Any reference in this section to the provision of additional capacity in a water main provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that main as are carried out or done for the purpose of enabling that main to be used for purposes in addition to those for which it is necessary to provide the main in order to comply with the requirement.

[^{F596}(7) Any reference in this section to the relevant revenue in respect of a main provided by a water undertaker for any year is—

- (a) in relation to premises connected with the main which are supplied with water by the undertaker, is a reference to so much of the aggregate of any charges payable to the undertaker in respect of services provided in the course of that year as represents charges which—
 - (i) have been imposed by the undertaker in relation to those premises; and
 - (ii) are reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main;
- (b) in relation to premises connected with the main which are supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges made during the course of that year which—
 - (i) are payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and

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- (ii) are reasonably attributable to the use of that main for the purpose of the supplier supplying water to those premises.]
- (8) An approval or determination given or made by the Director for the purposes of subsection (2) above—
- (a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and
 - (b) may be revoked at any time except in relation to a water main [^{F597}in respect of which the conditions referred to in section 42(1) above have already been satisfied.] .
- (9) In this section “water main requisition” means—
- (a) a requirement under section 41 above (including, by virtue of paragraph 1 of Schedule 2 to the ^{M13}Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 40 of the ^{M14}Water Act 1989);
 - (b) a requirement under the provisions of section 36 or 37 of the ^{M15}Water Act 1945 or of section 29 of Schedule 3 to that Act (water main requisitions); or
 - (c) a requirement under any local statutory provision corresponding to section 41 above or to any of those provisions of that Act of 1945.]

Textual Amendments

- F592** S. 43 repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 55](#); [S.I. 2017/462](#), art. 5(e)(ii) (with art. 14) (as amended by [S.I. 2017/926](#), art. 2(3))
- F593** Words in s. 43(1) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 14\(2\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F594** Words in s. 43(4)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(1\)\(a\)\(4\)](#), 105(3); [S.I. 2004/641](#), [art. 4\(a\)](#) (with art. 6, [Sch. 3](#))
- F595** S. 43(5) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(1\)\(b\)\(4\)](#), 105(3); [S.I. 2004/641](#), [art. 4\(a\)](#) (with art. 6, [Sch. 3](#))
- F596** S. 43(7) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 14\(3\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F597** Words in s. 43(8)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(1\)\(c\)\(4\)](#), 105(3); [S.I. 2004/641](#), [art. 4\(a\)](#) (with art. 6, [Sch. 3](#))

Marginal Citations

- M13** 1991 c. 60.
M14 1989 c. 15.
M15 1945 c. 42.

[^{F598}43A Calculation of “discounted aggregate deficit” for the purposes of section 42

- [^{F599}(1) For the purposes of section 42 above the discounted aggregate deficit on a water main is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the main, in each case discounted in accordance with subsection (6) below.
- (2) The estimated relevant deficit for any year is the amount (if any) by which the estimated revenue in respect of the water main for that year would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

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- (3) Subsections (2) to (6), (8) and (9) of section 43 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a water main) shall apply for the purposes of this section as they apply for the purposes of that.
- (4) Any reference in this section to the estimated revenue in respect of a water main for any year—
- (a) in relation to premises expected to be connected with the main and supplied with water by a water undertaker, is a reference to so much of the aggregate of any charges expected to be payable to the undertaker for the provision of services in the course of that year as would represent charges—
 - (i) imposed by the undertaker in relation to those premises, and
 - (ii) reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main; and
 - (b) in relation to premises expected to be connected with the main and supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges expected to be made during the course of that year as would be—
 - (i) payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and
 - (ii) reasonably attributable to the use of that main for the purpose of the supplier's supplying water to those premises.
- (5) For the purpose of calculating estimated revenue under subsection (4) above, a thing is expected to be the case if, at the time the calculation is made, it is reasonably likely to occur.
- (6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.
- (7) A determination made by the Authority for the purposes of subsection (6) above—
- (a) may be made in relation to the provision of a particular water main or in relation to the provision of water mains generally; and
 - (b) may be revoked at any time except in relation to a water main in respect of which the conditions referred to in section 42(1) above have already been satisfied.]]

Textual Amendments

F598 S. 43A inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(2)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with **art. 6**, **Sch. 3**)

F599 S. 43A repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 55**; S.I. 2017/462, **art. 5(e)(ii)** (with **art. 14**) (as amended by S.I. 2017/926, **art. 2(3)**)

44 Determination of completion date and route for requisitioned main.

- (1) A water undertaker shall not be in breach of a duty imposed by section 41 above in relation to any locality unless-
- (a) the period of three months beginning with the relevant day has expired; and

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- [^{F600}(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—
- (i) service pipes to premises in that locality; or
 - (ii) a water main which is the subject of an agreement under section 51A below (“the self-laid main”),
- to connect with the main at the place or places determined under subsection (3) below.]
- (2) The period mentioned in subsection (1)(a) above may be extended in any case—
- (a) by agreement between the water undertaker and the person or persons who required the provision of the main; or
 - (b) where there is a dispute as to whether the period should be extended, by [^{F601}the Authority] on a reference under subsection (4) below.
- (3) The places mentioned in subsection (1)(b) above shall be—
- (a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or
 - (b) in default of agreement, such places as are determined by [^{F602}the Authority], on a reference under subsection (4) below, to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question [^{F603}, or (as the case may be) the self-laid main,] to connect with the water main.
- [^{F604}(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.]
- (5) In this section “relevant day”, in relation to a requirement to provide a water main ^{F605} . . . , means the day after whichever is the later of the following, that is to say—
- (a) the day on which the conditions specified in section 42 above are satisfied in relation to the requirement; and
 - [^{F606}(b) the day on which the place or places where (as the case may be)—
- (i) service pipes to premises in the locality in question; or
 - (ii) the self-laid main,
- will connect with the main are determined under subsection (3) above.]

Textual Amendments

- F600** S. 44(1)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(a)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6](#), Sch. 3)
- F601** Words in s. 44(2)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(b)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6](#), Sch. 3)
- F602** Words in s. 44(3)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(c)(i)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6](#), Sch. 3)
- F603** Words in s. 44(3)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(c)(ii)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6](#), Sch. 3)
- F604** S. 44(4) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(d)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6](#), Sch. 3)
- F605** Words in s. 44(5) omitted (28.5.2004) and repealed (1.4.2005) by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(e)(4)**, 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(a)** (with [art. 6](#), Sch. 3); S.I. 2005/968, **art. 2(n)** (with savings in [art. 4](#), Schs. 1, 2)

Status: This version of this Act contains provisions that are prospective.

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F606 S. 44(5)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(e)(ii)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with **art. 6**, Sch. 3)

Domestic connections

45 Duty to make connections with main.

(1) Subject to the following provisions of this section and to sections 46 and 47 below, it shall be the duty of a water undertaker (in accordance with section 51 below) to make a connection under this section where the owner or occupier of any premises^{F607} . . . which—

- (a) consist in the whole or any part of a building; or
- (b) are premises on which any person is proposing to erect any building or part of a building,

serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

^{F608}(1ZA)

[^{F609}(1A) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

- (a) subsection (1) above is subject to section 51D(1) below; and
- (b) any such service pipe which is to vest in the undertaker by virtue of an agreement under section 51A below shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.]

(2) Where a notice has been served for the purposes of this section, the duty imposed by subsection (1) above shall be a duty^{F610} . . . to make the connection required by the notice if—

- (a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and
- (b) such conditions as the undertaker may have imposed under sections 47 to 50 below have been satisfied;

and, subject to section 51 below, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(3) A notice for the purposes of this section—

- (a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and
- (b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of section 46(4) below, shall set out the matters that have given rise to the imposition of that requirement;

but, subject to section 51(5) below and without prejudice to the effect (if any) of any other contravention of this subsection, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(4) The duty imposed on a water undertaker by this section shall be owed to the person who served the notice by virtue of which the duty arises.

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- (5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- [^{F611}(6) Where a water undertaker carries out any works which it is its duty under this section to carry out, the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules.]
- ^{F612}[(6A) Any dispute between a water undertaker and any other person [^{F613}as to the payments required to be made] may be referred to the Director for determination under section 30A above by either party to the dispute.]
- (7) Nothing in this section or in sections 46 to 51 below shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.
- (8) In the following provisions of this Chapter a notice served for the purposes of this section is referred to as a connection notice.

Textual Amendments

- F607** Words in s. 45(1) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 43(1), 56(7), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F608** [S. 45\(1ZA\)](#) omitted (E.) (31.10.2021) by virtue of [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), 2(3)
- F609** [S. 45\(1A\)](#) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 92(2)(7), 105(3); S.I. 2004/641, art. 4(a) (with art. 6, Sch. 3)
- F610** Words in s. 45(2) repealed (1.4.2018) by [Water Act 2014 \(c. 21\)](#), ss. 18(3)(a), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F611** [S. 45\(6\)](#) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), ss. 18(3)(b), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F612** [S. 45\(6A\)](#) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 35(2); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt. II
- F613** Words in s. 45(6A) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), ss. 18(3)(c), 94(3); S.I. 2017/462, art. 5(a) (with art. 14)

46 Duty to carry out ancillary works for the purpose of making domestic connection.

- (1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker^{F614}... to carry out such of the works to which this section applies as need to be carried out before the connection can be made.
- (2) This section applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.
- (3) In a case where—

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- (a) the water main with which the service pipe is to be connected is situated in a street;
 - (b) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and
 - (c) the service pipe to those premises will—
 - (i) enter the premises otherwise than through an outer wall of a building abutting on the street; and
 - (ii) have a stopcock fitted to it by the undertaker in the premises,
 this section applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.
- (4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by a local authority under section 80 below, this section applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by that authority—
- (a) to have unreasonably refused his consent to the laying of the service pipe; or
 - (b) to have sought to make the giving of his consent subject to unreasonable conditions.
- (5) Where a water main is alongside a street and within eighteen metres of the middle of that street, subsections (2) to (4) above shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.
- (6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.
- (7) Subsections (4) to [F615(6A)] of section 45 above shall have effect—
- (a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this section; and
 - (b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out [F616as its duty under this section],
- as they have effect by virtue of that notice in relation to the duty which arises under that section or, as the case may be, to works which the undertaker carries out [F617as its duty under that section].
- (8) Subject to subsection (9) below, a water undertaker may comply with any duty under this section to lay a service pipe by laying a water main instead; but nothing in section 45 above or this section shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.
- (9) Where a water undertaker exercises its power under subsection (8) above to lay a water main instead of a service pipe—
- (a) paragraph (a) of section 51(1) below shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that paragraph for the laying of the service pipe; ^{F618} ...

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F618(b)

Textual Amendments

- F614** Words in s. 46(1) repealed (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 18(4)(a)**, 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F615** Words in s. 46(7) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 35(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II
- F616** Words in s. 46(7)(b) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 18(4)(b)**, 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F617** Words in s. 46(7) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 18(4)(c)**, 94(3); S.I. 2017/462, art. 5(a) (with art. 14)
- F618** S. 46(9)(b) and word repealed (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 18(4)(d)**, 94(3); S.I. 2017/462, art. 5(a) (with art. 14)

47 Conditions of connection with water main.

- (1) Subject to subsection (3) and [F619 sections 48 to][F619 sections 49 and] 50 below, where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of its complying with the duties to which it is subject by virtue of that notice.
- (2) The requirements mentioned in subsection (1) above are—
- (a) a requirement that [F620 such security as charging rules allow and the undertaker requires] has been provided for the discharge of any obligations imposed by virtue of section 45(6) or 46(7)(b) above on the person who served the connection notice;
 - (b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person’s failure to pay any charges, that the person serving the connection notice has paid any amount owed by him to the undertaker—
 - (i) in respect of a supply of water to the relevant premises; or
 - (ii) in respect of expenses [F621 reasonably]incurred in the making of the disconnection;
 - (c) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—
 - (i) by the undertaker; or
 - (ii) in accordance with specifications approved by the undertaker;
 - (d) a requirement that—
 - [F622(i) subject to section 51D(1) below, so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and]
 - (ii) the plumbing of the premises,comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter as is mentioned in paragraph (c) above to be installed and connected as so mentioned;
 - (e) a requirement that a separate service pipe has been provided—

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- (i) to each house or building on the relevant premises; or
 - (ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;
 - (f) a requirement, in relation to the relevant premises—
 - (i) that such a requirement as may be imposed under section 66 below has been complied with; or
 - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;
 - (g) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
 - (i) the supply of water to the relevant premises; or
 - (ii) the use of water in those premises,
 of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this paragraph; and
 - (h) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.
- ^{F623}[(2A) No condition shall be imposed by a water undertaker under subsection (2)(e) above unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.]
- (3) A condition shall not be imposed by a water undertaker under this section on a person who has served a connection notice except by a counter-notice served on that person before the end of the period of fourteen days beginning with the day after the service of the connection notice.
- ^{F624}[(3A) Any dispute as to whether any requirement of a kind mentioned in subsection (2) (a), (b), (e) or (f) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.
- (3B) Any dispute between a water undertaker and any other person as to ^{F625}...—
- ^{F626}(a) the security required to be provided by a condition imposed under subsection (2)(a),]
 - (b) [^{F627}whether] the expenses referred to in subsection (2)(b)(ii) above were incurred reasonably, or
 - (c) in a particular case, [^{F628}whether] subsection (2A) above prevents a water undertaker from imposing a condition under subsection (2)(e) above,
- may be referred to the Director for determination under section 30A above by either party to the dispute.]
- (4) This section shall be without prejudice to the provisions of sections 233 and 372 of the ^{M16}Insolvency Act 1986 (conditions of supply after insolvency).

Textual Amendments

F619 Words in s. 47(1) substituted (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 56](#); S.I. 2017/462, art. 5(e)(ii) (with art. 14) (as amended by S.I. 2017/926, art. 2(3))

F620 Words in s. 47(2)(a) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 18\(5\)\(a\), 94\(3\); S.I. 2017/462, art. 5\(a\)](#) (with art. 14)

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- F621** Word in s. 47(2)(b)(ii) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(2\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)
- F622** S. 47(2)(d)(i) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 92\(3\)\(7\), 105\(3\)](#); S.I. 2004/641, [art. 4\(a\)](#) (with [art. 6, Sch. 3](#))
- F623** S. 47(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(3\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)
- F624** S. 47(3A)(3B) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(4\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)
- F625** Word in s. 47(3B) repealed (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 18\(5\)\(b\), 94\(3\)](#); S.I. 2017/462, [art. 5\(a\)](#) (with [art. 14](#))
- F626** S. 47(3B)(a) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 18\(5\)\(c\), 94\(3\)](#); S.I. 2017/462, [art. 5\(a\)](#) (with [art. 14](#))
- F627** Word in s. 47(3B)(b) inserted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 18\(5\)\(d\), 94\(3\)](#); S.I. 2017/462, [art. 5\(a\)](#) (with [art. 14](#))
- F628** Word in s. 47(3B)(c) inserted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 18\(5\)\(e\), 94\(3\)](#); S.I. 2017/462, [art. 5\(a\)](#) (with [art. 14](#))

Marginal Citations

M16 1986 c. 45.

48 Interest on sums deposited in pursuance of the deposit condition.

- [^{F629}(1) Where for the purposes of subsection (2)(a) of section 47 above any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
- (a) by the undertaker with the approval of the Director; or
 - (b) in default of a determination under paragraph (a) above, by the Director,
- on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (2) An approval or determination by the Director for the purposes of this section—
- (a) may be given or made in relation to a particular case or description of cases or generally; and
 - (b) may be revoked at any time.]

Textual Amendments

F629 S. 48 repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 57](#); S.I. 2017/462, [art. 5\(e\)\(ii\)](#) (with [art. 14](#)) (as amended by S.I. 2017/926, [art. 2\(3\)](#))

49 Supplemental provisions with respect to the metering conditions.

- (1) The power conferred on a water undertaker to impose conditions under section 47 above for the purposes of metering—
- (a) shall be exercisable in relation to any premises even if the undertaker has no immediate intention, when the power is exercised, of fixing charges in relation to those premises by reference to volume; but
 - (b) shall not be exercisable so as to require the alteration or removal of any pipe laid or plumbing installed before 1st April 1989.

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- (2) Specifications approved by any water undertaker for the purposes of subsection (2)(c) or (d) of section 47 above may be approved—
- (a) in relation to particular premises; or
 - (b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.
- ^{F630}(3) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under section 47 above for the purposes of metering shall be referred—
- (a) to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person; or
 - (b) if no agreement is reached, for determination by the Director under section 30A above.]
- (4) References in this section to the imposition of a condition under section 47 above for the purposes of metering are references to the imposition of conditions by virtue of subsection (2)(c) or (d) of that section.

Textual Amendments

F630 S. 49(3) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(4\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

50 Restriction on imposition of condition requiring separate service pipes.

- (1) This section applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.
- (2) Where this section applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this section, may be imposed by virtue of section 47(2)(e) above unless the undertaker would have been entitled under section 64 below to require the provision of a separate service pipe if the reconnection had already been made.

51 Time for performance of connection etc. duties.

- (1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless—
 - (a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;
 - (b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of fourteen days beginning with the relevant day.
- (2) In any case in which a water undertaker is subject to any such duty as is mentioned in subsection (1)(a) above, it shall be presumed, unless the contrary is shown in relation to that case, that the period of twenty-one days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—

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- (a) to lay so much of any service pipe; and
- (b) to fit such stopcock,

as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.

(3) Where—

- (a) a connection notice is served in respect of any premises; and
- (b) at the time when the notice is served, the customer’s part of the service pipe to those premises has not been laid,

the duties of the undertaker under sections 45 and 46 above shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in subsections (3) to (5) of section 46 above.

(4) In subsection (3) above the reference to the customer’s part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of section 46 above.

(5) Where—

- (a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under section 45(3)(a) above to supplement that notice with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

(6) In this section “the relevant day”, in relation to a duty imposed on a water undertaker by virtue of a connection notice, means the day after whichever is the latest of the following days, that is to say—

- (a) the day on which the notice was served on the undertaker;
- (b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;
- (c) the day on which all such conditions are satisfied as the undertaker has, under sections 47 to 50 above, made conditions of its compliance with that duty.

[^{F631} Adoption of water mains and service pipes

Textual Amendments

F631 Ss. 51A-51E and preceding cross-heading inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 92\(1\)](#), [105\(3\)](#); [S.I. 2004/641](#), [art. 4\(a\)](#) (with [art. 6](#), [Sch. 3](#))

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51A Agreements to adopt water main or service pipe at future date

(1) Subject to subsections (2) and (10) below, a water undertaker may agree with any person constructing or proposing to construct—

- (a) any water main; or
- (b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay, to be vested in that undertaker.

(2) Subsection (1) above shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

- (a) nothing in this section shall prevent a water undertaker from agreeing apart from this section to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and
- (b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which subsection (1) above applies may [^{F632}request a water undertaker to make an agreement under this section.]

^{F633}(4)

^{F633}(5)

^{F633}(6)

^{F633}(7)

^{F633}(8)

(9) An agreement made under this section by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.

[The reference in subsection (9) to an agreement made under this section includes a ^{F634}(9A) reference to—

- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
- (b) an agreement which has been varied by order under section 51C(1).]

(10) A water undertaker shall not make an agreement under this section with respect to a water main or a service pipe situated within the area of another water undertaker, until either—

- (a) that other undertaker has consented in writing to the making of the agreement; or
- (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F632** Words in s. 51A(3) substituted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\), ss. 10\(2\)\(a\), 94\(3\)](#); [S.I. 2017/462, art. 4\(a\)](#); [S.I. 2017/1288, art. 3\(c\)](#)
- F633** S. 51A(4)-(8) repealed (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\), ss. 10\(2\)\(b\), 94\(3\)](#); [S.I. 2017/462, art. 4\(a\)](#); [S.I. 2017/1288, art. 3\(c\)](#)
- F634** S. 51A(9A) inserted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\), ss. 10\(2\)\(c\), 94\(3\)](#); [S.I. 2017/462, art. 4\(a\)](#); [S.I. 2017/1288, art. 3\(c\)](#)

[^{F635}51B Adoption at a future date: orders by Authority

- (1) This section applies where a person constructing or proposing to construct a water main or service pipe makes a request to a water undertaker under section 51A(3).
- (2) The person or the water undertaker may apply to the Authority for an order under subsection (4) if the person and the water undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the water undertaker, make an order under subsection (4) if the Authority is satisfied that—
 - (a) it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
 - (b) the person and the water undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
 - (a) require the water undertaker to give such undertakings as to the vesting of the water main or service pipe in the undertaker as the Authority may specify, and
 - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.
- (5) An order under subsection (4) has effect as an agreement under section 51A between the person and the water undertaker.
- (6) The Authority may not, by order under subsection (4), require a water undertaker to vest in itself a water main or service pipe as regards which there is a contravention of any of the requirements of section 74 that are prescribed for the purposes of this subsection.
- (7) The Authority may not make an order under subsection (4) with respect to a water main or service pipe that is situated within the area of another water undertaker, until either—
 - (a) that other undertaker has consented in writing to the making of the order, or
 - (b) the Minister, on an application made to the Minister, has disappplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.
- (8) “The Minister” means—
 - (a) the Secretary of State, as regards the consent of a water undertaker whose area is wholly or mainly in England;
 - (b) the Welsh Ministers, as regards the consent of a water undertaker whose area is wholly or mainly in Wales.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a water main or service pipe in a water undertaker at a future date, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the vesting of a water main or service pipe at a future date, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (11) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the water supply industry;
 - (b) the recovery by the water undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.]

Textual Amendments

F635 Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), [ss. 10\(3\)](#), 94(3); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

[^{F635} 51C Variation and termination of section 51A agreements

- (1) On the application of a party to a section 51A agreement to vary (or terminate) the agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient that the section 51A agreement should be varied (or terminated),
 - (b) if the Authority is satisfied, in the case of an application to vary the agreement, that it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
 - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
- by order vary (or terminate) the section 51A agreement.
- (2) If an order under subsection (1) is made in relation to a section 51A agreement, the agreement—
- (a) has effect subject to the provision made by the order, or

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- (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 51A agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a section 51A agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the water undertaker in complying with its obligations under the section 51A agreement in question and to the desirability of—
 - (a) facilitating effective competition within the water supply industry;
 - (b) the recovery by the water undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.
- (7) In this section and sections 51CA to 51CG “section 51A agreement” means an agreement with a water undertaker for the vesting of a water main or service pipe in a water undertaker at a future date and includes—
 - (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
 - (b) any agreement which has been varied by order under subsection (1).]

Textual Amendments

F635 Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 10\(3\)](#), [94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(b\)\(ii\)](#); [S.I. 2017/462](#), [arts. 3\(d\)\(ii\)](#), [4\(a\)](#) (with [art. 15](#)); [S.I. 2017/1288](#), [art. 3\(c\)](#)

Codes in respect of section 51A agreements

F635 51CA

- (1) The Authority must issue a code in respect of section 51A agreements.
- (2) The code may make provision about—
 - (a) procedures in connection with making an agreement under section 51A;

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- (b) procedures in connection with varying or terminating a section 51A agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 51B(4) or 51C(1);
 - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a water undertaker;
 - (e) the terms and conditions of a section 51A agreement;
 - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 51A agreement;
 - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(c) may in particular require the Authority to consult—
- (a) the Chief Inspector of Drinking Water;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one.
- (4) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
- (a) the nature of the work;
 - (b) the kind of premises supplied or to be supplied.
- (5) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
- (a) constructing associated infrastructure;
 - (b) vesting associated infrastructure in a water undertaker;
 - (c) constructing water mains so as to meet additional supply requirements;
 - (d) connecting new water mains or service pipes to the existing supply system of a water undertaker;
 - (e) complying with requirements of the kind referred to in section 47(2);
 - (f) the duration of a section 51A agreement.
- (6) If the Authority considers that a water undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) The Authority may not give a direction under subsection (6) requiring a person to enter into, vary or terminate an agreement.
- (8) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (9) The code may make different provision for different persons or descriptions of person.
- (10) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (11) A revised code may include provision for applying any of its revisions to section 51A agreements made before the revised code comes into force.

Textual Amendments

F635 *Ss. 51B-51CG* substituted for *ss. 51B, 51C* (18.12.2015 for the substitution of *ss. 51CD-51CG*, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E.

Status: This version of this Act contains provisions that are prospective.

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in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), [ss. 10\(3\), 94\(3\)](#); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

51CB Codes under section 51CA: procedure

- (1) Before issuing a code under section 51CA, the Authority must—
 - (a) prepare a draft of the proposed code under section 51CA, and
 - (b) consult the relevant persons about the proposed code.
- (2) The relevant persons are—
 - (a) the Chief Inspector of Drinking Water;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one;
 - (c) such other persons as the Authority considers appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 51CA prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (5) Subsection (4) is subject to subsections (7) and (8).
- (6) In subsection (4) “the Minister” means—
 - (a) the Secretary of State, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) The power under subsection (4) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (8) If the power under subsection (4) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.
- (9) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (10) This section is subject to section 51CC.

Textual Amendments

F635 [Ss. 51B-51CG](#) substituted for [ss. 51B, 51C](#) (18.12.2015 for the substitution of [ss. 51CD-51CG](#), 1.4.2017 for E. for the substitution of [s. 51B\(6\)](#) for specified purposes and [s. 51CB](#), 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(c. 21), **ss. 10(3)**, 94(3); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

51CC Codes under section 51CA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 51CA and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 51CB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

Textual Amendments

F635 **Ss. 51B-51CG** substituted for **ss. 51B, 51C** (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by **Water Act 2014** (c. 21), **ss. 10(3)**, 94(3); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

51CD Rules about charges in connection with a section 51A agreement

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a section 51A agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules may require a water undertaker, upon declaring a water main or service pipe to be vested in the undertaker in accordance with a section 51A agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
 - (a) revenue that might be derived from the water main or service pipe in question;
 - (b) costs that might have been incurred in providing such a water main or service pipe.
- (5) The rules may also make provision as to—
 - (a) the amount of security that may be required by a water undertaker for the purposes of any charges imposed by the water undertaker under a section 51A agreement;
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a water undertaker by way of security.
- (6) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different water undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
 - (a) guidance is issued under section 51CG, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (11) Revised rules may include provision for applying any of their revisions to section 51A agreements made before the revised rules come into effect.

Textual Amendments

F635 Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 10\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(b\)\(ii\)](#); [S.I. 2017/462](#), [arts. 3\(d\)\(ii\), 4\(a\)](#) (with [art. 15](#)); [S.I. 2017/1288](#), [art. 3\(c\)](#)

51CE Rules under section 51CD: procedure

- (1) Before issuing rules under section 51CD, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;

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- (c) the Council;
 - (d) any water undertakers or other persons likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 51CG in making rules under section 51CD.
- (5) Before rules under section 51CD prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
- (a) the Secretary of State, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 51CF.

Textual Amendments

F635 Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), [ss. 10\(3\)](#), 94(3); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

51CF Rules under section 51CD: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 51CD and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 51CE does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—

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Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
- whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
 - (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
 - (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
 - (9) In this section “the Minister” has the meaning given by section 51CE.

Textual Amendments

F635 Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), [ss. 10\(3\)](#), 94(3); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

51CG Rules under section 51CD: guidance

- (1) The Minister may issue guidance as to the content of rules under section 51CD.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;

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- (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.]

Textual Amendments

F635 Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG, 1.4.2017 for E. for the substitution of s. 51B(6) for specified purposes and s. 51CB, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 10\(3\)](#), 94(3); S.I. 2015/1938, art. 2(b)(ii); S.I. 2017/462, arts. 3(d)(ii), 4(a) (with art. 15); S.I. 2017/1288, art. 3(c)

51D Prohibition on connection without adoption

- (1) Where a person (other than a water undertaker) constructs a water main or service pipe which is to be used, in whole or in part, for supplying water for domestic or food production purposes, no water undertaker may permit that water main or service pipe to become connected with its supply system unless it vests (to the relevant extent) in a water undertaker.
- (2) In subsection (1) above, “the relevant extent” means the extent specified in the agreement for the vesting in the undertaker of the water main or service pipe in question.
- (3) The prohibition imposed on a water undertaker by subsection (1) above shall be enforceable under section 18 above by the Authority.

51E Sections 51A to 51D: supplementary

- (1) For the purposes of sections 51A to 51D above, the definition of “water main” in section 219(1) below shall be treated as if the words “not being a pipe for the time being vested in a person other than the undertaker” were omitted.
- (2) [^{F636}In section 51A], references to so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay shall be construed disregarding section 46(8) above.
- (3) In this Act, references to vesting or the making of a declaration of vesting with respect to a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant vesting agreement.]

Textual Amendments

F636 Words in s. 51E(2) substituted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 10\(4\)](#), 94(3); S.I. 2017/462, art. 4(a); S.I. 2017/1288, art. 3(c)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Domestic supplies

52 The domestic supply duty.

- (1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—
 - (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
 - (b) to maintain the connection between the undertaker’s water main and the service pipe by which that supply is provided to those premises.
- (2) Subject to the following provisions of this section and to section 53 below, a water undertaker shall owe a domestic supply duty in relation to any premises to which this section applies^{F637} . . . if—
 - (a) a demand for a supply of water for domestic purposes has been made, in accordance with subsection (5) below, to the undertaker in respect of those premises; or
 - (b) those premises are premises to which this section applies by reason of a supply of water provided before 1st September 1989,and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the beginning of 1st September 1989.
- (3) [^{F638}Subject to subsection (4A) below,] this section applies to any premises if—
 - (a) they consist in the whole or any part of a building and are connected by means of a service pipe to [^{F639}one of the water undertaker’s water mains]; and
 - (b) the requirements of subsection (4) below are satisfied in relation to those premises.
- (4) The requirements of this subsection are satisfied in relation to any premises if—
 - (a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises;
 - (b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately before 1st September 1989;
 - (c) the condition specified in paragraph (b) above would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before 1st September 1989;
 - [^{F640}(ca) the premises are in a retail exit area and the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of section 66A(3);] or,
 - (d) the condition specified in any of the preceding paragraphs—
 - (i) has been satisfied in relation to the premises at any time on or after 1st September 1989; and
 - (ii) would continue to be satisfied in relation to the premises had not the whole or any part of a service pipe to those premises, or the main with which such a pipe had been connected, been renewed (on one or more previous occasions).

[^{F641}(4A) This section does not apply to any premises if—

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- (a) they are not in the area of the water undertaker [^{F642}or they are in a retail exit area] ;
 - (b) they are not household premises (as defined in section 17C above); and
 - (c) [^{F643}in the case of premises to be supplied using the supply system of a water undertaker whose area is wholly or mainly in Wales,] the total quantity of water estimated to be supplied to them annually for the purposes of subsection (2) of section 17D above is not less than the quantity specified in that subsection.]
- (5) For the purposes of this section a demand in respect of any premises is made in accordance with this subsection if it is made—
- (a) by the person who is the occupier of the premises at the time when the demand is made; or
 - (b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker’s charges in respect of the supply demanded.
- (6) For the purposes of this section—
- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and
 - (b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.
- ^{F644}(6A) For the purposes of this section, there is also an interruption of the domestic supply duty owed by a water undertaker in relation to any premises where—
- (a) a notice is served in respect of those premises under section 63AA below; and
 - (b) the time specified in that notice has passed.]
- (7) Nothing in this section shall impose any duty on a water undertaker—
- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
 - (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—
 - (i) for the supply of water to those premises to be cut off or reduced; or
 - (ii) for the pipe to be disconnected,
 for the purposes of the carrying out of any necessary works.
- (8) In this section references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of sections 60 to 62 and 75 below.

Textual Amendments

F637 Words in s. 52(2) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), ss. 41, 56\(7\), Sch. 2](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.1

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- F638** Words in s. 52(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F639** WOrds in s. 52(3)(a) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 20**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F640** S. 52(4)(ca) inserted (E.) (31.10.2021) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) (Consequential Provision) Regulations 2021 (S.I. 2021/1208), regs. 1(2), **2(4)**
- F641** S. 52(4A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F642** Words in s. 52(4A)(a) inserted (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), reg. 1(2), **Sch. 2 para. 4**
- F643** Words in s. 52(4A)(c) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 58(2)**; S.I. 2017/462, art. 3(k)(vii)
- F644** S. 52(6A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

53 Conditions of compliance with domestic supply duty.

- (1) Where a demand for the purposes of section 52(2) above has been made to a water undertaker in respect of any premises (“the relevant premises”), the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of providing his first supply of water in compliance with that demand.
- (2) The requirements mentioned in subsection (1) above are—
- (a) a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person’s failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—
 - (i) in respect of a supply of water to the relevant premises; or
 - (ii) in respect of expenses [^{F645}reasonably] incurred in cutting off any such supply;
 - (b) a requirement, in relation to the relevant premises
 - (i) that such a requirement as may be imposed under section 66 below has been complied with; or
 - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;
 - (c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
 - (i) the supply of water to the relevant premises; or
 - (ii) the use of water in those premises,of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection; and
 - (d) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.

^{F646}[(2A) Any dispute between a water undertaker and any other person as to whether the expenses referred to in subsection (2)(a)(ii) above were incurred reasonably may be

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referred to the Director for determination under section 30A above by either party to the dispute.]

^{F647}[(2A) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in subsection (2)(a) or (b) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.]

(3) This section shall be without prejudice to the provisions of sections 233 and 372 of the ^{M17}Insolvency Act 1986 (conditions of supply after insolvency).

Textual Amendments

F645 Word in s. 53(2)(a)(ii) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(5\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

F646 S. 53(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(5\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

F647 S. 53(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(5\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

Marginal Citations

M17 1986 c. 45.

54 Enforcement of domestic supply duty.

- (1) A duty imposed on a water undertaker under section 52 above—
- (a) to provide a supply of water to any premises; or
 - (b) to maintain a connection between a water main and a service pipe by which such a supply is provided,
- shall be owed to the consumer.
- (2) Where a duty is owed by virtue of this section to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

Other supplies

55 Supplies for non-domestic purposes.

- (1) This section applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—
- (a) the premises are premises which do not consist in the whole or any part of a building; or
 - (b) the requested supply is for purposes other than domestic purposes.

^{F648}(1A) This section also applies where—

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- (a) a water undertaker is requested to provide a supply of water to premises which are not in the undertaker's area by the owner or occupier of the premises;
- (b) the premises are household premises (as defined in section 17C above) [^{F649}, in the case of premises to be supplied using the supply system of a water undertaker whose area is wholly or mainly in Wales,] or the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection; and
- (c) paragraph (a) or (b) of subsection (1) above applies.]

[^{F650}(1B) But this section does not apply to any premises if—

- (a) they are in a retail exit area, and
- (b) they are not household premises (as defined in section 17C above).]

- (2) Where this section applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under section 56 below—
 - (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and
 - (b) having taken any such steps, to provide that supply.
- (3) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—
 - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
 - (b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (4) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if there is a contravention in relation to the water fittings used or to be used in connection with—
 - (a) the supply of water to those premises; or
 - (b) the use of water in those premises,of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.
- (5) Where—
 - (a) a request has been made by any person to a water undertaker for the purposes of subsection (2) above; and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by the undertaker of any of its powers or the carrying out by the undertaker of any works,the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.

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- (6) Nothing in this section shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.
- (7) The duty of a water undertaker to supply water under this section at the request of any person, and any terms and conditions determined under section 56 below in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.
- (8) Except so far as otherwise provided by the terms and conditions determined under section 56 below in relation to any supply, the duties of a water undertaker under this section shall have effect subject to the provisions of sections 60 to 63 ^[F651] and 63AB] and 75 below.

Textual Amendments

- F648** S. 55(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 16(2)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F649** Words in s. 55(1A)(b) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 59**; S.I. 2017/462, **art. 3(k)(vii)**
- F650** S. 55(1B) inserted (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), reg. 1(2), **Sch. 2 para. 5**
- F651** Words in s. 55(8) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 16(3)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))

Modifications etc. (not altering text)

- C80** S. 55 extended (01.12.1991) By [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(2), 4(2), **Sch. 2 Pt. I para.8**.

56 Determinations on requests for non-domestic supplies.

- (1) Subject to subsection (3) below, any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of section 55 above shall be determined—
 - (a) by agreement between that person and the water undertaker; or
 - (b) in default of agreement, by the Director according to what appears to him to be reasonable.
- (2) Subject to subsection (3) below, the Director shall also determine any dispute arising between any person and a water undertaker by virtue of subsection (3) or (4) of section 55 above.
- (3) The Director may, instead of himself making a determination under subsection (1) or (2) above, refer any matter submitted to him for determination under that subsection to the arbitration of such person as he may appoint.
- (4) For the purposes of any determination under this section by the Director or any person appointed by him it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of section 55 above.
- (5) The charges in respect of a supply provided in compliance with any request made for the purposes of section 55 above—

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- (a) shall not be determined by the Director or a person appointed by him, except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under section 143 below in respect of supplies of the applicable description; and
- (b) in so far they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—
 - (i) recovering the expenses of complying with its obligations under section 55 above; and
 - (ii) securing a reasonable return on its capital.
- (6) To the extent that subsection (5)(a) above excludes any charges from a determination under this section, those charges shall be fixed from time to time by a charges scheme under section 143 below, but not otherwise.
- (7) The determination of any matter under this section shall be without prejudice to the provisions of sections 233 and 372 of the ^{M18}Insolvency Act 1986 (conditions of supply after insolvency).

Marginal Citations

M18 1986 c. 45.

57 Duty to provide a supply of water etc. for fire-fighting.

- (1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.
- (2) Every water undertaker shall, at the request of the [^{F652}fire and rescue authority] concerned, fix fire-hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.
- (3) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.
- (4) It shall be the duty of a water undertaker to ensure that a [^{F652}fire and rescue authority] has been supplied by the undertaker with all such keys as the authority may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.
- [^{F653}(4A) Where a fire-hydrant is removed (other than at the request of the fire authority concerned) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.]
- (5) Subject to [^{F654}subsection (5A) and] section 58(3) below, the expenses incurred by a water undertaker in complying with its obligations under subsections (2) to (4) above shall be borne by the [^{F655}fire and rescue authority] concerned.
- [^{F656}(5A) Where a fire-hydrant is damaged as the result of any use made of it with the authority of a water undertaker, other than use for the purposes of fire-fighting or for any other purposes of a fire and rescue authority, the fire and rescue authority is not liable for the cost of repairing or replacing the hydrant.]

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- (6) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.
- (7) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.
- (8) In addition, where a water undertaker is in breach of its obligations under this section, 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.
- (9) In any proceedings against any water undertaker for an offence under subsection (8) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (10) ^{F657}

Textual Amendments

- F652** Words in s. 57(2)(4) substituted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), ss. 53, 61](#), {Sch. 1 para. 76(2)}; [S.I. 2004/2304, art. 2\(2\)](#) (subject to savings in [art. 3](#)); [S.I. 2004/2917, art. 2](#)
- F653** S. 57(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\), ss. 84\(1\), 105\(3\)](#); [S.I. 2004/641, art. 3\(v\)](#) (with [art. 6, Sch. 3](#))
- F654** Words in s. 57(5) inserted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), ss. 53, 61](#), {Sch. 1 para. 76(3)(a)}; [S.I. 2004/2304, art. 2\(2\)](#) (subject to savings in [art. 3](#)); [S.I. 2004/2917, art. 2](#)
- F655** Words in s. 57(5) substituted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), ss. 53, 61](#), {Sch. 1 para. 76(3)(b)}; [S.I. 2004/2304, art. 2\(2\)](#) (subject to [art. 2](#)); [S.I. 2004/2917, art. 2](#)
- F656** S. 57(5A) inserted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), ss. 53, 61](#), {Sch. 1 para. 76(4)}; [S.I. 2004/2304, art. 2\(2\)](#) (subject to savings in [art. 3](#)); [S.I. 2004/2917, art. 2](#)
- F657** S. 57(10) repealed (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), ss. 54, 61](#), {Sch. 2}; [S.I. 2004/2304, art. 2\(2\)](#) (subject to savings in [art. 3](#)); [S.I. 2004/2917, art. 2](#)

58 Specially requested fire-hydrants.

- (1) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.
- (2) For the purposes of subsection (1) above a water main or other pipe is suitable, in relation to a factory or place of business, if—
 - (a) it is situated in a street which is in or near to that factory or place of business; and
 - (b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.

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- (3) Subsection (5) of section 57 above shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under subsections (3) and (4) of that section.
- (4) Any expenses incurred by a water undertaker—
- (a) in complying with its obligations under subsection (1) above; or
 - (b) in complying, in relation to a specially requested fire-hydrant, with its obligations under section 57(3) or (4) above,
- shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.
- [^{F658}(4A) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.]
- (5) Subsections (6) to (9) of section 57 above shall apply in relation to the obligations of a water undertaker under this section as they apply to the obligations of a water undertaker under that section.
- (6) In this section—
- “factory” has the same meaning as in the ^{M19}Factories Act 1961; and
 - “specially requested fire-hydrant” means a fire-hydrant which—
- (a) is fixed on a water main or other pipe of a water undertaker; and
 - (b) was fixed on that main or pipe (whether before or after it became such a main or pipe under the ^{M20}Water Act 1989) in pursuance of a request made by the owner or occupier of a factory or place of business.

Textual Amendments

F658 S. 58(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 84(2)**, 105(3); S.I. 2004/641, **art. 3(v)** (art. 6, Sch. 3)

Marginal Citations

M19 1961 c. 34.

M20 1989 c. 15.

59 Supplies for other public purposes.

- (1) A water undertaker shall, at the request of a sewerage undertaker, highway authority or local authority, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains, for cleansing and watering highways or, as the case may be, for supplying any public pumps, baths or wash-houses.
- (2) A supply of water provided by a water undertaker under this section shall be provided upon such terms and conditions as may be reasonable.
- (3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this section if and only if it has a fire-hydrant fixed on it.

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- (4) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.
- (5) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the Director.

Disconnections

60 Disconnections for the carrying out of necessary works.

- (1) Subject to the following provisions of this section, a water undertaker may—
 - (a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or
 - (b) otherwise cut off a supply of water to any premises,
 if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.
- (2) The power of a water undertaker under this section to cut off a supply of water shall include power to reduce a supply of water.
- (3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this section to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.
- (4) Where a water undertaker exercises its power under this section to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—
 - (a) that those works are carried out with reasonable dispatch; and
 - (b) that any supply of water to those premises for domestic purposes is interrupted for more than twenty-four hours for the purposes of the carrying out of those works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.
- (5) Any breach by a water undertaker of the duty owed by virtue of subsection (4) above which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

61 Disconnections for non-payment of charges.

- (1) Subject to ^{F659}subsections (1A) to (6)], a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, ^{F660}if subsection (1ZA) or (1ZB) applies
- (1ZA) This subsection applies] if the occupier of the premises—
- (a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
 - (b) has failed to do so before the end of the period of seven days beginning with the day after he is served with notice requiring him to do so.

Status: This version of this Act contains provisions that are prospective.

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[^{F661}(1ZB) This subsection applies if a water supply licensee requests the undertaker to disconnect the service pipe or otherwise cut off the supply of water to the premises.

(1ZC) A water supply licensee may make a request under subsection (1ZB) only if—

- (a) the occupier of the premises is liable under an agreement with the licensee to pay charges to the licensee in respect of the supply of water to the premises,
- (b) the licensee has served notice on the occupier requiring payment of charges due,
- (c) the occupier has failed to pay the charges before the end of the period of seven days beginning with the day after the notice was served, and
- (d) that period has expired.]

[^{F662}(1A) The power conferred by subsection (1) above is not exercisable in relation to any premises specified in Schedule 4A to this Act.]

(2) Where—

- (a) a water undertaker has served a notice for the purposes of paragraph (b) of [^{F663}subsection (1ZA)] above on a person; and
- (b) within the period of seven days mentioned in that paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of [^{F664}subsection (1)] in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in subsection (3) below.

[^{F665}(2A) Where—

- (a) a water supply licensee has served a notice for the purposes of subsection (1ZC)(b) on a person, and
- (b) within the period of seven days mentioned in subsection (1ZC)(c), the person serves a counter-notice on the licensee stating that he disputes his liability to pay the charges in question,

the licensee may not make a request under subsection (1ZB) in relation to the premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in subsection (3).]

(3) For the purposes of subsection (2) [^{F666}or (2A)] above charges are enforceable in a manner specified in this subsection against a person if-

- (a) the undertaker [^{F667}or, as the case may be, the licensee] is able to enforce a judgment against that person for the payment of the charges; or
- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker [^{F668}or, as the case may be, the licensee] for the recovery of the charges.

(4) A water undertaker which exercises its power under this section to disconnect any pipe or otherwise to cut off any supply of water may recover^{F669}... any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply [^{F670}—

- (a) from the person in respect of whose liability the power is exercised, in a case where the power is exercised in the circumstances mentioned in subsection (1ZA);

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- (b) from the water supply licensee who made the request, in a case where the power is exercised in the circumstances mentioned in subsection (1ZB).]
- (5) Where—
- (a) a water undertaker has power under this section to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and
- (b) a supply of water is provided to those premises [^{F671}(“the primary premises”)] and to other premises [^{F672}(“the secondary premises”)] wholly or partly by the same service pipe,
- the undertaker may exercise that power so as to cut off the supply to [^{F673}the secondary premises] if and only if the same person is the occupier of [^{F674}the primary premises] and of [^{F675}the secondary premises].
- [^{F676}(6) The undertaker may not cut off the supply to the secondary premises in reliance on subsection (5) if—
- (a) in a case where the undertaker is exercising the power in subsection (1) because charges are due to it, the secondary premises are supplied by a person other than the undertaker;
- (b) in a case where the undertaker is exercising the power in subsection (1) because of a request for disconnection under subsection (1ZB), the secondary premises are supplied by a person other than the licensee which made that request.]

Textual Amendments

- F659** Words in s. 61(1) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(2)(a)**; S.I. 2017/462, art. 3(k)(vii)
- F660** S. 61(1ZA) and words inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(2)(b)**; S.I. 2017/462, art. 3(k)(vii)
- F661** S. 61(1ZB)(1ZC) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(3)**; S.I. 2017/462, art. 3(k)(vii)
- F662** S. 61(1A) inserted (30.6.1999) by 1999 c. 9, **ss. 1(1)**, 17(2)
- F663** Words in s. 61(2)(a) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(4)(a)**; S.I. 2017/462, art. 3(k)(vii)
- F664** Words in s. 61(2) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(4)(b)**; S.I. 2017/462, art. 3(k)(vii)
- F665** S. 61(2A) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(5)**; S.I. 2017/462, art. 3(k)(vii)
- F666** Words in s. 61(3) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(6)(a)**; S.I. 2017/462, art. 3(k)(vii)
- F667** Words in s. 61(3)(a) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(6)(b)**; S.I. 2017/462, art. 3(k)(vii)
- F668** Words in s. 61(3)(b) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(6)(c)**; S.I. 2017/462, art. 3(k)(vii)
- F669** Words in s. 61(4) repealed (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(7)(a)**; S.I. 2017/462, art. 3(k)(vii)
- F670** S. 61(4)(a)(b) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(7)(b)**; S.I. 2017/462, art. 3(k)(vii)
- F671** Words in s. 61(5)(b) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(8)(a)(i)**; S.I. 2017/462, art. 3(k)(vii)
- F672** Words in s. 61(5)(b) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 60(8)(a)(ii)**; S.I. 2017/462, art. 3(k)(vii)

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- F673** Words in s. 61(5) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 60\(8\)\(b\)\(i\)](#); S.I. 2017/462, art. 3(k)(vii)
- F674** Words in s. 61(5) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 60\(8\)\(b\)\(ii\)](#); S.I. 2017/462, art. 3(k)(vii)
- F675** Words in s. 61(5) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 60\(8\)\(b\)\(iii\)](#); S.I. 2017/462, art. 3(k)(vii)
- F676** S. 61(6) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 60\(9\)](#); S.I. 2017/462, art. 3(k)(vii)

62 Disconnections at request of customer.

- (1) Subject to the following provisions of this section, a water undertaker may—
- (a) disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker; or
 - (b) otherwise cut off a supply of water to any premises,
- if notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.
- (2) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by this section.

63 General duties of undertakers with respect to disconnections.

- (1) Where a water undertaker—
- (a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and
 - (b) does so without restoring the supply to that house before the end of the period of twenty-four hours beginning with the time when it is cut off,
- the undertaker shall, no later than forty-eight hours after that time, serve notice that it has cut off that supply on the local authority in whose area the house is situated.
- (2) A water undertaker which fails, without reasonable excuse, to serve a notice on a local authority as required by subsection (1) above shall be guilty of an offence under this section.
- (3) A water undertaker shall be guilty of an offence under this section if—
- (a) it disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under sections 60 to 62 above, section 75 below or any other enactment; or
 - (b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.
- [^{F677}(3A) A water undertaker is not guilty of an offence under subsection (3) where it disconnects a service pipe or otherwise cuts off a supply of water under section 61 in the circumstances mentioned in section 61(1ZB) (request from water supply licensee).]
- (4) A water undertaker which is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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Textual Amendments

F677 S. 63(3A) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 61](#); S.I. 2017/462, art. 3(k)(vii)

[^{F678}Supply by [^{F679}water supply licensee]etc

Textual Amendments

F678 Ss. 63AA-63AC and preceding cross-heading inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 17](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

F679 Words in s. 63AA cross-heading substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 62](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(l\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

63AA Supply by [^{F680}water supply licensee]: domestic supply

- (1) The owner or occupier of any premises may serve a notice on a water undertaker—
 - (a) informing the undertaker that the premises are to be supplied by a [^{F681}water supply licensee]; and
 - (b) specifying the time after which a supply of water to the premises by the undertaker will no longer be required.
- (2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.
- (3) In this section and section 63AB below, any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on—
 - (a) a Saturday or Sunday; or
 - (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Textual Amendments

F680 Words in s. 63AA title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 63\(2\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(l\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

F681 Words in s. 63AA(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 63\(3\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(l\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

63AB Supply by [^{F682}water supply licensee]: non-domestic supply

- (1) The duty of a water undertaker under section 55 above [^{F683}or section 63AC(2)] to provide a supply of water to any premises shall cease to apply if—
 - (a) a notice specifying the time after which a supply of water to the premises by the undertaker will no longer be required in consequence of the premises being

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supplied by a [^{F684}water supply licensee] has been served on the undertaker by the owner or occupier of the premises; and

(b) that time has passed.

(2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

Textual Amendments

F682 Words in s. 63AB title substituted (6.3.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 64\(2\)](#); [S.I. 2017/58](#), art. 2(c) (with art. 3(1))

F683 Words in s. 63AB(1) inserted (6.3.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 64\(3\)](#); [S.I. 2017/58](#), art. 2(c) (with art. 3(1))

F684 Words in s. 63AB(1)(a) substituted (6.3.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 64\(4\)](#); [S.I. 2017/58](#), art. 2(c) (with art. 3(1))

[^{F685}63A] **Interim duty: domestic and non-domestic supply**

(1) This section applies where—

(a) a water supply licensee (“the previous licensee”) ceases to supply any premises with water, and

(b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—

(i) he has made arrangements for the continuation of the supply of water to the premises, or

(ii) he intends any supply of water to the premises to cease.

(2) It is to be the duty of the water undertaker to continue the supply of water to the premises which was made by the previous licensee.

(3) But the Authority may give a direction to an eligible water supply licensee (an “interim licensee”) providing that it is to be the duty of that licensee to continue the supply instead.

(4) An “eligible water supply licensee” is a water supply licensee with a retail authorisation or a restricted retail authorisation who has elected to be an eligible water supply licensee for the purposes of this section in accordance with the code issued under section 63AF.

(5) If the Authority proposes to give a direction under subsection (3) to an eligible water supply licensee—

(a) the Authority must give notice of the proposed direction to the licensee, and

(b) the licensee may, in accordance with the code issued under section 63AF, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.

(6) Where a supply is made by an undertaker under subsection (2)—

(a) the charges payable in respect of the supply are to be fixed from time to time by a charges scheme under section 143, and

(b) subject to subsection (12), the supply is to be made until—

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- (i) a supply is made by an interim licensee by virtue of a direction under subsection (3),
 - (ii) a supply is made by a water supply licensee following the service of a notice under section 63AA or 63AB;
 - (iii) a supply is made under section 52 or 55, or
 - (iv) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (8)),
- whichever is the earlier.
- (7) Where a supply is made by an interim licensee by virtue of a direction given under subsection (3)—
- (a) the supply by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises,
 - (b) the terms and conditions in accordance with which the supply is to be made are to be—
 - (i) those provided for by a scheme made under section 63AE, or
 - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
 - (c) subject to subsection (12), the supply is to be made until it is discontinued in accordance with the terms and conditions mentioned in paragraph (b).
- (8) A notice under subsection (6)(b)(iv) may not be served before the end of the period of three months beginning with the day on which the supply by the previous licensee ceased.
- (9) Subsections (10) and (11) apply if, within a period of three months beginning with the date on which the previous licensee ceased to supply the premises with water, the owner or occupier of the premises serves notice—
- (a) under section 63AA or 63AB, on the water undertaker continuing the supply under subsection (2), or
 - (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the supply by virtue of a direction given under subsection (3),
- that instead another water supply licensee (“the new licensee”) is to continue the supply of water to the premises which was made by the previous licensee.
- (10) The notice must—
- (a) specify the time from which the new licensee is to continue the supply in question, and
 - (b) be served in accordance with the code issued under section 63AF.
- (11) In the case of a notice served as mentioned in subsection (9)(a), the supply by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises.
- (12) Supplies of water under this section are subject to sections 60 to 63.]]

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Textual Amendments

F685 Ss. 63AC-63AF substituted for s. 63AC (1.4.2017) by [Water Act 2014 \(c. 21\)](#), **ss. 31**, 94(3); S.I. 2017/462, art. 3(f)

[^{F685} 63A] **Interim duty: supplementary**

- (1) A water undertaker is not required by virtue of section 63AC to provide a supply of water to any premises if the provision of the supply would—
 - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
 - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (2) The Authority may determine, in a case referred to it by the owner or occupier of the premises in question, whether the condition in subsection (1) is satisfied in relation to a water undertaker.
- (3) Before the Authority determines whether that condition is satisfied, it must consult—
 - (a) the Secretary of State, in the case of a water undertaker whose area is wholly or mainly in England;
 - (b) the Welsh Ministers, in the case of a water undertaker whose area is wholly or mainly in Wales.
- (4) The supply of water to any premises by a water undertaker under section 63AC does not prevent a proposed supply to those premises by that undertaker under section 55 from being regarded as a new supply for the purposes of that section.
- (5) Where a duty is imposed by section 63AC(2), or by virtue of a direction given under section 63AC(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (6) But in any proceedings brought against a water undertaker or water supply licensee in pursuance of subsection (5), it is a defence for the undertaker or licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.
- (7) For the purposes of section 63AC, premises which are outside a water undertaker's area are to be treated as being within that area if they are supplied with water using the undertaker's supply system.
- (8) In subsection (7), the reference to the undertaker's supply system is to be construed in accordance with section 17B.

Textual Amendments

F685 Ss. 63AC-63AF substituted for s. 63AC (1.4.2017) by [Water Act 2014 \(c. 21\)](#), **ss. 31**, 94(3); S.I. 2017/462, art. 3(f)

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63AE Interim licensees: schemes for terms and conditions

- (1) A person who is an eligible water supply licensee for the purposes of section 63AC must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to a supply of water made by the licensee by virtue of a direction given under section 63AC(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
- (3) As soon as practicable after a water supply licensee makes or revises a scheme under this section the licensee is to—
 - (a) publish the scheme, or revised scheme, on the licensee's website, and
 - (b) send a copy of the scheme, or revised scheme, to the Authority.
- (4) The Authority may give a direction that terms and conditions applying to a supply of water in accordance with a scheme under this section must be modified as specified in the direction.
- (5) A direction under subsection (4) may apply—
 - (a) generally to terms and conditions applying in accordance with a scheme under this section, or
 - (b) to terms and conditions so applying in any particular case.
- (6) It is the duty of a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

Textual Amendments

F685 Ss. 63AC-63AF substituted for s. 63AC (1.4.2017) by [Water Act 2014 \(c. 21\)](#), **ss. 31, 94(3)**; S.I. [2017/462](#), art. 3(f)

63AF Interim duty: code

- (1) The Authority must issue a code in relation to—
 - (a) supplies of water under section 63AC, and
 - (b) its power of direction under section 63AC(3) (power to direct that eligible water supply licensee makes interim supply).
- (2) The code may, in particular, make provision about—
 - (a) the procedure for electing to be an eligible water supply licensee for the purposes of section 63AC;
 - (b) the procedure for temporarily suspending such an election under section 63AC(5)(b);
 - (c) the circumstances in which the Authority's power of direction under section 63AC(3) or 63AE(4) may or may not be exercised;
 - (d) how the Authority will determine the date on which a water supply licensee ceased to supply premises with water for the purposes of section 63AC;
 - (e) terms and conditions contained in schemes made under section 63AE;
 - (f) eligible water supply licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 63AE, before agreeing any terms and conditions as mentioned in section 63AC(7)(b)(ii);

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- (g) the giving of notices as mentioned in section 63AC(9) (that a new licensee is to continue the supply of water made by the previous licensee) including, in particular, provision about—
 - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the supply of water made by a previous licensee;
 - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a water supply licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water supply licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 63AC to the code issued under this section are to the code issued under this section that has effect at the time in question.]

Textual Amendments

F685 Ss. 63AC-63AF substituted for s. 63AC (1.4.2017) by [Water Act 2014 \(c. 21\)](#), **ss. 31, 94(3)**; S.I. 2017/462, art. 3(f)

[Use of limiting devices

^{F686}**63A Prohibition of use of limiting devices.**

- (1) A water undertaker shall be guilty of an offence under this section if it uses a limiting device in relation to any premises specified in Schedule 4A to this Act, with the intention of enforcing payment of charges which are or may become due to the undertaker in respect of the supply of water to the premises.
- (2) For the purposes of this section “a limiting device”, in relation to any premises, means any device or apparatus which—
 - (a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and
 - (b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.
- (3) An undertaker does not commit an offence under this section by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.
- (4) An undertaker guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

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Textual Amendments

F686 S. 63A inserted (30.6.1999) by 1999 c. 9, ss. 2, 17(2)

Means of supply

64 Supply by means of separate service pipes.

- (1) Subject to the following provisions of this section, a water undertaker may require the provision of a separate service pipe to any premises ^{F687} . . . which—
- (a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and
 - (b) are already supplied with water by the undertaker but do not have a separate service pipe.
- (2) Where the supply of water to two or more houses [^{F688}is provided wholly or partly by the same service pipe], the water undertaker shall not require the provision of separate service pipes to those houses until—
- (a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;
 - (b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;
 - (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;
 - (d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or
 - (e) the undertaker has reasonable grounds for believing that such interference as is mentioned in paragraph (d) above is likely to take place.
- ^{F689}[(2A) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.]
- (3) If, in the case of any such premises as are described in subsection (1) above, the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under subsection (4) below—
- (a) that consumer shall, within three months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of paragraph (b) below;
 - (b) sections 45 to 51 above shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;
 - (c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—
 - (i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made

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- a demand for the purposes of section 52 above that such a supply is provided by means of the separate service pipe; and
- (ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice;
- and
- (d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.
- (4) If a person upon whom a notice has been served for the purposes of subsection (3) above fails to comply with the notice, the water undertaker may—
- (a) itself carry out the works which that person was required to carry out; and
- (b) recover the expenses reasonably incurred by the undertaker in doing so from that person.
- (5) Without prejudice—
- (a) to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 47 above; or
- (b) to the power conferred by virtue of paragraph (d) of that subsection, any works carried out by a water undertaker by virtue of the provisions of the said paragraph (b) or of subsection (4) above shall be necessary works for the purposes of this Chapter.

Textual Amendments

- F687** Words in s. 64(1) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1, para. 21\(a\), Sch. 2](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F688** Words in s. 64(2) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 21\(b\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F689** S. 64(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(6\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

65 Duties of undertakers as respects constancy and pressure.

- (1) Subject to the following provisions of this section, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—
- (a) are used for providing supplies of water for domestic purposes; or
- (b) have fire-hydrants fixed on them,
- to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.
- (2) Nothing in subsection (1) above shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken.

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- (3) For the purposes of this section a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.
- (4) Nothing in subsection (1) above shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.
- (5) The Secretary of State may by order modify the application of the preceding provisions of this section in relation to any water undertaker.
- (6) The Secretary of State shall not make an order under subsection (5) above except—
 - (a) in accordance with Schedule 5 to this Act; and
 - (b) on an application made in accordance with that Schedule by the Director or by the water undertaker in relation to which the order is made.
- (7) Subject to subsection (6) above, 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
- (8) An order under subsection (5) above may—
 - (a) require the payment of compensation by a water undertaker to persons affected by the order;
 - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (9) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the ^{F690}Director].
- (10) In addition, where a water undertaker is in breach of a duty under this section, 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.
- (11) In any proceedings against any water undertaker for an offence under subsection (10) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Textual Amendments

F690 Word in s. 65(9) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para.22](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

66 Requirements by undertaker for maintaining pressure.

- (1) A water undertaker may require that any premises consisting in—
 - (a) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Act, be constantly laid on under pressure; or

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- (b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service reservoir or tank from which a supply of water is being provided by the undertaker to those premises,
shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises.
- (2) A water undertaker may, in the case of such a house as is mentioned in paragraph (b) of subsection (1) above, require that a cistern the provision of which is required under that subsection shall be capable of holding sufficient water to provide an adequate supply to the house for a period of twenty-four hours.
- (3) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice—
- (a) to provide a cistern in accordance with a requirement under this section; or
(b) to put any such cistern and its float-operated valve into good repair,
the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.
- (4) The period specified for the purposes of subsection (3) above in a notice under this section shall be a period of not less than twenty-eight days beginning with the day after the service of the notice.
- (5) Where a water undertaker provides a cistern or carries out any repairs under subsection (3) above, it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.
- (6) In this section—
“pre-transfer supplier”, in relation to a house, means the person who was supplying water to that house immediately before 1st September 1989; and
“relevant house” means any house other than a house in relation to which the following two conditions are satisfied, that is to say—
- (i) the erection of the house was commenced before 1st September 1989; and
(ii) no such requirement as is mentioned in subsection (1) or (2) above could have been imposed in relation to the house under any enactment having effect immediately before that date in relation to the pre-transfer supplier.

[^{F691}CHAPTER 2A

[^{F692}SUPPLY DUTIES ETC: WATER SUPPLY LICENSEES]

Textual Amendments

F691 Pt. 3 Ch. 2A inserted (1.4.2004 for specified provisions and purposes and 1.12.2005 otherwise) by Water Act 2003 (c. 37), ss. 56, 105(3), Sch. 4 para. 3; S.I. 2004/641, art. 3(I), Sch. 1 (with art. 6, Sch. 3); S.I. 2005/2714, art. 3(a) (with Sch. 2 para. 8)

F692 S. 66A-66C and cross-heading substituted (1.4.2017 for the substitution of ss. 66A, 66AA, 66C) by Water Act 2014 (c. 21), s. 94(3), Sch. 2 para. 1; S.I. 2017/462, art. 3(i)(i) (with arts. 6-9, 12)

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Modifications etc. (not altering text)

C81 Pt. 3 Ch. 2A applied (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **38**

[^{F692}Duties of undertakers to supply water supply licensees etc]

[^{F692}66A Wholesale water supply by primary water undertaker

- (1) This section applies where a water supply licensee with a retail authorisation (“L”) requests a water undertaker to permit the use of the undertaker’s supply system for the purpose of supplying water to premises that—
 - (a) L is to supply in accordance with L’s retail authorisation, and
 - (b) are in the area of the undertaker.
- (2) This section also applies where a water supply licensee with a restricted retail authorisation (“R”) requests a water undertaker to permit the use of the undertaker’s supply system for the purpose of supplying water to premises that—
 - (a) R is to supply in accordance with R’s restricted retail authorisation, and
 - (b) are in the area of the undertaker.
- (3) Where this section applies, the undertaker must in accordance with a section 66D agreement take such steps—
 - (a) for the purpose of connecting the premises in question with the undertaker’s supply system, or
 - (b) in respect of that system,
 as may be provided for in that agreement in order to enable the requested use of the undertaker’s supply system.
- [^{F693}(3A)** A water undertaker is not required by this section to take any steps to enable the use of its supply system at a time when it is required to take those steps by virtue of a notice under section 41 or a connection notice.]
- (4) A water undertaker is not required by this section to permit the use of its supply system, or to take any steps to enable its use, if the first or second ground applies.
- (5) The first ground is that—
 - (a) in the case of a request under subsection (1), the water supply licensee has not secured by means of—
 - (i) a request under section 66AA(1) made by the licensee,
 - (ii) a request under section 66B(1) or 66C(1), (2) or (3) made by the licensee or another water supply licensee, or
 - (iii) a combination of such requests,
 a supply of water, or the introduction of a supply of water, in connection with which the premises in question are to be supplied;
 - (b) in the case of a request under subsection (2), the water supply licensee has not secured by means of—
 - (i) a request under section 66AA(2), 66B(2) or (3) or 66C(4), or
 - (ii) a combination of such requests,
 a supply of water, or the introduction of a supply of water, in connection with which the premises in question are to be supplied.

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- (6) The second ground is that there is, in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises in question, or
 - (b) the use of water in those premises,
- a contravention of such of the requirements of regulations under section 74 as are prescribed for the purposes of this subsection.
- (7) Where—
- (a) a request has been made by a water supply licensee for the purposes of subsection (1) or (2), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.
- (8) For the purposes of this section and sections 66AA to 66C—
- (a) premises which are outside a water undertaker's area are to be treated as being within that area if they are supplied with water using the undertaker's supply system, and
 - (b) any pipes of the water undertaker which are used for the purpose of supplying premises as mentioned in paragraph (a) are to be treated as being part of the undertaker's supply system (if they would not otherwise be part of it).
- (9) In this section and sections 66AA to 66C—
- (a) “prescribed” means, in relation to a water undertaker whose area is wholly or mainly in Wales, prescribed by regulations made by the Welsh Ministers by statutory instrument, which is subject to annulment in pursuance of a resolution of the Assembly;
 - (b) a reference to the supply system of a water undertaker is to be construed in accordance with section 17B;
 - (c) references to a retail authorisation or a restricted retail authorisation are to be construed in accordance with Schedule 2A.]

Textual Amendments

F693 S. 66A(3A) inserted (E.) (31.10.2021) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), 2(5)

Water supply from water undertaker

F692 **66AA**

- (1) This section applies where a water supply licensee with a retail authorisation (“L”) requests a water undertaker to provide L with a supply of water for the purpose of supplying water to premises that—
- (a) L is to supply in accordance with L's retail authorisation, and
 - (b) are in the area of the undertaker.

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- (2) This section also applies where a water supply licensee with a restricted retail authorisation (“R”) requests a water undertaker to provide R with a supply of water for the purpose of supplying water to premises that—
- (a) R is to supply in accordance with R's restricted retail authorisation, and
 - (b) are in the area of the undertaker.
- (3) Where this section applies, the undertaker must in accordance with a section 66D agreement—
- (a) take such steps in respect of the undertaker's supply system as may be provided for in that agreement in order to enable the use of the undertaker's supply system for the purpose in subsection (1) or, as the case may be, subsection (2), and
 - (b) having taken such steps, provide the requested supply of water.
- (4) A water undertaker is not required by this section to provide a supply of water if both of the first and second grounds apply.
- (5) The first ground is that—
- (a) the premises to be supplied by L or, as the case may be, R do not consist in the whole or any part of a building, or
 - (b) the supply to be made by L or, as the case may be, R to those premises is for purposes other than domestic purposes.
- (6) The second ground is that provision of a supply of water by the water undertaker would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
 - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (7) Where—
- (a) a request has been made by a water supply licensee for the purposes of subsection (1) or (2), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.

66B Introduction of water into water undertaker's supply system

- (1) This section applies where—
- (a) a water supply licensee with a wholesale authorisation (“L”) requests a water undertaker to permit L to introduce water into the undertaker's supply system, with a view to the use of that system, in connection with that introduction of water, to supply water to particular premises in accordance with a retail authorisation (whether L's or another's), and

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- (b) the premises in issue are in the area of the undertaker.
- (2) This section also applies where—
- (a) a water supply licensee with a supplementary authorisation (“R1”) requests a water undertaker to permit R1 to introduce water into the undertaker's supply system, with a view to the use of that system, in connection with that introduction of water, to supply water to particular premises in accordance with R1's restricted retail authorisation, and
 - (b) the premises in issue are in the area of the undertaker.
- (3) This section also applies where—
- (a) a water undertaker agrees to permit a water supply licensee with a supplementary authorisation (“R2”) to introduce water into the undertaker's treatment works,
 - (b) in connection with that introduction, R2 requests the undertaker to permit R2 to introduce water into the undertaker's supply system, with a view to the use of that system to supply water to particular premises in accordance with R2's restricted retail authorisation, and
 - (c) the premises in issue are in the area of the undertaker.
- (4) Where this section applies, the undertaker must in accordance with a section 66D agreement—
- (a) in a case falling within subsection (1), take such steps—
 - (i) for the purpose of connecting L's source of water with the undertaker's supply system, or
 - (ii) in respect of the undertaker's supply system,
as may be provided for in that agreement in order to enable L to make the requested introduction of water into the supply system;
 - (b) in a case falling within subsection (2), take such steps—
 - (i) for the purpose of connecting R1's treatment works with the undertaker's supply system,
 - (ii) for the purpose of connecting with the undertaker's supply system any source used by R1 for the purpose of supplying water other than for domestic or food purposes, or
 - (iii) in respect of the undertaker's supply system,
as may be provided for in that agreement in order to enable R1 to make the requested introduction of water into the supply system;
 - (c) in a case falling within subsection (3), take such steps in respect of the undertaker's supply system as may be provided for in that agreement in order to enable R2 to make the requested introduction of water into the supply system;
 - (d) having taken steps under paragraph (a), (b) or (c) (as the case may be), permit the requested introduction of water into that supply system.
- (5) A water undertaker is not required by this section to permit the introduction of water into its supply system, or to take any steps to enable such an introduction of water, if permitting the introduction of water into the undertaker's supply system would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or

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- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (6) Where—
- (a) a request has been made by a water supply licensee for the purposes of subsection (1), (2) or (3), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.
- (7) In this section “treatment works” means—
- (a) in relation to a water undertaker whose area is wholly or mainly in Wales, the works designated as treatment works by the Secretary of State for the purposes of section 17B(6);
 - (b) in relation to a water supply licensee, the works designated from time to time by the Welsh Ministers as treatment works for the purposes of this paragraph.
- (8) A list of any works designated for the purposes of subsection (7)(b) must be published from time to time by the Welsh Ministers in such manner as the Welsh Ministers consider appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (9) A pipe laid because of subsection (4)(a)(i) or (b)(i) or (ii) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (10) In this section and section 66C—
- (a) a reference to a wholesale authorisation is to be construed in accordance with Schedule 2A;
 - (b) a reference to a supplementary authorisation is to be construed in accordance with Schedule 2A.

66C Introduction of water provided by secondary water undertaker

- (1) This section applies where a water supply licensee with a wholesale authorisation (“L1”)—
- (a) requests a water undertaker other than L1's primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that water may be supplied to particular premises, using the primary water undertaker's supply system and in accordance with a retail authorisation (whether L1's or another's), and
 - (b) requests L1's primary water undertaker to permit L1 to introduce that water into the primary water undertaker's supply system,
- and the premises in issue are in the area of the primary water undertaker.

A request under paragraph (a) may only be made to a water undertaker whose area is wholly or mainly in England.

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- (2) This section also applies where a water supply licensee with a wholesale authorisation (“L2”)—
- (a) requests a water undertaker whose area is wholly or mainly in Wales and which is not L2's primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that L2 may supply water to particular premises, using the primary water undertaker's supply system and in accordance with L2's retail authorisation so far as that authorisation relates to L2's customers, and
 - (b) requests L2's primary water undertaker to permit L2 to introduce that water into the primary water undertaker's supply system,
- and the premises in issue are in the area of the primary water undertaker.
- (3) This section also applies where a water supply licensee with a wholesale authorisation (“L3”)—
- (a) agrees with a water undertaker whose area is wholly or mainly in Wales and which is not L3's primary undertaker (the “secondary water undertaker”) for the secondary water undertaker to provide a supply of water so that water may be supplied to particular premises, using the primary water undertaker's supply system and in accordance with—
 - (i) L3's retail authorisation except so far as that authorisation relates to L3's customers, or
 - (ii) a retail authorisation other than L3's, and
 - (b) requests L3's primary water undertaker to permit L3 to introduce that water into the primary water undertaker's supply system,
- and the premises in issue are in the area of the primary water undertaker.
- (4) This section also applies where a water supply licensee with a supplementary authorisation (“R”)—
- (a) requests a water undertaker other than R's primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that R may supply water to particular premises, using the primary water undertaker's supply system and in accordance with R's restricted retail authorisation, and
 - (b) requests R's primary water undertaker to permit R to introduce that water into the primary water undertaker's supply system,
- and the premises in issue are in the area of the primary water undertaker.
- A request under paragraph (a) may be made to a water undertaker whose area is wholly or mainly in England or Wales.
- (5) Where this section applies by virtue of subsection (1), (2) or (4), the secondary water undertaker must in accordance with a section 66D agreement—
- (a) take such steps in respect of its supply system as may be provided for in that agreement in order to enable it to provide the requested supply, and
 - (b) having taken such steps, provide that supply.
- (6) Where this section applies, the primary water undertaker must in accordance with a section 66D agreement—
- (a) take such steps—
 - (i) for the purpose of connecting the secondary water undertaker's supply system with the primary water undertaker's supply system, or
 - (ii) in respect of its supply system,

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- as may be provided for in that agreement in order to enable L1, L2, L3 or R to make the requested introduction of water into the primary undertaker's supply system, and
- (b) having taken such steps, permit the requested introduction.
- (7) A secondary water undertaker is not required by this section to provide a supply of water to L1, L2 or R if providing the supply of water would—
- (a) require the secondary undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (8) A primary water undertaker is not required by this section to permit the introduction of water into its supply system, or to take any steps to enable such an introduction of water, if permitting the introduction of a supply of water would—
- (a) require the primary undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (9) Where—
- (a) a request has been made by a water supply licensee to a water undertaker for the purposes of subsection (1), (2), (3) or (4), and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.
- (10) A pipe laid because of subsection (6)(a)(i) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (11) For the purposes of this section, a water undertaker is the primary water undertaker of a water supply licensee if the undertaker's supply system is to be used for the purpose of making the supply to the premises mentioned in subsection (1), (2), (3) or (4).]

Determinations by Authority

¹_{F694} 66CA

- (1) The Authority may determine, in a case referred to it by a water supply licensee, whether any condition specified in the following provisions is satisfied—
- (a) section 66A(5) and (6);
- (b) section 66AA(5) and (6);
- (c) section 66B(5);
- (d) section 66C(7) and (8).

Status: This version of this Act contains provisions that are prospective.

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- (2) Before the Authority determines whether a condition specified in section 66B(5) is satisfied, it must consult the Secretary of State.
- (3) If a determination as to a condition specified in section 66B(5) relates to the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales, the Authority must consult the Welsh Ministers, not the Secretary of State.
- (4) Before the Authority determines whether a condition specified in section 66C(7) or (8) is satisfied, it must consult the Secretary of State and the appropriate agency.
- (5) If the case in which a determination as to a condition specified in section 66C(7) or (8) is made relates to—
 - (a) the supply of water by a water undertaker whose area is wholly or mainly in Wales, and
 - (b) the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales,the Authority must consult the Welsh Ministers, not the Secretary of State.
- (6) If the case in which a determination as to a condition specified in section 66C(7) or (8) is made relates to the supply of water by one water undertaker, and the introduction of water into the supply system of another water undertaker, and only one of those undertakers has an area wholly or mainly in Wales, the Authority must consult the Welsh Ministers as well as the Secretary of State.
- (7) In subsection (4), “the appropriate agency”, in relation to a determination as to a condition specified in section 66C(7) or (8) relating to the supply of water by one water undertaker, and the introduction of water into the supply system of another water undertaker means—
 - (a) the Environment Agency, in a case where the areas of both undertakers are wholly in England;
 - (b) the NRBW, in a case where the areas of both undertakers are wholly in Wales;
 - (c) both the Environment Agency and the NRBW, in any other case.]

Textual Amendments

F694 S. 66CA inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 2 para. 2](#); [S.I. 2017/462, art. 3\(i\)\(ii\)](#)

[^{F695} 66D Agreements as to duties under sections 66A to 66C

- (1) On the application of—
 - (a) a water supply licensee that has made a request under sections 66A to 66C, or
 - (b) a water undertaker to which such a request has been made,the Authority may by order require a water undertaker to perform the duty in question under sections 66A to 66C, for such period and on such terms and conditions as may be specified in the order.
- (2) The Authority may make an order under subsection (1) only if—

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- (a) in the case of an application relating to a duty under section 66A, 66AA, 66B or 66C, it appears to the Authority that the water undertaker is required to perform that duty under that section, or
 - (b) in the case of an application relating to duties under section 66C, it appears to the Authority that both water undertakers in question are required to perform duties under that section,
- and it is satisfied that the parties cannot reach agreement within a reasonable time.
- (3) An order under subsection (1) has effect as an agreement between—
- (a) the water supply licensee, and
 - (b) the water undertaker required to perform the duty in question.
- (4) On the application of a party to a section 66D agreement, and if the Authority is satisfied that the parties cannot reach agreement on the variation or termination of the agreement within a reasonable time, the Authority may by order vary or terminate the agreement.
- (5) If an order under subsection (4) is made in relation to a section 66D agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.
- (6) An order under subsection (4) may require one party to the agreement to pay compensation to the other.
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the performance of a duty under sections 66A to 66C by a water undertaker, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the performance of a duty under sections 66A to 66C by a water undertaker, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In this Chapter a reference to a section 66D agreement is a reference to—
- (a) an agreement for the performance of a duty under sections 66A to 66C by a water undertaker, or
 - (b) an order deemed to be such an agreement under subsection (3), or
 - (c) an agreement varied by order under subsection (4).]

Textual Amendments

F695 S. 66D substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 3](#); S.I. 2017/462, art. 3(i)(iii) (with arts. 6-9)

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Codes in respect of section 66D agreements

66DA

- (1) The Authority may issue one or more codes in respect of section 66D agreements.
- (2) A code may make provision about—
 - (a) procedures in connection with making a section 66D agreement;
 - (b) procedures in connection with varying or terminating a section 66D agreement;
 - (c) the terms and conditions of a section 66D agreement, including terms as to the duration of such an agreement;
 - (d) principles for determining the terms and conditions that should or should not be incorporated into a section 66D agreement.
- (3) A code may make provision about the steps to be taken by the Authority in determining for the purposes of section 66D(2) whether a water undertaker is, in the particular case, required to perform a duty under sections 66A to 66C.
- (4) If the Authority considers that a water undertaker or a water supply licensee is not acting as required by a code, the Authority may give the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make—
 - (a) different provision for different persons or descriptions of person;
 - (b) different provision for different duties under sections 66A to 66C.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to section 66D agreements made before the revised code comes into effect.

Textual Amendments

F696 Ss. 66DA-66DC inserted (1.9.2015 for the insertion of s. 66DB in part, 1.9.2015 for the insertion of s. 66DB(3), 1.4.2016 for the insertion of s. 66DB(1)(b) so far as not already in force, 30.3.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 4](#); [S.I. 2015/773](#), art. 3(c) (with art. 5); [S.I. 2015/1469](#), art. 3(d)(i); [S.I. 2016/465](#), art. 2(j)(i) (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16); [S.I. 2017/462](#), art. 2(c) (with art. 10)

66DB Codes under section 66DA: procedure

- (1) Before issuing a code under section 66DA, the Authority must—
 - (a) prepare a draft of the proposed code under section 66DA;
 - (b) consult persons in accordance with subsections (2) to (4).
- (2) If the proposed code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in England, the Authority must consult the following about the proposed code—

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- (a) the Secretary of State;
 - (b) the Chief Inspector of Drinking Water;
 - (c) the appropriate agency;
 - (d) the Council;
 - (e) any relevant undertakers likely to be affected by the proposed code;
 - (f) any water supply licensees likely to be affected by the proposed code;
 - (g) such other persons as the Authority thinks appropriate.
- (3) If the proposed code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in Wales, the Authority must consult the following about the proposed code—
- (a) the Welsh Ministers;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies;
 - (c) the appropriate agency;
 - (d) the Council;
 - (e) any relevant undertakers likely to be affected by the proposed code;
 - (f) any water supply licensees likely to be affected by the proposed code;
 - (g) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (5) Before a code under section 66DA prepared by the Authority is issued, the Minister may direct the Authority—
- (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (6) Subsection (5) is subject to subsections (8) and (9).
- (7) In subsection (5) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to section 66D agreements not falling within paragraph (a) or (b).
- (8) If the power under subsection (5) is exercised to give a direction in respect of such section 66D agreements as are referred to in paragraph (a), (b) or (c) of subsection (7), it may not be exercised again in respect of such section 66D agreements as are referred to in that paragraph.
- (9) If the power under subsection (5) to give a direction in respect of such section 66D agreements as are referred to in paragraph (a), (b) or (c) of subsection (7) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such section 66D agreements as are referred to in that paragraph on a later occasion.

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- (10) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (11) In this section “the appropriate agency” means—
- (a) the Environment Agency, in relation to section 66D agreements made with water undertakers whose areas are wholly in England;
 - (b) the NRW, in relation to section 66D agreements made with water undertakers whose areas are wholly in Wales;
 - (c) both the Environment Agency and the NRW, in relation to section 66D agreements made with water undertakers whose areas are partly in England and partly in Wales.
- (12) This section is subject to section 66DC.

Textual Amendments

F696 Ss. 66DA-66DC inserted (1.9.2015 for the insertion of s. 66DB in part, 1.9.2015 for the insertion of s. 66DB(3), 1.4.2016 for the insertion of s. 66DB(1)(b) so far as not already in force, 30.3.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 4](#); [S.I. 2015/773](#), art. 3(c) (with art. 5); [S.I. 2015/1469](#), art. 3(d)(i); [S.I. 2016/465](#), art. 2(j)(i) (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16); [S.I. 2017/462](#), art. 2(c) (with art. 10)

66DC Codes under section 66DA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 66DB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.]

Textual Amendments

F696 Ss. 66DA-66DC inserted (1.9.2015 for the insertion of s. 66DB in part, 1.9.2015 for the insertion of s. 66DB(3), 1.4.2016 for the insertion of s. 66DB(1)(b) so far as not already in force, 30.3.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 4](#); [S.I. 2015/773](#), art.

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3(c) (with art. 5); S.I. 2015/1469, art. 3(d)(i); S.I. 2016/465, art. 2(j)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2017/462, art. 2(c) (with art. 10)

[^{F697} 66E Rules about charges

- (1) The Authority must issue rules about charges that may be imposed by a water undertaker under a section 66D agreement.
- (2) The rules may in particular make provision about—
 - (a) the types of charges that may be imposed;
 - (b) the amount or the maximum amount, or methods for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charges may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules must include provision for and in connection with requiring a water undertaker to impose on a water supply licensee only such charges as would enable the licensee, where the services it provides to a person under its retail authorisation or restricted retail authorisation are services to which a section 142(2)(b) agreement would apply if the undertaker had continued to provide the services, to charge for those services at the same rate or rates as would have applied if the section 142(2)(b) agreement had applied.
- (4) In subsection (3) “section 142(2)(b) agreement” means an agreement to which section 142(2)(b) applies.
- (5) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may—
 - (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
 - (b) in a case where a section 66D agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the water supply licensee in question to modify the agreement.
- (6) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (7) The rules may—
 - (a) make different provision for different persons or descriptions of person;
 - (b) make different provision for different purposes;
 - (c) make provision subject to exceptions.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
 - (a) guidance is issued under section 66ED, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of their revisions to section 66D agreements made before the revised rules come into effect.]

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Textual Amendments

F697 Ss. 66E-66ED substituted (1.9.2015 for the substitution of s. 66EB(1)-(7), 1.9.2016 for the substitution of ss. 66E for specified purposes, 66EA, 66EB(8), 66EC, 66ED, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii); S.I. 2016/465, art. 3(e) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2017/462, art. 3(i)(iv) (with arts. 6-9)

F697 66EA Rules about charges: provision about the reduction of charges

- (1) Rules under section 66E may make provision about the reduction of charges payable under a section 66D agreement where—
- (a) a water supply licensee that has a retail authorisation or a restricted retail authorisation is party to the section 66D agreement, and
 - (b) other conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
- (a) specify conditions relating to any party to the section 66D agreement;
 - (b) specify conditions about persons taking steps for the purpose of reducing or managing water consumption;
 - (c) specify conditions about the premises by reference to which such steps are to be taken;
 - (d) specify conditions about reducing charges payable by a person who—
 - (i) is not party to the section 66D agreement, and
 - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition specified under paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
- (a) make provision as to the content of the notice;
 - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
- (a) the amount of the charge, with and without the reduction;
 - (b) the period for which the reduction has effect.

Textual Amendments

F697 Ss. 66E-66ED substituted (1.9.2015 for the substitution of s. 66EB(1)-(7), 1.9.2016 for the substitution of ss. 66E for specified purposes, 66EA, 66EB(8), 66EC, 66ED, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii); S.I. 2016/465, art. 3(e) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2017/462, art. 3(i)(iv) (with arts. 6-9)

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66EB Rules under section 66E: procedure

- (1) Before issuing rules under section 66E, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any water undertakers likely to be affected by the rules;
 - (e) any water supply licensees likely to be affected by the rules;
 - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 66ED in preparing rules under section 66E.
- (5) Before rules under section 66E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as rules prepared by the Authority relate to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to section 66D agreements not falling within paragraph (a) or (b).
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 66EC.

Textual Amendments

F697 Ss. 66E-66ED substituted (1.9.2015 for the substitution of s. 66EB(1)-(7), 1.9.2016 for the substitution of ss. 66E for specified purposes, 66EA, 66EB(8), 66EC, 66ED, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); [S.I. 2015/1469](#), art. 3(d)(ii); [S.I. 2016/465](#), art. 3(e) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16); [S.I. 2017/462](#), art. 3(i)(iv) (with arts. 6-9)

66EC Rules under section 66E: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 66E and, in the view of the Authority, the revision or each of the revisions proposed to be made is—

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- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 66EB does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 66EB.

Textual Amendments

F697 Ss. 66E-66ED substituted (1.9.2015 for the substitution of s. 66EB(1)-(7), 1.9.2016 for the substitution of ss. 66E for specified purposes, 66EA, 66EB(8), 66EC, 66ED, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii); S.I. 2016/465, art. 3(e) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2017/462, art. 3(i)(iv) (with arts. 6-9)

66ED Rules under section 66E: guidance

- (1) The Minister may issue guidance as to the content of rules under section 66E.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of any proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;

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- (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise guidance issued under this section and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, in relation to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, in relation to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to section 66D agreements not falling within paragraph (a) or (b).]

Textual Amendments

F697 Ss. 66E-66ED substituted (1.9.2015 for the substitution of s. 66EB(1)-(7), 1.9.2016 for the substitution of ss. 66E for specified purposes, 66EA, 66EB(8), 66EC, 66ED, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii); S.I. 2016/465, art. 3(e) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2017/462, art. 3(i)(iv) (with arts. 6-9)

^{F698} **66F Section 66D: supplementary**

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Textual Amendments

F698 S. 66F repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 6](#); S.I. 2017/462, art. 3(i)(v) (with arts. 6-9)

66G Designation of strategic supply

- (1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with [^{F699}a section 66D agreement] constitutes a strategic supply of water.
- (2) The Authority shall designate the introduction as a strategic supply.
- (3) Subsection (4) below applies if—
- (a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or

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- (b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
- (a) the Secretary of State;
 - (b) the Assembly;
 - (c) the Environment Agency^{F700}, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];
 - ^{F701}[(ca) the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]
 - (d) the other party or parties, or the parties, to ^{F702}[the section 66D agreement]; and
 - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers^{F703}, and supplies which it is obliged to make under ^{F704}[section 66AA] or 66C,] as well as supplying ^{F705}[relevant customers of a water supply licensee] with water for domestic purposes.
- ^{F706}[A person is a relevant customer of a water supply licensee if the introduction of water (11) in question is made by reference to the supply of water to that person's premises in accordance with—
- (a) a retail authorisation (whether that retail authorisation is an authorisation of the licensee requesting the introduction of water or another water supply licensee's authorisation), or
 - (b) a restricted retail authorisation of the licensee requesting the introduction of water.]

Textual Amendments

F699 Words in s. 66G(1) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 7\(2\)](#); S.I. 2017/462, art. 3(i)(v)

F700 Words in s. 66G(4)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 234\(2\)](#) (with Sch. 7)

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- F701** S. 66G(4)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 234(3)** (with Sch. 7)
- F702** Words in s. 66G(4)(d) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 2 para. 7(3)**; S.I. 2017/462, art. 3(i)(v)
- F703** Words in s. 66G(10) inserted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 7(1)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j)
- F704** Words in s. 66G(10) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 2 para. 7(4)(a)**; S.I. 2017/462, art. 3(i)(v)
- F705** Words in s. 66G(10) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 2 para. 7(4)(b)**; S.I. 2017/462, art. 3(i)(v)
- F706** S. 66G(11) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 2 para. 7(5)**; S.I. 2017/462, art. 3(i)(v)

66H Designation of collective strategic supply

- (1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—
 - (a) which are made by a licensed water supplier; and
 - (b) which a water undertaker is required to permit under section 66B or 66C above in accordance with [^{F707}section 66D agreements],
 constitute a collective strategic supply of water.
- (2) The Authority shall designate the introductions as a collective strategic supply.
- (3) Subsection (4) below applies if—
 - (a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or
 - (b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
 - (a) the Secretary of State;
 - (b) the Assembly;
 - (c) the Environment Agency [^{F708}, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];
 - ^{F709}(ca) [the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]
 - (d) the other party or parties, or the parties, to [^{F710}the section 66D agreements]; and
 - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.

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- (7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers^[F711], and supplies which it is obliged to make under ^[F712]section 66AA] or 66C,] as well as supplying the ^[F713]relevant customers of a water supply licensee] with water for domestic purposes.

- [A person is a relevant customer of a water supply licensee if an introduction of water^{F714}(11) is made by reference to the supply of water to that person's premises in accordance with—
- (a) a retail authorisation (whether that retail authorisation is an authorisation of the licensee requesting the introduction of water or another water supply licensee's authorisation), or
 - (b) a restricted retail authorisation of the licensee requesting the introduction of water.]

Textual Amendments

- F707** Words in s. 66H(1)(b) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 8\(2\)](#); S.I. 2017/462, art. 3(i)(v)
- F708** Words in s. 66H(4)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 235\(2\)](#) (with Sch. 7)
- F709** S. 66H(4)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 235\(3\)](#) (with Sch. 7)
- F710** Words in s. 66H(4)(d) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 8\(3\)](#); S.I. 2017/462, art. 3(i)(v)
- F711** Words in s. 66H(10) inserted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 5 para. 7\(2\)](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(j)
- F712** Words in s. 66H(10) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 8\(4\)\(a\)](#); S.I. 2017/462, art. 3(i)(v)
- F713** Words in s. 66H(10) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 8\(4\)\(b\)](#); S.I. 2017/462, art. 3(i)(v)
- F714** S. 66H(11) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 8\(5\)](#); S.I. 2017/462, art. 3(i)(v)

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Offences

66I Prohibition on unauthorised use of supply system

- (1) Subject to subsections (2) and (3) and section 66K below, no person shall use a water undertaker's supply system for the purpose of supplying water to any premises [^{F715}of —
- (a) a customer,
 - (b) the person so using that system, or
 - (c) a person associated with that person].
- (2) Subsection (1) above shall not apply where the supply is made—
- (a) by the water undertaker, or
 - (b) by a [^{F716}water supply licensee] in pursuance of [^{F717}the licensee's licence].
- (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
- (4) A person who contravenes subsection (1) above shall be guilty of an offence.
- (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (7) No proceedings for an offence under this section shall be instituted except by—
- (a) the Secretary of State, or
 - (b) the Authority.
- (8) The functions of—
- (a) making regulations under subsection (3) above; and
 - (b) instituting proceedings under subsection (7)(a) above,
- are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- [For the purposes of this section, a person (A) is associated with another person (B) if ^{F718}(8A) they would be associated with each other for the purposes of Schedule 2A if A were a water supply licensee.]
- (9) In this section and sections 66J and 66L below, references to the supply system of a water undertaker shall be construed in accordance with [^{F719}section 17B].

Textual Amendments

F715 Words in s. 66I(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(2\)](#); S.I. 2016/465, art. 2(j)(ii) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

F716 Words in s. 66I(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(3\)\(a\)](#); S.I. 2016/465, art. 2(j)(ii) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

F717 Words in s. 66I(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(3\)\(b\)](#); S.I. 2016/465, art. 2(j)(ii) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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F718 S. 66I(8A) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(4\)](#); S.I. 2017/462, art. 3(i)(vi)

F719 Words in s. 66I(9) substituted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(5\)](#); S.I. 2017/462, art. 3(i)(vi)

Modifications etc. (not altering text)

C82 S. 66I(1) restricted (1.12.2005) by [The Water Supply \(Exceptions from Supply System Prohibitions\) Regulations 2005 \(S.I. 2005/3075\), reg. 3](#)

66J Prohibition on unauthorised introduction of water

- (1) Subject to subsections (2) and (3) and section 66K below, no person shall introduce water into a water undertaker's supply system (other than the undertaker itself).
- (2) Subsection (1) above shall not apply where the water is introduced—
 - (a) by a [^{F720}water supply licensee] in pursuance of its licence, or
 - (b) by another water undertaker under an agreement for a supply of water in bulk.
- (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
- (4) A person who contravenes subsection (1) above shall be guilty of an offence.
- (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
- (6) A person guilty of an offence under this section shall be liable [^{F721}on summary conviction, or on conviction on indictment, to a fine].
- (7) For the purposes of section 210 below, the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (8) No proceedings for an offence under this section shall be instituted except by—
 - (a) the Secretary of State; or
 - (b) the Authority.
- (9) The functions of—
 - (a) making regulations under subsection (3) above; and
 - (b) instituting proceedings under subsection (8)(a) above,are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

Textual Amendments

F720 Words in s. 66J(2)(a) substituted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\), arts. 1\(1\), 6\(4\)](#)

F721 Words in s. 66J(6) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\), reg. 1\(1\), Sch. 4 para. 23\(2\)](#) (with reg. 5(1))

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Modifications etc. (not altering text)

- C83** S. 66J modified (temp.) (22.3.2017) by [The Water Act 2014 \(Commencement No. 9 and Transitional Provisions\) Order 2017 \(S.I. 2017/462\)](#), **art. 11(5)**
- C84** S. 66J(1) restricted (1.12.2005) by [The Water Supply \(Exceptions from Supply System Prohibitions\) Regulations 2005 \(S.I. 2005/3075\)](#), **reg. 4**

66K Sections 66I and 66J: exemptions

- (1) The Secretary of State may by order made by statutory instrument grant exemption from section 66I(1) or 66J(1) above to—
 - (a) a person or persons of a class;
 - (b) generally or to such extent as may be specified in the order; and
 - (c) unconditionally or subject to such conditions as may be so specified.
- (2) Before making an order under subsection (1) above the Secretary of State shall give notice—
 - (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
 - (b) stating the reasons why he proposes to make the order in the terms proposed; and
 - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (3) The notice required by subsection (2) above shall be given—
 - (a) by serving a copy of it on the Authority; and
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
 - (a) by serving a copy of the exemption on him; and
 - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
 - (a) persons of that class; and
 - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
 - (a) indefinitely; or
 - (b) for a period specified in, or determined by or under, the exemption.
- (7) Conditions included in an exemption by virtue of subsection (1)(c) above may, in particular, require any person carrying on any activity in pursuance of the exemption—

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- (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
- (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
- (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

66L Section 66K: supplementary

- (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a person under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
 - (a) at the person's request;
 - (b) in accordance with any provision of the order by which the exemption was granted; or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a class under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
 - (a) in accordance with any provision of the order by which the exemption was granted; or
 - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a class under section 66K(1) above from any person of that class—
 - (a) at the person's request;
 - (b) in accordance with any provision of the order by which the exemption was granted; or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (4) Before making an order under subsection (1)(b) or (c) or (2) above or giving a direction under subsection (3)(b) or (c) above, the Secretary of State shall—
 - (a) consult the Authority; and
 - (b) give notice—
 - (i) stating that he proposes to make such an order or give such a direction;
 - (ii) stating the reasons why he proposes to make such an order or give such a direction; and
 - (iii) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,and shall consider any representations or objections which are duly made and not withdrawn.

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- (5) The notice under subsection (4) above shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c) above, by serving a copy of it on the person to whom the exemption was granted;
 - (b) where he is proposing to make an order under subsection (2) above, by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
 - (c) where he is proposing to give a direction under subsection (3)(b) or (c) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption.
- (6) A statutory instrument containing an order under subsection (1) or (2) above or subsection (1) of section 66K above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The power to—
- (a) make an order under subsection (1) or (2) above or subsection (1) of section 66K above; or
 - (b) give a direction under subsection (3) above,
- is exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- (8) Accordingly, subsections (1) to (5) above and section 66K above apply in relation to an order made or a direction given by the Assembly by virtue of subsection (7) above as they apply in relation to an order made or direction given by the Secretary of State.]

CHAPTER III

QUALITY AND SUFFICIENCY OF SUPPLIES

Standards of wholesomeness

67 Standards of wholesomeness.

- (1) The Secretary of State may by regulations make provision that water that is supplied to any premises is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for the purpose of determining the wholesomeness of any water—
 - (a) prescribe general requirements as to the purposes for which the water is to be suitable;
 - (b) prescribe 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) prescribe specific requirements as to other characteristics of the water;
 - (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;

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- (e) enable the Secretary of State to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition; and
- (f) enable the Secretary of State to authorise a local authority (either instead of the Secretary of State or concurrently with him) to exercise in relation to a private supply any power conferred on the Secretary of State by regulations made by virtue of paragraph (e) above.

Subordinate Legislation Made

P1 S. 67: ss. 67 and 77(3) (with ss. 77(4) and 213(2)) power exercised by [S.I.1991/2790](#)

Modifications etc. (not altering text)

- C85** S. 67 applied by [S.I. 2000/2531, reg. 2\(2\)\(c\)](#) (as inserted (1.10.2009) by [The Building and Approved Inspectors \(Amendment\) Regulations 2009 \(S.I. 2009/1219\)](#), [reg. 2\(2\)\(b\)](#))
- C86** S. 67 applied (1.10.2010) by [The Building Regulations 2010 \(S.I. 2010/2214\)](#), [regs. 1, 2\(5\)](#) (with [reg. 9](#))

General obligations of undertakers [^{F722}and [^{F723}water supply licensees]]

Textual Amendments

- F722** Words in s. 68 cross-heading inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 101\(1\), 105\(3\)](#), [Sch. 8 para. 18\(8\)](#); [S.I. 2005/2714, art. 3\(e\)](#) (with [Sch. para. 8](#))
- F723** Words in s. 68 cross-heading substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 66](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

68 Duties of water undertakers [^{F724}and [^{F725}water supply licensees]] with respect to water quality.

- (1) It shall be the duty of a water undertaker [^{F726}where its supply system is used for the purpose of supplying water to any premises for domestic or food production purposes]—
- (a) [^{F727}to ensure that any water so supplied] is wholesome at the time of supply; and
 - (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which [^{F728}water is so supplied], that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources.

[^{F729}and this section and section 69 below apply, in relation to the duty of an undertaker, whether or not the water supplied using the undertaker's supply system is supplied by the undertaker.]

[^{F730}(1A) It shall be the duty of a [^{F731}water supply licensee]—

- (a) when supplying water to any premises for domestic or food production purposes, in accordance with [^{F732}the licensee's retail authorisation or restricted retail authorisation], to ensure that the water is wholesome at the time of supply; and

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- (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which [^{F733}that licensee] supplies water to premises for domestic or food production purposes, in accordance with [^{F734}the licensee's retail authorisation or restricted retail authorisation], that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources,
- ^{F735} ...]
- (2) For the purposes of this section and section 69 below and subject to subsection (3) below, [^{F736}where a water undertaker's supply system is used for the purpose of supplying water to any premises, any water so supplied] to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the undertaker's pipes.
- (3) For the purposes of [^{F737}subsection (1) above where a water undertaker's supply system is used for the purpose of supplying water to any premises, and the water so supplied] would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
- (a) it has ceased to be wholesome after leaving the undertaker's pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
 - (b) it has so ceased in consequence of the failure of the undertaker, before [^{F738}the water is supplied, to ensure that such steps are taken] as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the undertaker's pipes.
- ^{F739}(3A) For the purposes of subsection (1A) above where water supplied by a [^{F740}water supply licensee] to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
- (a) it has ceased to be wholesome after leaving the relevant pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
 - (b) it has so ceased in consequence of the failure of [^{F741}the licensee], before supplying the water, to ensure that such steps are taken as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the relevant pipes.
- (3B) In subsection (3A) above “relevant pipes” means the pipes of the water undertaker whose supply system is used for the purpose of the supply made by the [^{F742}water supply licensee].]
- (4) The provisions of this section shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Act.
- (5) The duties of a water undertaker [^{F743}and [^{F744}water supply licensee]] under this section shall be enforceable under section 18 above by the Secretary of State.
- ^{F745}(6) References in this section to a retail authorisation or a restricted retail authorisation are to be construed in accordance with Schedule 2A.
- (7) In this section “prescribed” means—

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- (a) in relation to a water undertaker whose area is wholly or mainly in Wales, and
 - (b) in relation to a water supply licensee so far as relating to licensed activities using the supply system of such a water undertaker,
- prescribed by regulations made by the Welsh Ministers by statutory instrument, which is subject to annulment in pursuance of a resolution of the Assembly.]

Textual Amendments

- F724** S. 68: words in sidenote inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(8\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F725** Words in s. 68 title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(2\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F726** Words in s. 68(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(2\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F727** Words in s. 68(1)(a) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(2\)\(b\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F728** Words in s. 68(1)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(2\)\(c\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F729** Words in s. 68(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(2\)\(d\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F730** S. 68(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(3\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F731** Words in s. 68(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(3\)\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F732** Words in s. 68(1A)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(3\)\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F733** Words in s. 68(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(3\)\(c\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F734** Words in s. 68(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(3\)\(d\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F735** Words in s. 68(1A) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(3\)\(e\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F736** Words in s. 68(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(4\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F737** Words in s. 68(3) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(5\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F738** Words in s. 68(3)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(5\)\(b\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F739** S. 68(3A)(3B) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 18\(6\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F740** Words in s. 68(3A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(4\)\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F741** Words in s. 68(3A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(4\)\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F742** Words in s. 68(3B) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 67\(5\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

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- F743** Words in s. 68(5) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F744** Words in s. 68(5) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(6)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F745** S. 68(6)(7) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(7)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

69 Regulations for preserving water quality.

- (1) The Secretary of State may by regulations require a water undertaker [^{F746}or a [^{F747}water supply licensee] to ensure that such steps are taken] as may be prescribed for the purpose of securing compliance with section 68 above.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may impose an obligation on a water undertaker [^{F748}or [^{F749}water supply licensee]]—
 - (a) to [^{F750}ensure that all such steps are taken] as may be prescribed for monitoring and recording whether the water [^{F751}used for relevant supplies] to premises for domestic or food production purposes is wholesome at the time of supply;
 - (b) to [^{F752}ensure that all such steps are taken] as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which [^{F753}is used or is proposed to be used for making relevant supplies] to any premises for domestic or food production purposes;
 - (c) to ensure that a source which [^{F754}is used or proposed to be used for making relevant supplies] for domestic or food production purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
 - (d) to [^{F755}ensure that records are kept] of the localities within which all the premises [^{F756}receiving relevant supplies] for domestic or food production purposes [^{F757}. . . are normally supplied from the same source or combination of sources];
 - (e) to [^{F758}ensure that prescribed requirements are complied with] with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.
- (3) Without prejudice to subsections (1) and (2) above, the Secretary of State may by regulations make provision [^{F759}imposing obligations on water undertakers or [^{F760}water supply licensees] with respect to the use for the purposes of or in connection with making relevant supplies]—
 - (a) of such processes and substances; and
 - (b) of products that contain or are made with such substances or materials,
 as he considers might affect the quality of any water.
- (4) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under that subsection may—
 - (a) [^{F761}require water undertakers or [^{F762}water supply licensees] to ensure that] processes, substances and products which have not been approved under the regulations or which contravene the regulations [^{F763}are not used for the purposes of or in connection with relevant supplies];
 - (b) for the purposes of provision made by virtue of paragraph (a) above, require [^{F764}water undertakers and [^{F765}water supply licensees] to ensure

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- that] processes, substances and products used [^{F766}for the purposes of or in connection with relevant supplies] conform to such standards as may be prescribed by or approved under the regulations;
- (c) impose such other requirements as may be prescribed with respect to the use [^{F767}for the purposes of or in connection with relevant supplies] of prescribed processes, substances and products;
 - (d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition;
 - (e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;
 - (f) provide for a contravention of the regulations to constitute—
 - (i) a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed; or
 - (ii) an offence triable either way and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine;
- and
- (g) require prescribed charges to be paid to persons carrying out functions under the regulations.
- (5) The Secretary of State may by regulations ^{F768} . . . —
- (a) [^{F769}require a water undertaker]to publish information about the quality of water supplied for domestic or food production purposes to any premises [^{F770}using that undertaker’s supply system]; ^{F771} . . .
 - ^{F772}(aa) require a [^{F773}water supply licensee] to publish information about the quality of water supplied for domestic or food production purposes to any premises by [^{F774}that licensee].]
 - (b) [^{F775}require any such undertaker [^{F776}or licensee]] to provide information to prescribed persons about the quality of water [^{F777}supplied as referred to in paragraph (a) or (aa) above (as the case may be)].
- (6) Regulations under subsection (5) above—
- (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
 - (b) may require the provision of information by a water undertaker [^{F778}or [^{F779}water supply licensee]] to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker [^{F780}or licensee] of a prescribed charge; and
 - (c) may impose such other conditions on the provision of information by a water undertaker [^{F781}or [^{F782}water supply licensee]] to any person as may be prescribed.
- ^{F783}(7) In this section, “relevant supplies” means—
- (a) in the case of an obligation imposed on a water undertaker, supplies of water—
 - (i) made by the undertaker in carrying out its functions; or

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- (ii) made by a [^{F784}water supply licensee] using the undertaker’s supply system; and
- (b) in the case of an obligation imposed on a [^{F785}water supply licensee], supplies of water made by that supplier using a water undertaker’s supply system.]

Textual Amendments

- F746** Words in s. 69(1) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(2)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F747** Words in s. 69(1) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F748** Words in s. 69(2) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F749** Words in s. 69(2) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F750** Words in s. 69(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(b)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F751** Words in s. 69(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F752** Words in s. 69(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(c)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F753** Words in s. 69(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(c)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F754** Words in s. 69(2)(c) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(d)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F755** Words in s. 69(2)(d) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(e)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F756** Words in s. 69(2)(d) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(e)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F757** Words in s. 69(2)(d) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(3)(e)(iii)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F758** Words in s. 69(2)(e) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(f)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F759** Words in s. 69(3) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(4)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F760** Words in s. 69(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F761** Words in s. 69(4)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(a)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F762** Words in s. 69(4)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F763** Words in s. 69(4)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F764** Words in s. 69(4)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(b)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F765** Words in s. 69(4)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F766** Words in s. 69(4)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F767** Words in s. 69(4)(c) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(c)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

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- F768** Words in s. 69(5) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(6)(a)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F769** Words in s. 69(5)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), {Sch. 8 para. 19(6)(b)(i)}; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F770** Words in s. 69(5)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F771** Words in s. 69(5)(a) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(6)(c)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F772** S. 69(5)(aa) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(d)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F773** Words in s. 69(5)(aa) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F774** Words in s. 69(5)(aa) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F775** Words in s. 69(5)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(e)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F776** Words in s. 69(5)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F777** Words in s. 69(5)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(e)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F778** Words in s. 69(6)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(7)(a)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F779** Words in s. 69(6)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F780** Words in s. 69(6)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F781** Words in s. 69(6)(c) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(7)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F782** Words in s. 69(6)(c) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F783** S. 69(7) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(8)**; S.I. 2004/641, **art. 3(y)**, Sch. 2
- F784** Words in s. 69(7)(a)(ii) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F785** Words in s. 69(7)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

70 Offence of supplying water unfit for human consumption.

- (1) Subject to subsection (3) below, where a [^{F786}water undertaker’s supply system is used for the purposes of supplying water] to any premises and that water is unfit for human consumption, [^{F787}the relevant persons] shall be guilty of an offence and liable [^{F788}on summary conviction, or on conviction on indictment, to a fine].

[^{F789}(1A) For the purposes of subsection (1) above, the relevant persons are—

- (a) the water undertaker whose supply system is used for the purposes of supplying the water (in this section referred to as the “primary water undertaker”); and

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- (b) any employer of persons, or any self-employed person, who is concerned in the supply of the water.]
- (2) For the purposes of section 210 below and any other enactment under which an individual is guilty of an offence by virtue of subsection (1) above the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (3) In any proceedings against any [^{F790}relevant person] for an offence under this section it shall be a defence for [^{F791}that person] to show that it—
- (a) had no reasonable grounds for suspecting that the water would be used for human consumption; or
 - (b) took all reasonable steps and exercised all due diligence for securing that the water was fit for human consumption on leaving [^{F792}the primary water undertaker's] pipes or was not used for human consumption.
- [^{F793}(3A) For the purposes of paragraph (b) of subsection (3) above—
- (a) in the case of proceedings against a primary water undertaker, showing that the undertaker took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that the relevant arrangements were reasonable in all the circumstances; and
 - (b) in the case of proceedings against any other relevant person, showing that the person took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that it took all reasonable steps and exercised all due diligence for securing that all aspects of the relevant arrangements for which it was responsible were properly carried out.
- (3B) In subsection (3A) above, “relevant arrangements” means arrangements made by the primary water undertaker to ensure that all other relevant persons were required to take all reasonable steps and exercise all due diligence for securing that the water was fit for human consumption on leaving the undertaker’s pipes or was not used for human consumption.]
- (4) Proceedings for an offence under this section shall not be instituted except by the Secretary of State or the Director of Public Prosecutions.

Textual Amendments

- F786** Words in s. 70(1) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(2\)\(a\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with [art. 4](#), [Sch.](#))
- F787** Words in s. 70(1) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(2\)\(b\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with [art. 4](#), [Sch.](#))
- F788** Words in s. 70(1) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 23\(3\)](#) (with [reg. 5\(1\)](#))
- F789** S. 70(1A) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(3\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with [art. 4](#), [Sch.](#))
- F790** Words in s. 70(3) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(4\)\(a\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with [art. 4](#), [Sch.](#))
- F791** Words in s. 70(3) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(4\)\(b\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with [art. 4](#), [Sch.](#))

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- F792** Word in s. 70(3)(b) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(4\)\(c\)](#); [S.I. 2004/2528](#), [art. 2\(t\)\(iv\)](#) (with art. 4)
- F793** S. 70(3A)(3B) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(5\)](#); [S.I. 2004/2528](#), [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)

Waste, contamination, misuse etc.

71 Waste from water sources.

- (1) Subject to subsections (2) and (3) below, a person shall be guilty of an offence under this section if—
 - (a) he causes or allows any underground water to run to waste from any well, borehole or other work; or
 - (b) he abstracts from any well, borehole or other work water in excess of his reasonable requirements.
- (2) A person shall not be guilty of an offence by virtue of subsection (1)(a) above in respect of anything done for the purpose—
 - (a) of testing the extent or quality of the supply; or
 - (b) of cleaning, sterilising, examining or repairing the well, borehole or other work in question.
- (3) Where underground water interferes or threatens to interfere with the carrying out or operation of any underground works (whether waterworks or not), it shall not be an offence under this section, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.
- (4) A person who is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) On the conviction of a person under this section, the court may—
 - (a) order that the well, borehole or other work to which the offence relates shall be effectively sealed; or
 - (b) make such other order as appears to the court to be necessary to prevent waste of water.
- (6) If any person fails to comply with an order under subsection (5) above, then, without prejudice to any penalty for contempt of court, the court may, on the application of [^{F794}the [^{F795}appropriate agency]], authorise [^{F796}the appropriate agency] to take such steps as may be necessary to execute the order; and any expenses incurred in taking any such steps shall be recoverable summarily as a civil debt from the person convicted.
- (7) Any person designated for the purpose by [^{F797}the [^{F795}appropriate agency]] shall, on producing some duly authenticated document showing his authority, have a right at all reasonable times—
 - (a) to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this section on or in connection with the premises;
 - (b) to enter any premises for the purpose of executing any order of the court under this section which [^{F797}the [^{F795}appropriate agency]] has been authorised to execute in those premises.

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(8) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsection (7) above.

[^{F798}(9) In this section “the appropriate agency” means—

- (a) the Environment Agency, in relation to a well, borehole or other work in England;
- (b) the NRBW, in relation to a well, borehole or other work in Wales.]

Textual Amendments

- F794** Words in s. 71(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 101(1)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F795** Words in s. 71 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 236(2)** (with Sch. 7)
- F796** Words in s. 71(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 236(3)** (with Sch. 7)
- F797** Words in s. 71(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 101(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F798** S. 71(9) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 236(4)** (with Sch. 7)

72 Contamination of water sources.

- (1) Subject to subsections (2) and (3) below, a person is guilty of an offence under this section if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—
- (a) for human consumption or domestic purposes; or
 - (b) for manufacturing food or drink for human consumption,
- is polluted or likely to be polluted.
- (2) Nothing in this section shall be construed as restricting or prohibiting any method of cultivation of land which is in accordance with the principles of good husbandry.
- (3) Nothing in this section shall be construed as restricting or prohibiting the reasonable use of oil or tar on any highway maintainable at public expense so long as the highway authority take all reasonable steps for preventing—
- (a) the oil or tar; and
 - (b) any liquid or matter resulting from the use of the oil or tar,
- from polluting the water in any waterworks.
- (4) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In this section “waterworks” includes—
- (a) any spring, well, adit, borehole, service reservoir or tank; and
 - (b) any main or other pipe or conduit of a water undertaker; and

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- (c) any pipe or conduit of a ^{F799}water supply licensee].

Textual Amendments

F799 Words in s. 72(5)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 69; S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

Modifications etc. (not altering text)

C87 S. 72 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 8](#) (with [ss. 42, 46](#)).

C88 S. 72 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](#))

C89 S. 72 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 paras. 1\(3\), 2 Table 9](#) (with [regs. 1\(3\), 77-79, Sch. 4](#))

73 Offences of contaminating, wasting and misusing water etc.

- (1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker ^{F800}or ^{F801}water supply licensee] intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or adapted, or to be so used—

- (a) that water in a water main or other pipe of a water undertaker, or in a pipe connected with such a water main or pipe, is or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
- (b) that water that has been supplied by the undertaker ^{F802}or ^{F803}licensee] to those premises is or is likely to be contaminated before it is used; or
- (c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

^{F804}(1A) In any proceedings under subsection (1) above it shall be a defence to prove—

- (a) that the contamination or likely contamination, or the wastage, misuse or undue consumption, was caused (wholly or mainly) by the installation, alteration, repair or connection of the water fitting on or after 1st July 1999;
- (b) that the works were carried out by or under the direction of an approved contractor within the meaning of the [Water Supply \(Water Fittings\) Regulations 1999](#); and
- (c) that the contractor certified to the person who commissioned those works that the water fitting complied with the requirements of those regulations.]

- (2) Any person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (3) Where a person has committed an offence under subsection (2) above, the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

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- (4) For the purposes of this section the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.

Textual Amendments

- F800** Words in s. 73(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 22\(a\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F801** Words in s. 73(1) substituted (1.4.2016) by [Explanatory Note 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 70\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F802** Words in s. 73(1)(b) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 22\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F803** Word in s. 73(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 70\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F804** S. 73(1A) inserted (1.7.1999) by [S.I. 1999/1148, reg. 8](#)

74 Regulations for preventing contamination, waste etc. and with respect to water fittings.

- (1) The Secretary of State may by regulations make such provision as he considers appropriate for any of the following purposes, that is to say—
- (a) for securing—
 - (i) that water in a water main or other pipe of a water undertaker is not contaminated; and
 - (ii) that its quality and suitability for particular purposes is not prejudiced, by the return of any substance from any premises to that main or pipe;
 - (b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker [^{F805}or [^{F806}water supply licensee]] is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;
 - (c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker [^{F807}or [^{F808}that or another water supply licensee]] to any premises; and
 - (d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker [^{F809}or [^{F810}water supply licensee]] are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for any of the purposes specified in that subsection, make provision in relation to such water fittings as may be prescribed—
- (a) for forbidding the installation, connection or use of the fittings if they have not been approved under the regulations or if they contravene the regulations;
 - (b) for requiring the fittings, for the purposes of provision made by virtue of paragraph (a) above, to be of such a size, nature, strength or workmanship, to be made of such materials or in such a manner or to conform to such standards as may be prescribed by or approved under the regulations;

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- (c) for imposing such other requirements as may be prescribed with respect to the installation, arrangement, connection, testing, disconnection, alteration and repair of the fittings and with respect to the materials used in their manufacture;
 - (d) for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations; and
 - (e) for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.
- (3) Without prejudice as aforesaid, regulations under this section may—
- (a) impose separate or concurrent duties with respect to the enforcement of the regulations on water undertakers, local authorities and such other persons as may be prescribed;
 - (b) confer powers on a water undertaker or local authority to carry out works and take other steps, in prescribed circumstances, for remedying any contravention of the regulations;
 - (c) provide for the recovery by a water undertaker or local authority of expenses reasonably incurred by the undertaker or authority in the exercise of any power conferred by virtue of paragraph (b) above;
 - (d) repeal or modify the provisions of section 73 above or section 75 below;
 - (e) provide for a contravention of the regulations to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed;
 - (f) require prescribed charges to be paid to persons carrying out functions under the regulations;
 - (g) enable the Secretary of State to authorise such relaxations of and departures from such of the requirements of the regulations as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition;
 - (h) enable the Secretary of State to authorise a water undertaker or local authority (either instead of the Secretary of State or concurrently with him) to exercise any power conferred on the Secretary of State by regulations made by virtue of paragraph (g) above; and
 - (i) require disputes arising under the regulations to be referred to arbitration and for determinations under the regulations to be subject to such rights of appeal as may be prescribed.
- (4) Without prejudice to sections 84 and 170 below, any person designated in writing for the purposes of this subsection in such manner as may be prescribed may—
- (a) enter any premises for the purpose of—
 - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being or has been contravened;
 - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under this section should be exercised or performed; or
 - (iii) exercising any such power or performing any such duty;

or

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- (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under this section.
- (5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.
- (6) The power of the Secretary of State under this section to make regulations with respect to the matters specified in the preceding provisions of this section shall include power, by regulations under this section—
- (a) to modify the operation of Schedule 2 to the ^{M21}Water Consolidation (Consequential Provisions) Act 1991 in relation to any byelaws made under section 17 of the ^{M22}Water Act 1945 which have effect by virtue of paragraph 19 of Schedule 26 to the ^{M23}Water Act 1989 and that Schedule 2; and
- (b) to revoke or amend any such byelaws;
- but, so long as any such byelaws so have effect, the references in sections 47(2)(g), 53(2)(c) and 55(4) above to such regulations under this section as are prescribed shall have effect as including references to those byelaws.
- (7) Any sums received by the Secretary of State in consequence of the provisions of any regulations under this section shall be paid into the Consolidated Fund.
- (8) In this section “safe” has the same meaning as in Part II of the ^{M24}Consumer Protection Act 1987.

Textual Amendments

- F805** Words in s. 74(1)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F806** Words in s. 74(1)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 71(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F807** Words in s. 74(1)(c) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F808** Words in s. 74(1)(c) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 71(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F809** Words in s. 74(1)(d) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(c)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F810** Words in s. 74(1)(d) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 71(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Marginal Citations

- M21** 1991 c. 60.
M22 1945 c. 42.
M23 1989 c. 15.
M24 1987 c. 43.

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75 Power to prevent damage and to take steps to prevent contamination, waste etc.

(1) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker which provides a supply of water to any premises has reason for believing—

- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;
- (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
- (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or
- (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.

[^{F811}(1A) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker whose supply system is used for the purpose of a [^{F812}water supply licensee] making a supply of water to any premises has reason for believing—

- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the water undertaker;
- (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that pipe or main;
- (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the supplier to those premises is being or is likely to be contaminated before it is used; or
- (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.]

(2) The power conferred by this subsection in relation to any premises is—

- (a) where the case constitutes an emergency, power to disconnect the service pipe or otherwise to cut off the supply of water to those premises; and
- (b) in any other case, power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.

(3) Where a water undertaker, in exercise of the power conferred by virtue of subsection (2)(a) above, disconnects a service pipe to any premises or otherwise cuts off any supply of water to any premises, the undertaker shall, as soon as reasonably

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practicable after the supply is disconnected or cut off, serve a notice on the consumer specifying the steps which that person is required to take before the undertaker will restore the supply.

(4) The steps specified in a notice under subsection (3) above shall be the steps necessary to secure that, as the case may be—

- (a) the damage, contamination, waste, misuse or undue consumption; or
- (b) the likelihood of damage, contamination, waste, misuse or undue consumption,

would not recur if the supply were restored.

(5) A water undertaker which fails, without reasonable excuse, to serve a notice in accordance with subsection (3) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) A notice served for the purposes of subsection (2)(b) above shall—

- (a) specify the period, not being less than the period of seven days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and
- (b) set out the powers of the undertaker under subsections (7) to (9) below.

(7) Where a water undertaker has served a notice for the purposes of subsection (2)(b) above in relation to any premises and—

- (a) the case becomes an emergency; or
- (b) the premises appear to be unoccupied and the steps specified in the notice are not taken before the end of the period so specified,

the undertaker may disconnect the service pipe to those premises or otherwise cut off the supply of water to those premises.

(8) Subsections (3) to (5) above shall apply where a water undertaker exercises its power under subsection (7) above as they apply where such an undertaker exercises its power by virtue of subsection (2)(a) above.

(9) Where, in a case not falling within subsection (7)(a) or (b) above, any steps specified in a notice served by a water undertaker for the purposes of subsection (2)(b) above have not been taken by the end of the period so specified, the water undertaker shall have power—

- (a) to take those steps itself; and
- (b) subject to subsection (10) below, to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served;

and any steps taken by a water undertaker by virtue of paragraph (a) above shall be necessary works for the purposes of Chapter II of this Part.

(10) Where any steps are taken by virtue of this section and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in subsection (2) or, as the case may be, (4) above, the water undertaker in question—

- (a) shall not be entitled to recover any expenses incurred by it in taking those steps; and
- (b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps.

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- [^{F813}(11) Where the power conferred by subsection (2) above on a water undertaker is exercisable by virtue of subsection (1A) above—
- (a) the references to the consumer in subsections (2) and (3), in relation to a supply of water to any premises, shall be taken to be references to the person in respect of whom the supply is made; and
 - (b) the undertaker shall serve on the [^{F814}water supply licensee] providing the supply a copy of any notice under this section which is served on the person mentioned in paragraph (a) above.
- (12) In subsection (1A) above, the reference to the supply system of a water undertaker shall be construed in accordance with [^{F815}section 17B] above.]

Textual Amendments

- F811** S. 75(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 24(2)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F812** Words in s. 75(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 72(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F813** S. 75(11)(12) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 24(3)**; S.I. 2005/2714, {**art. 3(c)**} (with [Sch. para. 8](#))
- F814** Words in s. 75(11)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 72(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F815** Words in s. 75(12) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 72(4)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

Modifications etc. (not altering text)

- C90** S. 75(2)-(12) applied (with modifications) (20.4.2010) by [The Water Supply \(Water Quality\) Regulations 2010 \(S.I. 2010/994\)](#), **regs. 1(1), 21(4)(5)** (with **reg. 1(2)(3)**)
- C91** S. 75(2)-(12) applied (with modifications) (27.6.2016) by [The Water Supply \(Water Quality\) Regulations 2016 \(S.I. 2016/614\)](#), **regs. 1(1), 21(4)(5)** (with **reg. 1(2)(3)**)
- C92** S. 75(2)-(12) applied with modifications (15.6.2018) by [The Water Supply \(Water Quality\) Regulations 2018 \(S.I. 2018/647\)](#), **regs. 1(1), 21(4)(5)** (with **reg. 1(2)**)

[^{F816}76 Temporary bans on use

- (1) A water undertaker may prohibit one or more specified uses of water supplied [^{F817}by means of its supply system] if it thinks that it is experiencing, or may experience, a serious shortage of water for distribution.
- (2) Only the following uses of water may be prohibited—
- (a) watering a garden using a hosepipe;
 - (b) cleaning a private motor-vehicle using a hosepipe;
 - (c) watering plants on domestic or other non-commercial premises using a hosepipe;
 - (d) cleaning a private leisure boat using a hosepipe;
 - (e) filling or maintaining a domestic swimming or paddling pool;
 - (f) drawing water, using a hosepipe, for domestic recreational use;
 - (g) filling or maintaining a domestic pond using a hosepipe;
 - (h) filling or maintaining an ornamental fountain;

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- (i) cleaning walls, or windows, of domestic premises using a hosepipe;
 - (j) cleaning paths or patios using a hosepipe;
 - (k) cleaning other artificial outdoor surfaces using a hosepipe.
- (3) The Minister may by order—
- (a) add a non-domestic purpose to the list in subsection (2);
 - (b) remove a purpose from the list in subsection (2).
- (4) A prohibition must specify—
- (a) the date from which it applies, and
 - (b) the area to which it applies (which may be all or part of the undertaker's area).
- (5) A person who contravenes a prohibition—
- (a) is guilty of an offence, and
 - (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A water undertaker which issues a prohibition must make arrangements for a reasonable reduction of charges which are made in respect of prohibited uses (including arrangements for repayment or credit where charges are paid in advance).
- (7) A water undertaker may vary or revoke a prohibition.

[The reference in subsection (1) to the supply system of a water undertaker is to be ^{F818}(8) construed in accordance with section 17B.]]

Textual Amendments

F816 Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); S.I. 2010/2169, arts. 3(3), 4, Sch. (with art. 5)

F817 Words in s. 76(1) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 73(a)**; S.I. 2017/462, art. 3(k)(viii)

F818 S. 76(8) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 73(b)**; S.I. 2017/462, art. 3(k)(viii)

[^{F816}76A Temporary bans: supplemental

- (1) A prohibition may—
- (a) apply to one or more specified uses of water generally or only in specified cases or circumstances (which may be specified by reference to classes of user, timing or in any other way);
 - (b) be subject to exceptions (which may be absolute or conditional, and may be specified by reference to classes of user, timing or in any other way).
- (2) The Minister may by order—
- (a) provide for exceptions to a category of use in section 76(2) (whether or not added under section 76(3));
 - (b) provide that a specified activity, or an activity undertaken in specified circumstances, is to be or not to be treated as falling within a category of use in section 76(2) (whether or not added under section 76(3));

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- (c) define a word or phrase used in section 76(2) (whether or not added under section 76(3)).
- (3) In particular, an order may—
 - (a) restrict a category of use by reference to how water is drawn;
 - (b) frame an exception by reference to ownership of land by a specified person or class of person;
 - (c) provide for a process that involves the use of a hosepipe at any point to be included in the meaning of “using a hosepipe”;
 - (d) provide for a reference to a thing to include a reference to something that is or may be used in connection with it (such as, for example, for a reference to a vehicle to include a reference to a trailer).
- (4) In this section and section 76 “the Minister” means—
 - (a) the Secretary of State in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in England, and
 - (b) the Welsh Ministers in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in Wales.
- (5) Subject to provision under subsection (2), a reference to a hosepipe in section 76 includes a reference to anything designed, adapted or used to serve the same purpose as a hosepipe.]

Textual Amendments

F816 Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with [s. 49\(1\)\(6\)](#)); [S.I. 2010/2169](#), [arts. 3\(3\), 4](#), [Sch.](#) (with [art. 5](#))

[^{F816}76B Temporary bans: procedure

- (1) A prohibition takes effect only if this section is complied with.
- (2) Before the period for which a prohibition is to apply the water undertaker must give notice of the prohibition and its terms—
 - (a) in at least two newspapers circulating in the area to which it is to apply, and
 - (b) on the water undertaker's internet website.
- (3) The notice must give details of how to make representations about the proposed prohibition.
- (4) The variation of a prohibition is to be treated as a prohibition for the purposes of this section.
- (5) A water undertaker must give notice of a revocation of a prohibition—
 - (a) in at least two newspapers circulating in the area to which it is to apply, and
 - (b) on the water undertaker's internet website.
- (6) The revocation may not take effect until at least one notice under subsection (5) has been given.]

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Textual Amendments

F816 Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); S.I. 2010/2169, arts. 3(3), 4, Sch. (with art. 5)

[^{F816}76C Orders under sections 76 and 76A

- (1) Section 213 applies to orders under section 76(3) or 76A(2) as it applies to regulations.
- (2) But—
 - (a) an order made by the Secretary of State under section 76(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament,
 - (b) an order made by the Welsh Ministers under section 76(3) may not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and
 - (c) an order made by the Welsh Ministers under section 76A(2) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.]

Textual Amendments

F816 Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); S.I. 2010/2169, arts. 3(3), 4, Sch. (with art. 5)

Local authority functions

77 **General functions of local authorities in relation to water quality.**

- (1) It shall be the duty of every local authority to take all such steps as they consider appropriate for keeping themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises.
- (2) It shall be the duty of a local authority to comply with any direction given by the Secretary of State to that authority, to authorities of a description applicable to that authority or to local authorities generally as to—
 - (a) the cases and circumstances in which they are or are not to exercise any of the powers conferred on them by this Chapter in relation to private supplies; and
 - (b) the manner in which those powers are to be exercised.
- (3) The Secretary of State may by regulations make such provision, supplementing the provisions of this section and of sections 78 and 79(2) below, as he considers appropriate for—
 - (a) imposing duties and conferring powers on local authorities with respect to the acquisition of information about the quality and sufficiency of water supplies provided to premises in their areas; and
 - (b) regulating the performance of any duty imposed by or under any of those provisions.

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- (4) Without prejudice to the generality of subsection (3) above, regulations under that subsection may—
- (a) prescribe the matters to be taken into account by a local authority in determining, for the purposes of subsection (1) above, what is appropriate;
 - (b) provide, for the purposes of the exercise or performance of any power or duty conferred or imposed on a local authority by or under any of the provisions mentioned in subsection (3) above, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;
 - (c) authorise local authorities to exercise or perform any such power or duty through prescribed persons;
 - (d) provide for the recovery by a local authority from prescribed persons of such amounts as may be prescribed in respect of expenses reasonably incurred by the authority in the exercise of any such power or the performance of any such duty.

Subordinate Legislation Made

P2 S. 77(3)(4): ss. 67 and 77(3) (with ss. 77(4) and 213(2)) power exercised by [S.I.1991/2790](#)

Modifications etc. (not altering text)

C93 Ss. 77-79 modified (6.4.2010) by [The Cowes Port Health Authority Order 2010 \(S.I. 2010/1216\)](#), arts. 1(1), 4, [Sch.](#)

C94 Ss. 77-79 modified (6.4.2010) by [The Portsmouth Port Health Authority Order 2010 \(S.I. 2010/1217\)](#), arts. 1(1), 4, [Sch.](#)

78 Local authority functions in relation to undertakers' supplies.

- (1) It shall be the duty of a local authority to notify any water undertaker of anything appearing to the authority to suggest—
- (a) that any supply by that undertaker [^{F819}, or by a [^{F820}water supply licensee] using that undertaker's supply system,] of water for domestic or food production purposes to any premises in the area of that authority is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for domestic purposes;
 - (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health; or
 - (c) that the duty imposed on that undertaker by virtue of section 68(1)(b) above is being, has been or is likely to be so contravened as to affect any supply of water to premises in that area.
- (2) Where a local authority have notified a water undertaker of any such matter as is mentioned in subsection (1) above, it shall be the duty of that authority, if they are not satisfied that all such remedial action as is appropriate will be taken by the undertaker, to inform the Secretary of State about the contents of the notification.
- [^{F821}(3) In subsection (1)(a) above, the reference to the water undertaker's supply system shall be construed in accordance with [^{F822}section 17B] above.]

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Textual Amendments

- F819** Words in s. 78(1)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(2)**; S.I. 2005/2714, {art. 3(c)} (with Sch. para. 8)
- F820** Words in s. 78(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 74(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(n)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F821** S. 78(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(3)**; S.I. 2005/2714, {art. 3(c)} (with Sch. para. 8)
- F822** Words in s. 78(3) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 74(3)**; S.I. 2017/462, art. 3(k)(ix)

Modifications etc. (not altering text)

- C93** Ss. 77-79 modified (6.4.2010) by [The Cowes Port Health Authority Order 2010 \(S.I. 2010/1216\)](#), arts. 1(1), 4, **Sch.**
- C94** Ss. 77-79 modified (6.4.2010) by [The Portsmouth Port Health Authority Order 2010 \(S.I. 2010/1217\)](#), arts. 1(1), 4, **Sch.**

79 Local authority functions where piped supplies insufficient or unwholesome.

- (1) This section applies to a case in which it is not practicable at reasonable cost for a water undertaker, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its area as (so far as those premises are concerned) is sufficient for domestic purposes.
- (2) In any case to which this section applies, it shall be the duty of the local authority in whose area the premises in question are situated, if they are satisfied—
 - (a) that the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and
 - (b) that it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as is sufficient for those purposes,
 to require the undertaker, under subsection (3) below, to provide a supply of water to those premises otherwise than in pipes.
- (3) Where, in a case to which this section applies—
 - (a) the insufficiency or unwholesomeness of the supply of water for domestic purposes to the premises in question is such as to cause a danger to life or health;
 - (b) it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as (so far as those premises are concerned) is sufficient for domestic purposes; and
 - (c) the local authority in whose area those premises are situated notify the undertaker of the danger to life or health and require the undertaker to provide a supply otherwise than in pipes,

it shall be the duty of the undertaker, for such period as may be required by that local authority, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by that authority.

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- (4) Where under this section a local authority require the provision by a water undertaker of a supply of water to any premises, that authority—
- (a) shall be liable to the undertaker for any charges payable by virtue of Chapter I of Part V of this Act in respect of the provision of that supply; but
 - (b) shall have power to recover the whole or any part of any charges paid by virtue of this subsection from the owner or occupier of the premises to which the supply is provided.
- (5) In this section references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.
- (6) The duty of a water undertaker under subsection (3) above shall be enforceable under section 18 above by the [^{F823}Director].

Textual Amendments

F823 Word in s. 79(6) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.23](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I

Modifications etc. (not altering text)

C93 Ss. 77-79 modified (6.4.2010) by [The Cowes Port Health Authority Order 2010 \(S.I. 2010/1216\)](#), arts. 1(1), 4, [Sch.](#)

C94 Ss. 77-79 modified (6.4.2010) by [The Portsmouth Port Health Authority Order 2010 \(S.I. 2010/1217\)](#), arts. 1(1), 4, [Sch.](#)

80 Remedial powers of local authorities in relation to private supplies.

- (1) Subject to the following provisions of this section, where a local authority are satisfied in relation to any premises in their area which are supplied with water for domestic or food production purposes by means of a private supply—
- (a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or
 - (b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,
- the authority may serve a notice in relation to that private supply on one or more of the relevant persons.
- (2) A notice under this section in relation to a private supply of water to any premises shall-
- (a) give particulars of the matters mentioned in subsection (1) above in respect of which the notice is served;
 - (b) specify the steps which, in the opinion of the authority serving the notice, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;

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- (c) specify a period, ending not less than twenty-eight days after the day on which the notice is served, within which any representations or objections with respect to the notice must be received by that authority; and
 - (d) state the effect in relation to that notice of section 81(2) and (3) below.
- (3) Subject to sections 81 and 82 below, where a local authority serve a notice under this section on any relevant person they may do one or more of the following, that is to say—
- (a) by that notice designate as steps to be taken by the authority themselves such of the steps specified in the notice as they consider it appropriate so to designate;
 - (b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;
 - (c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to that authority such payments as may be so determined in respect of expenses reasonably incurred by that other person or that authority in taking any step specified in the notice;
 - (d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.
- (4) The power of a local authority to serve a notice under this section specifying the steps which are required to be taken in relation to any source from which a private supply is provided both to premises in the area of that authority and to premises in the area of another local authority shall be exercisable only where—
- (a) the other authority consent to the service of the notice; or
 - (b) the authorities act jointly in exercising their respective powers under this section in relation to that source.
- (5) The powers conferred by this section and sections 81 and 82 below shall be so exercised in relation to a private supply of water to any premises where there is no house as to secure that no local authority are required to bear any of the expenses incurred (whether by the authority or by any other person) in taking any of the steps for ensuring that the supply is wholesome which are specified in a notice under this section.
- (6) The steps that a relevant person may be required by a notice under this section to take in relation to any premises shall include—
- (a) requiring a supply of water to be provided to those premises by a water undertaker or by any other person; and
 - (b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.
- (7) For the purposes of this section and sections 81 to 83 below the relevant persons, in relation to a private supply of water to any premises in the area of a local authority, are—
- (a) the owners and occupiers of those premises; and
 - (b) whether or not the source of the private supply is in that authority's area, the owners and occupiers of the premises where that source is situated and any

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other person who exercises powers of management or control in relation to that source;

and in sections 81 to 83 below a notice under this section is referred to as a private supply notice.

81 Confirmation of private supply notices.

- (1) Subject to subsection (2) below, a private supply notice served by a local authority shall not take effect until the end of the period specified in the notice as the period within which representations or objections with respect to the notice must be received by that authority.
- (2) Where any written representation or objection with respect to a private supply notice served by a local authority is received by the authority, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—
 - (a) the notice is submitted by the authority to the Secretary of State and is confirmed by him either with or without modifications; or
 - (b) the representation or objection is withdrawn.
- (3) If a local authority submit a private supply notice to the Secretary of State for confirmation, the Secretary of State—
 - (a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;
 - (b) may, with respect to the matters specified in the notice or any proposed modification of it, direct the local authority to serve a private supply notice, in such terms as may be specified in the direction, on any relevant person who has not previously been served with such a notice;
 - (c) may, for the purposes of paragraph (a) or (b) above cause a local inquiry to be held or afford—
 - (i) to the local authority; and
 - (ii) to every person who has made representations or objections with respect to the notice or any proposed direction under paragraph (b) above,
an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and
 - (d) if he is satisfied that the person on whom any notice to be served in pursuance of a direction under paragraph (b) above has had a proper opportunity of having his representations or objections with respect to the proposal for the direction considered, may dispense, in relation to the notice so served, with the provisions of subsections (1) and (2) above and of section 80(2)(c) and (d) above.
- (4) Where the Secretary of State confirms a private supply notice (whether with or without modifications)—
 - (a) he, or if he so directs, the local authority concerned shall serve notice of that confirmation on every person originally served with the notice under section 80 above; and
 - (b) that notice shall take effect, with any modifications made by the Secretary of State, at such time as may be specified in the notice served under this subsection.

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82 Enforcement and variation of private supply notice.

- (1) Where any relevant person who is required by virtue of a private supply notice to take any step in relation to any premises fails to take that step within the period specified in the notice, the authority which served the notice may, in accordance with any applicable provision having effect by virtue of section 83 or 84 below, take that step themselves.
- (2) Where any step is taken by a local authority in relation to any premises by virtue of subsection (1) above—
 - (a) the authority may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by the authority in taking that step; and
 - (b) for the purposes of any requirement under which payments are required to be made to that person by any person other than the authority, sums paid by virtue of paragraph (a) above in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.
- (3) Nothing in this Act shall confer any right of action on any person in respect of any loss or damage sustained by that person in consequence of the failure by any other person to take any step specified in a private supply notice.
- (4) Any sum required to be paid to any person by virtue of any requirement or undertaking contained in a private supply notice shall be recoverable by that person from the person who is required to pay it.
- (5) Any requirement which—
 - (a) is imposed by virtue of a private supply notice on the owner or occupier of any premises; and
 - (b) is expressed to bind those premises in relation to the owners or occupiers from time to time,
 shall bind successive owners or, as the case may be, occupiers of those premises and shall be a local land charge.
- (6) Subject to subsection (7) below, a local authority may by notice served on any person modify or revoke the effect in relation to that person of any private supply notice or notice under this subsection (including a notice which has been confirmed, with or without modifications, by the Secretary of State).
- (7) Sections 80(2)(c) and (d) and 81 above shall apply, as they apply in relation to a private supply notice, in relation to any notice served by a local authority on any person under subsection (6) above except where the notice—
 - (a) extends the period within which any step is required to be taken by that person; or
 - (b) discharges, postpones or abates any obligation of that person to make a payment to the local authority.

83 Application of certain powers to local authorities in relation to private supplies.

- (1) For the purposes of the taking of any steps falling to be taken by a local authority by virtue of a designation under subsection (3)(a) of section 80 above the provisions of Part VI of this Act shall have effect—

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- (a) as if the relevant works powers, so far as conferred on a water undertaker for the purpose of carrying out its functions, were also conferred on a local authority for the purpose of ensuring that a supply of water provided by means of a private supply to any premises in the authority's area is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
 - (b) as if any such power, so far as it is conferred on a water undertaker in relation to things belonging to or operated or used by the undertaker for the purposes of its functions, were conferred by virtue of paragraph (a) above on a local authority in relation to things belonging to or operated or used by that authority, or a relevant person, in connection with the provision of water by means of a private supply;
 - (c) as if references to a water undertaker in any provision of Part VI of this Act relating to a relevant works power, except the references in sections 181 and 182 below, included references to a local authority; and
 - (d) as if the making by any person in pursuance of a private supply notice of any payment in respect of sums incurred in the laying of any pipe entitled that person, for the purposes of section 179(1) below, to an interest in the pipe.
- (2) Where by virtue of this Act a local authority have power under Part VII of the ^{M25}Local Government Act 1972 (miscellaneous powers of a local authority) to acquire (whether compulsorily or otherwise) any land or right over land for the purpose of ensuring that private supplies of water to premises in their area are both wholesome and (so far as houses on those premises are concerned) sufficient for domestic purposes, that power shall include power to acquire land or any interest or right in or over land in order, for that purpose, to dispose of the land or the interest or right to a person who is a relevant person in relation to such a private supply.
- (3) In this section “relevant works powers” means the powers conferred on water undertakers by sections 158, 159, 161, 163 and 165 below.

Marginal Citations

M25 1972 c. 70.

84 Local authority rights of entry etc.

- (1) Any person designated for the purpose by a local authority within whose area any waterworks are situated shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is or has been any contravention of section 72 above in relation to those waterworks.
- (2) Any person designated in writing for the purpose by a local authority may—
 - (a) enter any premises for the purpose of—
 - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings, or with respect to the waste or misuse of water, is being or has been contravened;
 - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under section 74 above should be exercised or performed; or

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- (iii) exercising any such power or performing any such duty;
 - or
 - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.
- (3) Any person designated in writing for the purpose by any local authority may—
- (a) enter any premises for the purpose, in relation to any private supply, of—
 - (i) determining whether, and if so in what manner, any power or duty conferred or imposed on that authority by or under any of sections 77 to 82 above should be exercised or performed; or
 - (ii) exercising any such power or performing any such duty;
 - (b) enter any premises to which a supply of water is provided by a water undertaker for the purpose, in relation to a supply so provided of—
 - (i) determining whether, and if so in what manner, any such power should be exercised or any such duty performed; or
 - (ii) exercising any such power or performing any such duty;
 - or
 - (c) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as the local authority—
 - (i) consider appropriate for the purposes of any such power or duty; and
 - (ii) have authorised that person to carry out or take away.
- (4) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above; but nothing in that subsection or in that Part of that Schedule shall entitle any person designated for the purposes of that subsection by a local authority to have access to any waterworks belonging to a water undertaker.
- (5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsections (2) and (3) above.
- (6) In subsection (1) above the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under that subsection shall be defrayed as part of their general expenses.
- (7) In this section “waterworks” has the same meaning as in section 72 above.

85 **Local authority power to obtain information for the purposes of functions under Chapter III.**

- (1) Subject to subsection (2) below, a local authority may serve on any person a notice requiring him to furnish that authority, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by that authority for the purpose of exercising or performing any power or duty conferred or imposed on that authority by or under any of sections 77 to 82 above.

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- (2) The Secretary of State may by regulations make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.
- (3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Assessors for the enforcement of water quality

86 Assessors for the enforcement of water quality.

- (1) The Secretary of State may for the purposes of this section appoint persons to act on his behalf^{F824} . . . in relation to some or all of—
 - (a) the powers and duties conferred or imposed on him by or under sections 67 to 70 and 77 to 82 above; and
 - (b) such other powers and duties in relation to the quality and sufficiency of water supplied [^{F825}using a water undertaker's supply system] as are conferred or imposed on him by or under any other enactments.
- ^{F826}(1A) Subject to subsection (1B) below, the Secretary of State shall designate one such person as the Chief Inspector of Drinking Water.
- (1B) If the function of the Secretary of State under subsection (1) above is transferred to any extent to the Assembly—
 - (a) subject to paragraph (b) below, the Assembly may designate one such person appointed by it as the Chief Inspector of Drinking Water for Wales; but
 - (b) if the person designated by the Assembly is the same as the person designated by the Secretary of State as the Chief Inspector of Drinking Water, he shall be known as such in both capacities.]
- (2) [^{F827}An inspector] appointed under this section shall—
 - (a) carry out such investigations as the Secretary of State may require him to carry out for the purpose of—
 - (i) ascertaining whether any duty or other requirement imposed on that undertaker [^{F828}or a [^{F829}water supply licensee] by or under any of sections 68, 69 and 79 above or imposed on a relevant person (as defined in subsection (1A) of section 70 above) by or under that section] is being, has been or is likely to be contravened; or
 - (ii) advising the Secretary of State as to whether, and if so in what manner, any of the powers of the Secretary of State in relation to such a contravention, or any of the powers (including the powers to make regulations) which are conferred on him by or under any of sections 67 to 70 and 77 to 82 above should be exercised;
 - and
 - (b) make such reports to the Secretary of State with respect to any such investigation as the Secretary of State may require.
- (3) Without prejudice to the powers conferred by subsection (4) below, it shall be the duty of a water undertaker [^{F830}, [^{F831}water supply licensee] or other relevant person (as defined in section 70(1A) above)]—

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- (a) to give [^{F832}an inspector] appointed under this section all such assistance; and
- (b) to provide [^{F832}an inspector] so appointed with all such information,
- as that person may reasonably require for the purpose of carrying out any such investigation as is mentioned in subsection (2) above.
- (4) Any [^{F833}inspector] appointed under this section who is designated in writing for the purpose by the Secretary of State may—
- (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in subsection (2) above;
- (b) carry out such inspections, measurements and tests on premises entered by that [^{F833}inspector] or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that [^{F833}inspector] considers appropriate for the purpose of enabling him to carry out any such investigation; or
- [^{F834}(c) at any reasonable time require—
- (i) any water undertaker or [^{F835}water supply licensee] to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker [^{F836}or licensee] by or under any of sections 68, 69 and 79 above; or
- (ii) any relevant person (as defined in subsection (1A) of section 70 above) to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that person by or under that section.]
- (5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.
- (6) Any water undertaker [^{F837}, [^{F838}water supply licensee] or other relevant person] which fails to comply with the duty imposed on [^{F839}that person] by virtue of subsection (3) above shall be guilty of an offence and liable [^{F840}on summary conviction, or on conviction on indictment, to a fine].
- [^{F841}(7) Proceedings by the Secretary of State for an offence under this section or in relation to the quality and sufficiency of water supplied using a water undertaker's supply system may be instituted and carried on in the name of the Chief Inspector of Drinking Water.
- (8) Any such proceedings by the Assembly may be instituted and carried on in the name of the Chief Inspector of Drinking Water for Wales, if there is one (or, if subsection (1B) (b) above applies, in the name of the Chief Inspector of Drinking Water).
- (9) In this section “inspector” means the Chief Inspector of Drinking Water or any other person appointed under subsection (1) above.]

Textual Amendments

- F824** Words in s. 86(1) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(2), 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(z)(i)** (with art. 6, Sch. 3)
- F825** Words in s. 86(1)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F826** S. 86(1A)(1B) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(3), 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)

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- F827** Words in s. 86(2) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 57(4), 105(3); S.I. 2004/641, art. 3(m) (with art. 6, Sch. 3)
- F828** Words in s. 86(2)(a)(i) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 26(3); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F829** Words in s. 86(2)(a)(i) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 75(2); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F830** Words in s. 86(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 26(4); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F831** Words in s. 86(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 75(2); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F832** Words in s. 86(3)(a)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 57(5), 105(3); S.I. 2004/641, art. 3(m) (with art. 6, Sch. 3)
- F833** Word in s. 86(4) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 57(6), 105(3); S.I. 2004/641, art. 3(m) (with art. 6, Sch. 3)
- F834** S. 86(4)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 26(5); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F835** Words in s. 86(4)(c)(i) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 75(2); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F836** Words in s. 86(4)(c)(i) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 75(3); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F837** Words in s. 86(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 26(6); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F838** Words in s. 86(6) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 75(2); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F839** Words in s. 86(6) substituted (1.4.2016) by water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 75(4); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F840** Words in s. 86(6) substituted (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), Sch. 4 para. 23(4) (with reg. 5(1))
- F841** S. 86(7)-(9) added (1.4.2004) by Water Act 2003 (c. 37), ss. 57(8), 105(3); S.I. 2004/641, art. 3(m) (with art. 6, Sch. 3)

^{F842}86ZA Charging of fees

- (1) The Secretary of State may by order made by statutory instrument confer power on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed by the Secretary of State under section 86 (and to determine their amount).
- (2) The Welsh Ministers may by order made by statutory instrument confer power on the designated person to charge fees for the exercise of a function by an inspector appointed by the Welsh Ministers under section 86 (and to determine their amount).
- (3) In subsection (2) “the designated person” means—
 - (a) the Chief Inspector of Drinking Water for Wales, or
 - (b) if the same person is designated under section 86(1A) and (1B), the Chief Inspector of Drinking Water in that person's capacity as a person designated by the Welsh Ministers under section 86(1B).

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- (4) An order under this section may include consequential, supplementary, incidental or transitional provision, or savings.
- (5) A statutory instrument containing an order made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing an order made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the Assembly.
- (7) Subsection (8) applies in relation to a statutory instrument containing both—
 - (a) an order under this section made by the Secretary of State, and
 - (b) an order under this section made by the Welsh Ministers.
- (8) If in accordance with subsection (5) or (6)—
 - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
 - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
 nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.]

Textual Amendments

F842 S. 86ZA inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), ss. **40(1)**, 94(3); S.I. 2014/1823, art. 2(a)

[^{F843}Complaints

Textual Amendments

F843 S. 86A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. **29**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

86A ^{F844} **Procedure for dealing with complaints.**

- (1) Each water undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the supply of water.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
 - (a) the water undertaker has consulted the [^{F845}regional committee] to which it has been allocated; and
 - (b) the proposed procedure or modification has been approved by the Director.
- (3) The water undertaker shall—
 - (a) publicise the procedure in such manner as may be approved by the Director; and
 - (b) send a description of the procedure, free of charge, to any person who asks for one.

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- (4) The Director may give a direction to a water undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.
- (5) A direction under subsection (4) above—
 - (a) may specify the manner in which the review is to be conducted; and
 - (b) shall require a written report of the review to be made to the Director.
- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the water undertaker, direct the undertaker to make such modifications of—
 - (a) the procedure; or
 - (b) the manner in which the procedure operates,as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.
- (8) The duty of a water undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by the Director under section 18 above.
- (9) Where the Director is considering whether to exercise his powers under subsection (4) or (6) above in relation to a water undertaker, it shall be the duty of that undertaker to give him such information as he may reasonably require for the purpose of assisting him in coming to a decision.
- (10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.]

Textual Amendments

- F844** S. 86A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 29](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F845** Words in s. 86A(2)(a) substituted (1.10.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(3\)](#); S.I. 2005/2714, [art. 2\(l\)\(v\)\(aa\)](#) (with Sch. para. 8)

CHAPTER IV

FLUORIDATION

Modifications etc. (not altering text)

- C95** Pt. 3 Ch. 4 modified (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 37\(1\), 306\(2\)\(3\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)

^{F846}87 Fluoridation of water supplies

- (1) If requested in writing to do so by a relevant authority, a water undertaker shall enter into arrangements with the relevant authority to increase the fluoride content

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of the water supplied by that undertaker to premises within the area specified in the arrangements.

(2) But a water undertaker shall not be required by subsection (1) above to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of section 90 below—

- (a) to the water undertaker; and
- (b) to any [^{F847}water supply licensee] which is entitled to one.

(3) In this section and the following provisions of this Chapter—

- (a) references to a relevant authority—
 - [^{F848}(i) in relation to areas in England, are to the Secretary of State;]
 - (ii) in relation to areas in Wales, are to the Assembly; and
- (b) references to water supplied by a water undertaker are to water supplied (whether by a water undertaker or a [^{F849}water supply licensee]) to premises using the supply system of that undertaker.

^{F850}(3A)

(4) The area specified in arrangements under this section may be—

- [^{F851}(a) in relation to England, such area [^{F852}in England as the Secretary of State may determine];]
- (b) in relation to Wales, such area comprising the whole or any part of Wales as the Assembly may determine.

(5) The arrangements shall be on such terms as may be agreed between the relevant authority and the water undertaker or, in the absence of agreement, determined in accordance with section 87B below.

(6) [^{F853}Subject to subsection (6A)] those terms shall include provision—

- (a) requiring the relevant authority to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;
- (b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and
- (c) for the variation of the arrangements at the request of the relevant authority.

[^{F854}(6A) The Secretary of State may by regulations provide that, in circumstances specified in the regulations, subsection (6)(a) is not to apply in relation to arrangements entered into by the Secretary of State.

(6B) The Secretary of State may by regulations require a public body specified in the regulations to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.]

(7) The relevant authority shall consult the Authority in relation to the terms to be included in any arrangements under this section (in particular, terms which affect the operation of the water undertaker’s supply system).

^{F855}(7A)

^{F855}(7B)

[^{F856}(7G) Before making regulations under subsection (6A) or (6B) the Secretary of State must consult such persons as the Secretary of State considers appropriate.]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F857(8)

F857(9)

F857(10)

(11) Before carrying out the consultation required by subsection (1) of section 89 below in relation to a step mentioned in paragraph (a), (b) or (c) of subsection (2) of that section, [F858 a relevant authority] shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).

[F859(12) A statutory instrument containing regulations under subsection (6A) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]]

Textual Amendments

- F846** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F847** Words in s. 87(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 76**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F848** S. 87(3)(a)(i) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(2)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F849** Words in s. 87(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 76**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F850** S. 87(3A) omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(a)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F851** S. 87(4)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(4)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F852** Words in s. 87(4)(a) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(b)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F853** Words in s. 87(6) inserted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(c)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F854** S. 87(6A)(6B) inserted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(d)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F855** S. 87(7A)(7B) omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(e)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F856** s. 87(7G) inserted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(f)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F857** S. 87(8)-(10) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(7)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F858** Words in s. 87(11) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(g)**, 186(6); S.I. 2022/1003, **reg. 3(a)**
- F859** S. 87(12) inserted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(2)(h)**, 186(6); S.I. 2022/1003, **reg. 3(a)**

Modifications etc. (not altering text)

- C96** S. 87: functions not to be exercised by a primary care trust (1.4.2000) by virtue of S.I. 2000/695, **art. 4(1)**, **Sch. 4**

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^{F860}87A Target concentration of fluoride

- (1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.
- (2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).
- (3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

^{F861}(3A)

- (4) If, in relation to any area (“area A”), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).
- (5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A (“area B”) it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.
- (6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).
- (7) In this section, “specified area” means the area specified in arrangements under section 87(1) above.]

Textual Amendments

F860 Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(2\)\(11\)-\(14\)](#), [105\(3\)](#); S.I. 2008/1922, [art. 2\(a\)](#); S.I. 2009/359, [art. 2](#), (with saving in art. 3, Sch. 3)

F861 S. 87A(3A) omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(3\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

^{F862}87B Fluoridation arrangements: determination of terms

- (1) This section applies if a relevant authority and a water undertaker fail to agree—
 - (a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or

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- (b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.
- (2) In relation to areas in England (except where subsection (4) below applies)—
 - ^{F863} [the Secretary of State may—
 - (a) (i) determine the terms of the arrangements as the Secretary of State sees fit; or
 - (ii) refer the matter for determination by such other person as the Secretary of State considers appropriate; and]
 - ^{F864} (b)
 - (c) the determination of the Secretary of State or, as the case may be, the other person shall be final.
- (3) In relation to areas in Wales (except where subsection (4) below applies)—
 - (a) the Assembly may—
 - (i) determine the terms of the arrangements itself as it sees fit; or
 - (ii) refer the matter for determination by such other person as it considers appropriate; and
 - (b) the determination of the Assembly or, as the case may be, the other person shall be final.
- (4) [^{F865}Where a combined reference is made under section 87(7C)(b) or 87(7F)] above—
 - (a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and
 - (b) the determination of that person shall be final.
- (5) Following determination under this section of the terms to be included in any arrangements—
 - (a) the relevant authority shall give notice of the determination to the water undertaker in question; and
 - (b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.
- (6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.]

Textual Amendments

- F862** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F863** S. 87B(2)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(10)(a)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with [arts. 7-9](#))
- F864** S. 87B(2)(b) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(10)(b)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with [arts. 7-9](#))
- F865** Words in s. 87B(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(11)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with [arts. 7-9](#))

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[^{F866}87C Fluoridation arrangements: compliance

- (1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.
- (2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—
 - hexafluorosilicic acid (H₂SiF₆)
 - disodium hexafluorosilicate (Na₂SiF₆).
- (3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).
- (4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—
 - (a) for the purpose of dealing with any serious deficiency in supply; or
 - (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a [^{F867}water supply licensee] supplying water using its or their supply system.
- (5) In this section—
 - (a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and
 - (b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.
- (6) In subsection (4) above, “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
- (7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.

^{F868}(8)]

Textual Amendments

F866 Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(2\)\(11\)-\(14\)](#), 105(3); S.I. 2008/1922, [art. 2\(a\)](#); S.I. 2009/359, [art. 2](#), (with saving in art. 3, Sch. 3)

F867 Words in s. 87C(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 77](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

Status: This version of this Act contains provisions that are prospective.

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F868 S. 87C(8) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(12), 306(2)(3)**; [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)

88 Power to vary permitted fluoridation agents.

- (1) The Secretary of State may by order amend section [^{F869}87C(2)] above by—
 - (a) adding a reference to another compound of fluorine; or
 - (b) removing any reference to a compound of fluorine.
- (2) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F869 Words in [s. 88\(1\)](#) substituted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(3), 105(3)**; [S.I. 2009/359](#), **arts. 2, 3, Sch.**

[^{F870}**88A Power to vary target concentration of fluoride**

- (1) The appropriate authority may by order made by statutory instrument provide that section 87A(1) above is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.
- (2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.
- (3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) In subsection (1) above “appropriate authority”—
 - (a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;
 - (b) in relation to an area which is wholly in England, means the Secretary of State; and
 - (c) in relation to an area which is wholly in Wales, means the Assembly.
- (5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.]

Textual Amendments

F870 [S. 88A](#) inserted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(4), 105(3)**; [S.I. 2009/359](#), **art. 2(b)** (with saving in [art. 3, Sch.](#))

^{F871}**88B Requirement for fluoridation proposal: England**

.....

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Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88C Initial consultation etc. on fluoridation proposal

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88D Additional requirements where other local authorities affected

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88E Decision on fluoridation proposal

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88F Decision-making procedure: exercise of functions by committee

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88G Secretary of State's duty in relation to fluoridation proposal

.....

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Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(4\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

F871 88H Payments by local authorities towards fluoridation costs

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(4\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

F871 88I Variation or termination of arrangements under section 87(1)

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(4\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

F871 88J Initial consultation etc. on variation or termination proposal

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(4\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

F871 88K Additional requirements where other local authorities affected

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(4\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

F871 88L Decision on variation or termination proposal

.....

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Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88M Decision-making procedure: exercise of functions by committee

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88N Secretary of State's duty in relation to requests for variation or termination

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F871}88O Power to make regulations as to maintenance of section 87 arrangements

.....

Textual Amendments

F871 Ss. 88B-88O omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(4)**, 186(6); S.I. 2022/1003, reg. 3(a)

^{F873}89 Consultation ^{F872}...

- (1) Before taking any step mentioned in subsection (2) below, [^{F874}a relevant authority] shall—
 - (a) consult and ascertain opinion in accordance with regulations made by [^{F875}that authority]; and
 - (b) comply with the requirements set out in regulations made by [^{F876}that authority].
- (2) The steps are—
 - (a) requesting a water undertaker to enter into arrangements under section 87(1) above;
 - (b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;
 - (c) giving notice to a water undertaker under section 87C(7) above to terminate any such arrangements;

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- (d) maintaining any such arrangements in prescribed circumstances.
- (3) Regulations—
- (a) under paragraph (a) of subsection (1) above shall include provision about the process which [^{F877}the relevant authority is] to follow for the purposes of that paragraph;
- (b) under paragraph (b) of that subsection shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in subsection (2) above may be taken.
- (4) Subsection (1) above shall not apply in relation to a proposal by [^{F878}a relevant authority] to take the step mentioned in subsection (2)(c) above if [^{F879}that authority so directs] by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).
- (5) [^{F880}In this section “appropriate authority”—
- (a) in a case where two or more relevant authorities (one of which is the Assembly) propose to request a particular water undertaker to take a step mentioned in subsection (2)(a), (b) or (c) in respect of arrangements in adjoining areas, means the Secretary of State and the Assembly acting jointly;
- (b) in relation to England (except in a case to which paragraph (a) applies), means the Secretary of State; and
- (c) in relation to Wales (except in a case to which paragraph (a) applies), means the Assembly.]]

Textual Amendments

- F872** Word in s. 89 heading omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(a\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F873** [S. 89](#) substituted (18.2.2005 for E. for specified purposes, 1.8.2008 for E. for further specified purposes and 25.2.2009 for E. insofar as not already in force) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(5\)](#), [105\(3\)](#); [S.I. 2005/344](#), [art. 2](#); [S.I. 2008/1922](#), [art. 2\(b\)\(c\)](#); [S.I. 2009/359](#), [arts. 2\(c\)](#) (with saving in [art. 3](#), [Sch.](#))
- F874** Words in [s. 89\(1\)](#) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(b\)\(i\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F875** Words in [s. 89\(1\)\(a\)](#) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(b\)\(ii\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F876** Words in [s. 89\(1\)\(b\)](#) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(b\)\(ii\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F877** Words in [s. 89\(3\)\(a\)](#) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(c\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F878** Words in [s. 89\(4\)](#) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(d\)\(i\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F879** Words in [s. 89\(4\)](#) substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(5\)\(d\)\(ii\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
- F880** [S. 89\(5\)](#) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(13\)\(f\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F881}90 Indemnities in respect of fluoridation.

- (1) The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to section 87(1) above.
- (2) The Secretary of State may also, with the consent of the Treasury, agree to indemnify any [^{F882}water supply licensee] in respect of liabilities which [^{F883}the licensee] may incur—
 - (a) in supplying water to which fluoride has been added by a water undertaker by virtue of any such arrangements;
 - (b) (if the licensee is introducing water into the water undertaker’s supply system) in complying with any obligation imposed on [^{F883}the licensee] by the undertaker in consequence of the arrangements.
- (3) The Secretary of State may by regulations make provision with respect to—
 - (a) the matters in respect of which an indemnity may be given under subsection (1) or (2) above;
 - (b) the form and terms of any such indemnity; and
 - (c) such ancillary matters as he sees fit.]

Textual Amendments

- F881** Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by [Water Act 2003 \(c. 37\)](#), **ss. 58(6)**, 105(3); S.I. 2005/344, **art. 2**; S.I. 2009/359, **art. 2(c)** (subject to [art. 3](#), Sch.)
- F882** Words in s. 90(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 78(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F883** Words in s. 90(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 78(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

[^{F884}90A Review of fluoridation

- (1) A relevant authority which has entered into arrangements under section 87(1) above shall—
 - (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
 - (b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.
- (2) The relevant authority shall make available—
 - (a) any information collected by it for the purposes of subsection (1) above; or
 - (b) summaries of that information.
- (3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).
- (4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.

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- (5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.

^{F885}(5A)

- (6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.]

Textual Amendments

F884 Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by [Water Act 2003 \(c. 37\)](#), **ss. 58(6), 105(3)**; S.I. 2005/344, **art. 2**; S.I. 2009/359, **art. 2(c)** (subject to [art. 3, Sch.](#))

F885 S. 90A(5A) omitted (1.11.2022 for E.) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 175(6), 186(6)**; S.I. 2022/1003, **reg. 3(a)**

[^{F886}**90B Old English fluoridation arrangements: transitional provision**

- (1) With effect from the day on which section 176 of the Health and Care Act 2022 comes into force, old English fluoridation arrangements are to be treated for the purposes of this Chapter as if they were arrangements entered into by the water undertaker with the Secretary of State under section 87(1).
- (2) The Secretary of State may request such modifications to the arrangements as the Secretary of State considers necessary in order to give effect to subsection (1) (for example to insert the terms mentioned in section 87(6)).
- (3) If the Secretary of State and the water undertaker fail to agree the modifications requested by the Secretary of State—
- (a) subsection (2) or, as the case may be, (4) of section 87B is to apply as if the parties had failed to agree the terms of the arrangements under section 87(1), and
- (b) following determination of the modifications—
- (i) the Secretary of State is to give notice of the determination to the water undertaker, and
- (ii) the arrangements are deemed to have been modified as so determined with effect from the day after the date of notice.
- (4) Sections 87(11) and 89(1) (which relate to consultation) do not apply to the deemed entry into, and modification of, arrangements by virtue of this section.
- (5) References in this Chapter to arrangements entered into under section 87(1) include arrangements entered into by a water undertaker by virtue of subsection (1).
- (6) In this section “old English fluoridation arrangements” means—
- (a) any arrangements entered into by a water undertaker with a Strategic Health Authority under section 87(1) of the Water Industry Act 1991 (before section 87(3) was amended by section 35(2) of the Health and Social Care Act 2012 in relation to England), and
- (b) any arrangements which were treated as arrangements falling within paragraph (a) by virtue of section 91 (as that section had effect immediately

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before the commencement of section 37(4) of the Health and Social Care Act 2012).]

Textual Amendments

F886 S. 90B inserted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 176(2)**, 186(6); S.I. 2022/1003, reg. 3(b)

[^{F887}91 [^{F888}Old Welsh fluoridation arrangements: transitional provision]

- (1) With effect from the appointed day, [^{F889}old Welsh fluoridation arrangements] shall be treated for the purposes of this Chapter as if they were arrangements entered into by the water undertaker in question with the [^{F890}Welsh Ministers] under section 87(1) above.
- (2) The [^{F891}Welsh Ministers] may request such modifications to the arrangements as it considers necessary in order to give effect to subsection (1) above, for example to insert the terms mentioned in section 87(6) above.
- (3) If the [^{F892}Welsh Ministers] and the water undertaker fail to agree the modifications requested by [^{F893}the Welsh Ministers]—
 - (a) subsection ^{F894}... (3) or, as the case may be, (4) of section 87B above shall apply as if the parties had failed to agree the terms of arrangements requested under section 87(1) above; and
 - (b) following determination of the modifications—
 - (i) the [^{F892}Welsh Ministers] shall give notice of the determination to the water undertaker; and
 - (ii) the arrangements shall be deemed to have been modified as so determined with effect from the day after the date of the notice.
- (4) Sections 87(11) and 89(1) above (which relate to consultation) shall not apply to the deemed entry into, and modification of, arrangements by virtue of this section.
- (5) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements treated as entered into by a water undertaker by virtue of subsection (1) above.
- (6) In this section—

“the appointed day” means the day on which section 58 of the Water Act 2003 comes into force [^{F895}in relation to Wales]; and

[^{F896}“old Welsh fluoridation arrangements” means arrangements, other than arrangements mentioned in section 90B(6), in pursuance of which a scheme for increasing the fluoride content of water was being operated by a water undertaker by virtue of paragraph 1 of Schedule 7 to this Act immediately before the appointed day.]]

Textual Amendments

F887 S. 91 substituted (26.3.2010 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(7)**, 105(3); S.I. 2010/975, art. 2(a)

F888 S. 91 heading substituted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 176(3)(a)**, 186(6); S.I. 2022/1003, reg. 3(b)

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- F889** Words in s. 91(1) substituted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(b)(i), 186(6); S.I. 2022/1003, reg. 3(b)
- F890** Words in s. 91(1) substituted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(b)(ii), 186(6); S.I. 2022/1003, reg. 3(b)
- F891** Words in s. 91(2) substituted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(c), 186(6); S.I. 2022/1003, reg. 3(b)
- F892** Words in s. 91(3) substituted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(d)(i), 186(6); S.I. 2022/1003, reg. 3(b)
- F893** Words in s. 91(3) substituted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(d)(ii), 186(6); S.I. 2022/1003, reg. 3(b)
- F894** Word in s. 91(3)(a) omitted (1.11.2022 for E.) by virtue of Health and Care Act 2022 (c. 31), ss. 176(3)(d)(iii), 186(6); S.I. 2022/1003, reg. 3(b)
- F895** Words in s. 91(6) inserted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(e)(i), 186(6); S.I. 2022/1003, reg. 3(b)
- F896** Words in s. 91(6) substituted (1.11.2022 for E.) by Health and Care Act 2022 (c. 31), ss. 176(3)(e)(ii), 186(6); S.I. 2022/1003, reg. 3(b)

Modifications etc. (not altering text)

- C97** S. 91 excluded (1.4.2013 for E.) by virtue of Health and Social Care Act 2012 (c. 7), ss. 37(4), 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER V

SUPPLEMENTAL PROVISIONS OF PART III

92 Power to give effect to international obligations [^{F897} etc.]

- (1) Subject to subsection (2) below, the Secretary of State may by regulations provide that the provisions of Chapters I to III of this Part shall have effect with such modifications as may be prescribed for the purpose of ^{F898}—
- [^{F899}(a) giving effect to any [^{F900}assimilated] obligations, or
- (b) [^{F901}enabling Her Majesty's Government in the United Kingdom to give effect] to any international agreement to which the United Kingdom is for the time being a party.
- (2) This section shall not authorise any modification of any of sections 71, 72 and 76 above or of any other provisions of this Part so far as they have effect for the purposes of or in relation to those sections.

Textual Amendments

- F897** Word in s. 92 heading inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), 3(3)(a); 2020 c. 1, Sch. 5 para. 1(1)
- F898** Words in s. 92(1) omitted (31.12.2020) by virtue of The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), 3(3)(b)(i); 2020 c. 1, Sch. 5 para. 1(1)
- F899** S. 92(1)(a) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), 3(3)(b)(ii); 2020 c. 1, Sch. 5 para. 1(1)
- F900** Word in s. 92(1)(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), Sch. para. 30(2)(b)

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F901 Words in s. 92(1)(b) inserted (31.12.2020) by [The Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/558\)](#), regs. 1(1), **3(3)(b)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)

93 Interpretation of Part III.

(1) In this Part—

“connection notice” shall be construed in accordance with section 45(8) above;

“consumer”, in relation to a supply of water provided by a water undertaker to any premises, means (except in Chapter IV) a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

“food production purposes” means the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used, and for the purposes of this definition “food production premises” means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises;

“necessary works” includes works carried out, in exercise of any power conferred by or under any enactment, by a person other than a water undertaker;

“private supply” means, subject to subsection (2) below, a supply of water provided otherwise than by a water undertaker [^{F902} or by a [^{F903} water supply licensee] in accordance with Chapter 1A of Part 2 of this Act] (including a supply provided for the purposes of the bottling of water), and cognate expressions shall be construed accordingly;

“private supply notice” shall be construed in accordance with section 80(7) above;

“water fittings” includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water;

“wholesome” and cognate expressions shall be construed subject to the provisions of any regulations made under section 67 above.

- (2) For the purposes of any reference in this Part to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this subsection water shall be treated as used on any premises where it is bottled on those premises for use or consumption elsewhere.
- (3) For the purposes of this Part a service pipe shall be treated as connected with a water main other than a trunk main even if the connection is an indirect connection made by virtue of a connection with another service pipe.
- (4) The rights conferred by virtue of this Part as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises.

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Textual Amendments

- F902** S. 93(1): words in definition of "private supply" inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 28](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F903** Words in s. 93(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 79](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

^{F904} PART IIIA

PROMOTION OF THE EFFICIENT USE OF WATER

Textual Amendments

- F904** Part IIIA (ss. 93A-93D) inserted (1.2.1996) by [1995 c. 25](#), s. 120(1), [Sch. 22 para. 102](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 2](#)

93A Duty to promote the efficient use of water.

- (1) It shall be the duty of every water undertaker [^{F905}or [^{F906}water supply licensee]] to promote the efficient use of water by [^{F907}that person's customers].
- (2) The duty of a water undertaker [^{F905}or [^{F908}water supply licensee]] under this section shall be enforceable under section 18 above—
 - (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) Nothing in this Part shall have effect to authorise or require a water undertaker [^{F905}or [^{F909}water supply licensee]] to impose any requirement on any of [^{F910}that person's customers] or potential customers.

Textual Amendments

- F905** Words in s. 93A(1)(2)(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 29](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F906** Words in s. 93A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 80\(1\)\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F907** Words in s. 93A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 80\(1\)\(b\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F908** Words in s. 93A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 80\(1\)\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F909** Words in s. 93A(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 80\(1\)\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

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F910 Words in s. 93A(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 80\(1\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

93B Power of Director to impose requirements on water undertakers.

- (1) The Director may require a water undertaker [^{F911}or [^{F912}water supply licensee]], in [^{F913}the performance of that undertaker's or licensee's duty] under section 93A above, to—
 - (a) take any such action; or
 - (b) achieve any such overall standards of performance,
 as he may specify in the document imposing the requirement.
- (2) Where the Director, in the document imposing a requirement on a water undertaker [^{F914}or [^{F915}water supply licensee]] under subsection (1) above, stipulates that any contravention of the requirement by the undertaker [^{F916}or licensee] will be a breach of [^{F917}the undertaker's or licensee's duty] under section 93A above, any contravention of that requirement by the undertaker shall be a breach of that duty.
- (3) Without prejudice to the generality of subsection (1) above, a requirement under that subsection may—
 - (a) require a water undertaker [^{F918}or [^{F919}water supply licensee]] to make available to [^{F920}that person's customers] or potential customers such facilities as may be specified in the document imposing the requirement;
 - (b) require a water undertaker [^{F918}or [^{F919}water supply licensee]] to provide or make available to [^{F920}that person's customers] or potential customers such information as may be specified in the document imposing the requirement, and may specify the form in which, the times at which or the frequency with which any such information is to be provided or made available.
- (4) In exercising his powers under this section in relation to any water undertaker [^{F921}or [^{F922}water supply licensee]] the Director shall have regard to the extent to which water resources are available to that undertaker [^{F923}or licensee].
- (5) Before imposing any requirement on a water undertaker [^{F924}or [^{F925}water supply licensee]] under subsection (1) above the Director shall consult that undertaker [^{F926}or licensee].
- (6) Nothing in this section authorises the Director to impose any requirement on a water undertaker [^{F927}or [^{F928}water supply licensee]] which has or may have the effect of authorising or requiring that undertaker [^{F929}or licensee] to impose any requirement on any of [^{F930}that person's customers] or potential customers.

Textual Amendments

- F911** Words in s. 93B(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 30\(2\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F912** Words in s. 93B(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 81\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F913** Words in s. 93B(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 81\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F914** Words in s. 93B(2) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 30\(3\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))

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- F915** Words in s. 93B(2) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F916** Words in s. 93B(2) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F917** Words in s. 93B(2) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F918** Words in s. 93B(3)(a)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(4)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F919** Words in s. 93B(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F920** Words in s. 93B(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F921** Words in s. 93B(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(5)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F922** Words in s. 93B(4) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F923** Words in s. 93B(4) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F924** Words in s. 93B(5) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(6)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F925** Words in s. 93B(5) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F926** Words in s. 93B(5) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F927** Words in s. 93B(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(7)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F928** Words in s. 93B(6) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F929** Words in s. 93B(6) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F930** Words in s. 93B(6) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 81(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(o) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

93C Publicity of requirements imposed under section 93B.

- (1) Where, under section 93B(1) above, the Director imposes any requirement on a water undertaker [^{F931}or [^{F932}water supply licensee]], the Director may arrange for that requirement to be publicised in any such manner as he may consider appropriate for the purpose of bringing it to the attention of that undertaker's [^{F933}or licensee's] customers.
- (2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such publicising of the requirement as is mentioned in that subsection by—
 - (a) himself publicising the requirement or causing it to be publicised; or
 - (b) directing the undertaker [^{F934}or licensee] to inform or arrange to inform its customers of the requirement.

Textual Amendments

- F931** Words in s. 93C(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 31(2)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

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- F932** Words in s. 93C(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 82\(2\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F933** Words in s. 93C(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 82\(2\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F934** Words in s. 93C(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 82\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

93D Information as to compliance with requirements under section 93B.

- (1) Where a water undertaker [^{F935}or [^{F936}water supply licensee]] is subject to any requirement imposed under section 93B(1) above, the Director may arrange for there to be given to the customers of that undertaker [^{F937}or licensee] at any such times or with such frequency, and in any such manner, as he may consider appropriate, such information about the level of performance achieved by the undertaker [^{F937}or licensee] in relation to that requirement as appears to the Director to be expedient to be given to those customers.
- (2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such giving of information as is mentioned in that subsection by—
 - (a) himself disseminating the information or causing it to be disseminated; or
 - (b) directing the undertaker [^{F938}or licensee] to give or arrange to give the information to its customers.
- (3) At such times and in such form or manner as the Director may direct, a water undertaker [^{F939}or [^{F940}water supply licensee]] shall provide the Director with such information as may be specified in the direction in connection with the undertaker's [^{F941}or licensee's] performance in relation to any requirement imposed upon the undertaker [^{F942}or licensee] under section 93B(1) above.
- (4) A water undertaker [^{F943}or [^{F944}water supply licensee]] who fails without reasonable excuse to do anything required of him by virtue of subsection (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

Textual Amendments

- F935** Words in s. 93D(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 32\(2\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F936** Words in s. 93D(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 83\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F937** Words in s. 93D(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 83\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F938** Words in s. 93D(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 83\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F939** Words in s. 93D(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 32\(4\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F940** Words in s. 93D(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 83\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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- F941** Words in s. 93D(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 83(4)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F942** Words in s. 93D(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 83(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F943** Words in s. 93D(4) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 32(5)**; S.I. 2005/2714, **art. 3(c)** (with **Sch. para. 8**)
- F944** Words in s. 93D(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 83(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

PART IV

SEWERAGE SERVICES

Modifications etc. (not altering text)

- C98** Pt. IV: power to apply conferred (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 78(2)(b)**, 225(2).
- C99** Pt. IV saved (1.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), **ss. 1(4)**, 17(2).

CHAPTER I

GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS [^{F945}ETC]

Textual Amendments

- F945** Word in Pt. 4 Ch. 1 heading inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 84**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Principal duties and standards of performance

94 General duty to provide sewerage system.

- (1) It shall be the duty of every sewerage undertaker—
- (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers [^{F946}and any lateral drains which belong to or vest in the undertaker] as to ensure that that area is and continues to be effectually drained; and
 - (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.
- (2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—
- (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
 - (b) to the need to provide for the disposal of trade effluent which is so discharged.

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- (3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (4) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 95 below and shall not be in any way qualified by any such provision.
- (5) In this section “trade effluent” has the same meaning as in Chapter III of this Part.

Textual Amendments

F946 Words in s. 94(1)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(3)**, 105(3); [S.I. 2004/641](#), **art. 4(b)** (with [Sch. 3 para. 7](#))

Modifications etc. (not altering text)

C100 S. 94 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), **reg. 1(1)(b)**, **Sch. 1 para. 10(2)** (with **reg. 1(1)(c)**)

95 Standards of performance in connection with provision of sewerage services.

- (1) For the purpose-
- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Part are to amount to breaches of the duty imposed by section 94 above; or
 - (b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker, the Secretary of State may, in accordance with section 96 below, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may, in accordance with section 96 below, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in his opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) above may provide that, if a sewerage undertaker fails to meet a prescribed standard, it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
- (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
 - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;

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- (c) make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
- (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.

^{F947} [(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.]

Textual Amendments

F947 S. 95(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para.24](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

^{F948} **95ZA Standards of performance in connection with provision of sewerage services: sewerage licensees**

- (1) For the purpose of establishing overall standards of performance in connection with the provision of sewerage services by sewerage licensees in accordance with their retail authorisations, the Secretary of State may, in accordance with section 96ZA, by regulations—
 - (a) impose requirements in connection with the provision of sewerage services;
 - (b) provide for a requirement so imposed to be enforceable under section 18 by—
 - (i) the Secretary of State, or
 - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Secretary of State may, in accordance with section 96ZA, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in the Secretary of State's opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a sewerage licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
 - (a) is affected by the failure, and
 - (b) is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
 - (a) include in a standard of performance a requirement for a sewerage licensee, in prescribed circumstances, to inform a person of that person's rights by virtue of any such regulations;
 - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a sewerage licensee is to be exempted from requirements of the regulations.

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- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.]

Textual Amendments

F948 S. 95ZA inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), ss. **30(1)**, 94(3); S.I. 2016/1007, art. 2(e)

[95A ^{F949}Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation paid by sewerage undertakers under regulations under section 95(2) above; ^{F950} ...
 - ^{F951} [the compensation paid by sewerage licensees under regulations under section 95ZA(2); and]
 - (b) the levels of overall performance achieved by sewerage undertakers [^{F952}or sewerage licensees] in connection with the provision of sewerage services.
- (2) At such times as the Director may direct, each sewerage undertaker shall give the following information to the Director—
- (a) as respects each standard prescribed by regulations under section 95(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
 - (b) as respects each standard established by regulations under section 95(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.
- ^{F953} [At such times as the Authority may direct, each sewerage licensee is to give the (2A) following information to the Authority—
- (a) as respects each standard established by regulations under section 95ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
 - (b) as respects each standard prescribed by regulations under section 95ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.]
- ^{F954} [The requirements in subsections (2) and (2A) are enforceable by the Authority under (3) section 18.]
- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of sewerage undertakers [^{F955}or sewerage licensees].
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter

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would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

Textual Amendments

- F949** S. 95A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.31](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F950** Word in s. 95A(1) repealed (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 30\(3\)\(a\)](#), 94(3); S.I. 2016/1007, art. 2(e)
- F951** S. 95A(1)(aa) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 30\(3\)\(b\)](#), 94(3); S.I. 2016/1007, art. 2(e)
- F952** Words in s. 95A(1)(b) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 30\(3\)\(c\)](#), 94(3); S.I. 2016/1007, art. 2(e)
- F953** S. 95A(2A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 30\(4\)](#), 94(3); S.I. 2016/1007, art. 2(e)
- F954** S. 95A(3) substituted (1.1.2015 for specified purposes, 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 30\(5\)](#), 94(3); S.I. 2014/3320, art. 2(2)(b); S.I. 2016/1007, art. 2(e)
- F955** Words in s. 95A(4) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 30\(6\)](#), 94(3); S.I. 2016/1007, art. 2(e)

[^{F956}95B Publication of statistical information about complaints

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of sewerage undertakers [^{F957}or sewerage licensees] and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to sewerage undertakers [^{F958}or sewerage licensees] (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

Textual Amendments

- F956** S. 95B inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 45\(2\)](#), 105(3); S.I. 2005/2714, [art. 2\(e\)](#) (with [Sch. para. 8](#))
- F957** Words in s. 95B(1) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 85\(a\)](#); S.I. 2017/462, art. 3(k)(x)
- F958** Words in s. 95B(2) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 85\(b\)](#); S.I. 2017/462, art. 3(k)(x)

96 Procedure for regulations under section 95.

- [^{F959}(A1) The Secretary of State may make regulations under section 95 above—
- (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
 - (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.]

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- (1) ^{F960}Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 95 above if—
- ^{F961}[(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—
- (i) on every sewerage undertaker specified in the application; ^{F962} . . .
 - (ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;
 - (iii) ^{F963}on the Council; and
 - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;]
- (c) such period as the Secretary of State considers appropriate has been allowed for the making—
- (i) by the Director; and
 - (ii) by any affected sewerage undertaker ^{F964}or person or body on whom a copy of the application has been served under paragraph ^{F965}(b) above],
- of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
- (d) the Secretary of State has considered ^{F966}the summary mentioned in subsection (2)(bb) below,] the Director’s reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- ^{F967}[(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.]
- (2) An application made by the Director to the Secretary of State complies with this subsection if it—
- (a) sets out ^{F968}the Authority’s proposals for the making of] regulations under section 95 above;
 - (b) specifies the sewerage undertaker or undertakers in relation to which it is proposed ^{F969}the regulations] should apply
- ^{F970}(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;]; and
- (c) summarises the Director’s reasons for his proposals.
- (3) The Secretary of State shall not make any regulations ^{F971}on an application by the Authority under this section] except where—
- (a) the only provisions of the regulations are ^{F972}those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority’s application or to those proposals] with such modifications as the Secretary of State considers appropriate; and
 - (b) each of the modifications (if any) of the Director’s proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
 - (i) to the Director; ^{F973} . . .

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- (ii) to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications^{F974} and
 - (iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above.]
- ^{F975}(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 95 above only if he considers—
- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
 - (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 95 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;
 - (b) consider the results of the research carried out in accordance with subsection (7) below; and
 - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State's reasons for his proposals;
 - (b) specify the sewerage undertaker or undertakers in relation to which it is proposed the regulations should apply; and
 - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;
 - (b) the Council;
 - (c) every sewerage undertaker to which the regulations will apply;
 - (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
 - (e) such other persons or bodies as the Secretary of State may consider appropriate.]

Textual Amendments

F959 S. 96(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1, 2](#))

F960 Words in s. 96(1) substituted (1.4.2005) for "words preceding paragraph (a), and paragraph (a)" by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1, 2](#))

F961 S. 96(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 25(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

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- F962** Word in s. 96(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(3)(b), 101(2), 105(3), [Sch. 9 Pt. 2](#); S.I. 2005/968, [art. 2\(h\)\(n\)\(i\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F963** S. 96(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(3)(b), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F964** Words in s. 96(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 25\(3\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F965** Words in s. 96(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(3)(c), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F966** Words in s. 96(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 30(2); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F967** S. 96(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 30(3); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F968** Words in s. 96(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(4)(a), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F969** Words in s. 96(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(4)(b), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F970** S. 96(2)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 30(4); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F971** Words in s. 96(3) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(5)(a), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F972** Words in s. 96(3)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(5)(b), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F973** Word in s. 96(3)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(5)(c), 101(2), 105(3), [Sch. 9 Pt. 2](#); S.I. 2005/968, [art. 2\(h\)\(n\)\(i\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F974** S. 96(3)(b)(iii) and preceding word inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(5)(c), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)
- F975** S. 96(4)-(8) added (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 42(6), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), Schs. 1, 2)

[^{F976}96ZA Procedure for regulations under section 95ZA

- (1) Section 96 applies for the purposes of making regulations under section 95ZA as it applies for the purposes of making regulations under section 95.
- (2) In the application of section 96 by virtue of subsection (1), a reference to a sewerage undertaker is to be treated as a reference to a sewerage licensee.]

Textual Amendments

F976 S. 96ZA inserted (15.7.2015) by [Water Act 2014 \(c. 21\)](#), ss. 30(7), 94(3); S.I. 2015/1469, [art. 2\(d\)](#)

Modifications etc. (not altering text)

C101 S. 96ZA(2) modified (temp.) (1.7.2015) by [The Water Act 2014 \(Commencement No. 4 and Transitional Provisions\) Order 2015 \(S.I. 2015/1469\)](#), [art. 5\(2\)\(5\)](#)

[96A ^{F977}Information to be given to customers about overall performance.

- (1) Each sewerage undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers [^{F978}, and, if the direction so

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specifies, sewerage licensees using the undertaker's sewerage system for the purpose of providing sewerage services to the premises of customers,] of—

- (a) the standards of overall performance established under section 95(1)(b) above which are applicable to that undertaker; and
- (b) that undertaker's level of performance as respects each of those standards.

[Each sewerage licensee must, in such form and manner and with such frequency as ^{F979}(1A) the Authority may direct, take steps to inform the licensee's customers of—

- (a) the standards of overall performance established under section 95ZA(1) which are applicable to that licensee;
- (b) that licensee's level of performance as regards those standards.

(1B) The Authority may direct that the requirement in subsection (1A) is not to apply to such sewerage licensees as may be specified in the direction.]

(2) In giving [^{F980}a direction under subsection (1) or (1A)], the Director shall not specify a frequency of less than once in every period of twelve months.

[The sewerage licensees referred to in subsection (1) shall, if the Authority so directs, ^{F981}(2A) pass on the information about the matters mentioned in that subsection to their customers.

(2B) In subsection (1), the reference to the sewerage undertaker's sewerage system is to be construed in accordance with section 17BA(7).]

(3) The duty of a sewerage undertaker [^{F982}or sewerage licensee] to comply with this section shall be enforceable by the Director under section 18 above.]

Textual Amendments

- F977** S. 96A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.32](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F978** Words in s. 96A(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F979** S. 96A(1A)(1B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F980** Words in s. 96A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(4\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F981** S. 96A(2A)(2B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(5\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F982** Words in s. 96A(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(6\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

[^{F983}96B Nutrient pollution standards to apply to certain sewage disposal works

- (1) A sewerage undertaker whose area is wholly or mainly in England must—
 - (a) in the case of each nitrogen significant plant comprised in its sewerage system—
 - (i) secure that, by the upgrade date, the plant will be able to meet the nitrogen nutrient pollution standard, and
 - (ii) on and after the upgrade date, secure that the plant meets that standard;

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- (b) in the case of each phosphorus significant plant comprised in its sewerage system—
 - (i) secure that, by the upgrade date, the plant will be able to meet the phosphorus nutrient pollution standard, and
 - (ii) on and after the upgrade date, secure that the plant meets that standard.
- (2) In carrying out the duty under subsection (1), a sewerage undertaker must consider whether nature-based solutions, technologies and facilities relating to sewerage and water could be used to meet the standard.
- (3) “Nitrogen significant plant” means a plant in England that—
 - (a) discharges treated effluent into a nitrogen sensitive catchment area, and
 - (b) is not an exempt plant in relation to the nitrogen nutrient pollution standard.
- (4) “Phosphorus significant plant” means a plant in England that—
 - (a) discharges treated effluent into a phosphorus sensitive catchment area, and
 - (b) is not an exempt plant in relation to the phosphorus nutrient pollution standard.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

96C Sensitive catchment areas

- (1) Where the Secretary of State considers that a habitats site that is wholly or partly in England is in an unfavourable condition by virtue of pollution from nutrients in water comprising nitrogen or compounds of nitrogen, the Secretary of State may designate the catchment area for the habitats site as a nitrogen sensitive catchment area.
- (2) Where the Secretary of State considers that a habitats site that is wholly or partly in England is in an unfavourable condition by virtue of pollution from nutrients in water comprising phosphorus or compounds of phosphorus, the Secretary of State may designate the catchment area for the habitats site as a phosphorus sensitive catchment area.
- (3) In determining—
 - (a) whether a habitats site is in an unfavourable condition by virtue of pollution from nutrients comprising nitrogen, phosphorus or compounds of nitrogen or phosphorus,
 - (b) the catchment area for a habitats site, or
 - (c) whether to exercise the power in subsection (4)(e),
 the Secretary of State may take into account, in particular, advice from, or guidance published by, Natural England, the Environment Agency or the Joint Nature Conservation Committee.
- (4) A designation under subsection (1) or (2)—
 - (a) must be in writing,
 - (b) must be published as soon as practicable after being made,
 - (c) takes effect—
 - (i) on the day specified in the designation, or

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- (ii) if none is specified, on the day on which it is made, (the “designation date”),
 - (d) if it takes effect after the end of the initial period, must specify the upgrade date (see section 96E(1)(b)), and
 - (e) may specify the concentration that applies to a plant (which discharges into the catchment area) in relation to a nutrient pollution standard instead of the standard concentration.
- (5) A date specified under subsection (4)(d) as the upgrade date must be at least 7 years after the designation date.
- (6) Before specifying a concentration under subsection (4)(e), the Secretary of State must consult the Environment Agency.
- (7) A concentration specified under subsection (4)(e) ceases to have effect if, after the day on which the designation is made, the plant becomes an exempt plant.
- (8) A designation under this section may not be revoked; and it is immaterial for the purposes of the continued designation of an area whether subsection (1) or (2) continues to be satisfied in relation to it.
- (9) In this section “catchment area”, in relation to a habitats site, means the area where water, if released, would drain into the site.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), ss. 168(1), 255(6) (with s. 247)

96D Exempt sewage disposal works

- (1) A plant is exempt in relation to a nutrient pollution standard if—
- (a) it has a capacity of less than a population equivalent of 2000 when the designation of the associated catchment area takes effect,
 - (b) it has been designated by the Secretary of State as exempt in relation to the standard, or
 - (c) it is exempt in relation to the standard under regulations under subsection (8).

This is subject to subsection (2).

- (2) The Secretary of State may designate a plant as not being exempt in relation to a nutrient pollution standard, unless—
- (a) the plant has a capacity of less than a population equivalent of 250, and
 - (b) the designation takes effect after the designation of the associated catchment area takes effect.
- (3) A designation under subsection (1)(b) or (2)—
- (a) must be in writing,
 - (b) must be published as soon as practicable after being made, and
 - (c) takes effect—
 - (i) on the day specified in the designation, or
 - (ii) if none is specified, on the day on which it is made.

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- (4) A designation under subsection (2) that takes effect after the designation of the associated catchment area takes effect must specify the upgrade date (see section 96E(2)(a)).
 The upgrade date must be at least 7 years after the designation under subsection (2) takes effect.
- (5) A designation under subsection (2) may specify the concentration that applies to a plant in relation to a nutrient pollution standard instead of the standard concentration.
- (6) Before specifying a concentration under subsection (5), the Secretary of State must consult the Environment Agency.
- (7) A concentration specified under subsection (5) ceases to have effect if, after the day on which the designation is made, the plant again becomes an exempt plant.
- (8) The Secretary of State may by regulations specify plants or descriptions of plant that are to be exempt in relation to a nutrient pollution standard.
- (9) Subsections (10) and (11) apply where a plant that is exempt under regulations under subsection (8) can, by virtue of the regulations, cease to be exempt.
- (10) The regulations must specify or provide for determining the upgrade date (see section 96E(2)(b)) in relation to any plant that ceases, by virtue of the regulations, to be an exempt plant in relation to a standard after the designation of the associated catchment area takes effect.
 The upgrade date must be at least 7 years after the plant ceases to be exempt in relation to the standard.
- (11) The regulations may provide for the Secretary of State to specify the concentration that applies to a plant that ceases, by virtue of the regulations, to be an exempt plant in relation to a nutrient pollution standard instead of the standard concentration; and, if such provision is made, the regulations must—
- (a) require that the Secretary of State consult the Environment Agency before specifying a concentration;
 - (b) provide for any specified concentration to cease to have effect if, after the day on which the plant ceases to be an exempt plant, the plant again becomes an exempt plant.
- (12) A designation under subsection (2) in relation to a plant and a nutrient pollution standard is of no effect if the plant ceases, by virtue of regulations under subsection (8), to be exempt in relation to the standard before, or at the same time as, the designation would otherwise take effect.
- (13) In this section “population equivalent” has the meaning given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 ([S.I. 1994/2841](#)).
- (14) References in this section to the designation of an associated catchment area are to its designation as a sensitive catchment area.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), [ss. 168\(1\), 255\(6\)](#) (with [s. 247](#))

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96E Upgrade date

- (1) The upgrade date, in relation to a nutrient significant plant, is, unless subsection (2) or (3) applies—
 - (a) 1 April 2030, if the designation of the associated catchment area takes effect during the initial period;
 - (b) the date specified under section 96C(4)(d), if the designation of the associated catchment area takes effect after the end of the initial period.
- (2) But, if the plant becomes a nutrient significant plant after the designation of the associated catchment area takes effect, the upgrade date is—
 - (a) the date specified under section 96D(4), where it becomes a nutrient significant plant by virtue of a designation under section 96D(2);
 - (b) the date specified by or determined under provision made by virtue of section 96D(10), where it becomes a nutrient significant plant on ceasing, by virtue of regulations under section 96D(8), to be exempt.
- (3) Where the associated catchment area has ceased to be a catchment permitting area and a date has been specified under section 96H(4)(c), that date is the upgrade date.
- (4) “The initial period” means the period of 3 months beginning with the date on which the Levelling-up and Regeneration Act 2023 is passed.
- (5) References in this section to the designation of an associated catchment area are to its designation as a sensitive catchment area.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

96F Nutrient pollution standards

- (1) A nitrogen significant plant meets the nitrogen nutrient pollution standard if—
 - (a) where the associated catchment area is not a catchment permitting area (see section 96G), the concentration of total nitrogen in treated effluent that the plant discharges is not more than—
 - (i) 10 mg/l, or
 - (ii) where a different concentration applies to the plant under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11), that concentration;
 - (b) where the associated catchment area is a catchment permitting area, the sewerage undertaker is complying with any condition in the environmental permit for the plant imposed in pursuance of section 96G(3)(b).
- (2) A phosphorus significant plant meets the phosphorus nutrient pollution standard if—
 - (a) where the associated catchment area is not a catchment permitting area, the concentration of total phosphorus in treated effluent that the plant discharges is not more than—
 - (i) 0.25 mg/l, or

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- (ii) where a different concentration applies to the plant under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11), that concentration;
- (b) where the associated catchment area is a catchment permitting area, the sewerage undertaker is complying with any condition in the environmental permit for the plant imposed in pursuance of section 96G(3)(b).
- (3) “Treated effluent”, in relation to a plant, means any effluent discharged by the plant, other than anything discharged—
 - (a) from a storm overflow, or
 - (b) by an emergency discharge.
- (4) For the purposes of subsection (3), in relation to a plant—
 - (a) “storm overflow” means any structure or apparatus comprised in the plant which, when the capacity of relevant parts of the sewerage system is exceeded, relieves them by discharging the excess contents into inland waters, underground strata or the sea, where—
 - “relevant parts of the sewerage system” means—
 - (a) storage tanks at the plant, and
 - (b) other parts of the sewerage system downstream of the plant;
 - “the sewerage system” means the undertaker’s sewerage system of which the plant forms part;
 - (b) “emergency discharge” means a discharge in circumstances where the plant’s normal treatment process has failed because of—
 - (i) electrical power failure, or
 - (ii) mechanical breakdown of duty and standby pumps.
- (5) Regulations made by the Secretary of State may specify how the concentration of total nitrogen or concentration of total phosphorus in treated effluent is to be determined.
- (6) Regulations under subsection (5) may, in particular—
 - (a) make provision for requiring regular sampling of the treated effluent that a plant discharges to ascertain the concentration of total nitrogen or concentration of total phosphorus;
 - (b) make provision for regarding a nutrient pollution standard as being met by a plant if, for example—
 - (i) it is met, with at least the frequency specified in the regulations, in samples taken in accordance with the regulations, or
 - (ii) the average concentration, calculated in accordance with the regulations, of total nitrogen or of total phosphorus in samples taken in accordance with the regulations would meet the standard;
 - (c) make provision for determining generally, or in a particular case, whether anything is, or is not, to be regarded as treated effluent discharged by a plant;
 - (d) make provision in relation to section 96G, including—
 - (i) the determination of compliance with conditions in environmental permits imposed in pursuance of section 96G(3)(b);
 - (ii) in connection with any kind of plant;
 - (e) confer any function on the Secretary of State, the Authority, the Environment Agency, statutory undertakers or any other person;

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- (f) make different provision for different purposes or different areas (including different plants within an area).

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

96G Nutrient pollution standards determined through environmental permitting

- (1) The Secretary of State may designate a sensitive catchment area as a catchment permitting area.
- (2) In determining whether to make a designation under [subsection \(1\)](#) or to revoke such a designation under [section 96H\(3\)\(c\)](#), the Secretary of State may take into account, in particular, advice from, or guidance published by, the Environment Agency or Natural England.
- (3) Where the Secretary of State makes a designation under [subsection \(1\)](#), the Environment Agency must—
- (a) review the environmental permits for the plants that discharge treated effluent into the catchment permitting area that are—
 - (i) nutrient significant plants, and
 - (ii) such other plants that the Environment Agency considers appropriate (including such plants within an area that may be determined by the Environment Agency), and
 - (b) impose conditions on those permits relating to nutrients in treated effluent discharged by those plants—
 - (i) under Chapter 3 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016, and
 - (ii) for the relevant purpose.
- (4) The “relevant purpose” is ensuring that, on and after the applicable date, the overall effect on the habitats site associated with the catchment permitting area of nutrients in treated effluent discharged by all the plants that discharge treated effluent into the catchment permitting area is less significant or the same as the overall effect on the site of nutrients in treated effluent that would be discharged by those plants if—
- (a) the standard concentration applied to nutrient significant plants, and
 - (b) the nutrient significant plants were (on that basis) meeting the nutrient pollution standard on and after the applicable date.
- (5) For that purpose, a condition imposed on an environmental permit in pursuance of [subsection \(3\)\(b\)](#) may, in particular—
- (a) require, or have the effect of requiring, that the concentration of nutrients in treated effluent discharged by a plant is higher or lower than, or equal to, the standard concentration;
 - (b) relate to any or all of the plants mentioned in [subsection \(3\)\(a\)](#), including the concentration of nutrients in treated effluent discharged by those plants.
- (6) In [subsection \(4\)](#)—
- (a) the “applicable date” means—

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- (i) where the designation under section 96C(1) or (2) of the area that is the catchment permitting area takes effect during the initial period, 1 April 2030, or
 - (ii) where that designation takes effect after the initial period, the date specified under section 96C(4)(d) in that designation;
 - (b) a habitats site is “associated” with a catchment permitting area if water released into the area would drain into the site.
- (7) The duty in subsection (3) applies in relation to the grant of an environmental permit for a plant that discharges (or will discharge) treated effluent into the catchment permitting area as if—
- (a) paragraph (a) were omitted, and
 - (b) in paragraph (b)—
 - (i) for “those permits” there were substituted “the permit”;
 - (ii) for “those plants” there were substituted “the plant”;
 - (iii) for “Chapter 3” there were substituted “Chapter 2”.
- (8) It is for the Environment Agency to determine the overall effect on a habitats site of nutrients in treated effluent.
- (9) Regulations made by the Secretary of State may specify how such determinations are to be made.
- (10) In this section “nutrients”, in relation to an area designated under—
- (a) section 96C(1), means nutrients in water comprising nitrogen or compounds of nitrogen;
 - (b) section 96C(2), means nutrients in water comprising phosphorus or compounds of phosphorus.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

Modifications etc. (not altering text)

C102 S. 96G(6)(a) applied (26.12.2023) by [S.I. 2017/1012](#), **reg. 85D** (as inserted by [Levelling Up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 11** (with s. 247))

C103 S. 96G(6)(a) applied (26.12.2023) by [S.I. 2015/810](#), reg. 9A(7) (as inserted by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 170(2), 255(6)** (with s. 247))

96H Section 96G: procedure and revocations

- (1) A designation under section 96G(1) or revocation of such a designation under subsection (3)(c)—
- (a) must be in writing,
 - (b) must be published as soon as practicable after being made, and
 - (c) takes effect in accordance with subsection (3) or (4) (as appropriate).
- (2) A designation under section 96G(1) may be made at the same time, or at any time after the time, that the designation under section 96C(1) or (2) of the area as a sensitive catchment area is made.

Status: This version of this Act contains provisions that are prospective.

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- (3) A designation under section 96G(1)—
 - (a) if made before the time that the designation under section 96C(1) or (2) takes effect, takes effect at the same time as that designation;
 - (b) if made after the time that the designation under section 96C(1) or (2) takes effect, takes effect on the day specified in it;
 - (c) may be revoked.
- (4) A revocation under subsection (3)(c)—
 - (a) takes effect—
 - (i) on the day specified in the revocation, or
 - (ii) if none is specified, on the day on which it is made;
 - (b) has no effect in relation to the designation of the area under section 96C(1) or (2);
 - (c) may specify the upgrade date that is to apply in relation to nutrient significant plants (see section 96E(3)).
- (5) In determining whether an upgrade date should be specified under subsection (4)(c), the Secretary of State may take into account, in particular, advice from, or guidance published by, Natural England or the Environment Agency.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), ss. **168(1)**, **255(6)** (with s. 247)

96I Information about catchment areas and nutrient significant plants

- (1) The Secretary of State must maintain and publish online a map showing—
 - (a) all the nitrogen sensitive catchment areas, and
 - (b) all the phosphorus sensitive catchment areas.
- (2) As soon as practicable after making a designation under section 96C (sensitive catchment areas), the Secretary of State must publish the revised map online.
- (3) The Secretary of State must maintain and publish online a document listing—
 - (a) all plants that are or have been—
 - (i) nitrogen significant plants, or
 - (ii) phosphorus significant plants;
 - (b) in relation to each plant listed under paragraph (a)—
 - (i) the upgrade date that applies for the time being;
 - (ii) if the plant becomes, or ceases to be, an exempt plant in relation to the related nutrient pollution standard, that fact and the date on which it occurred;
 - (iii) where the associated catchment area for a plant is not a catchment permitting area, the figure specified in section 96F(1)(a)(i) or (2)(a)(i), under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11) (total nitrogen concentration or total phosphorus concentration) that applies to the plant;

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- (iv) where a direction relating to the plant and the related nutrient pollution standard is made or revoked under regulation 85C or 110B of the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)) (disapplication of assumption that the plant will meet the standard on and after the upgrade date or applicable date), that fact and the date on which the direction or revocation takes effect;
 - (c) all catchment permitting areas.
- (4) Where any change occurs in the information required to be listed, the Secretary of State must, as soon as practicable, publish a revised document online.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

96J Section 96B: enforcement and interaction with other provisions

- (1) The duty of a sewerage undertaker under section 96B is enforceable under section 18—
- (a) by the Secretary of State, or
 - (b) with the consent of, or in accordance with a general authorisation given by, the Secretary of State, by the Authority.
- (2) The Environment Agency must exercise its functions (whether under environmental permitting regulations or otherwise) so as to secure compliance by sewerage undertakers with the duty imposed by section 96B; those functions include, in particular, functions of determining—
- (a) whether to grant or vary any permit under environmental permitting regulations, or
 - (b) any conditions to be included in any such permit.
- (3) The Environment Agency must exercise its functions under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ([S.I. 2015/810](#)) so as to secure compliance by sewerage undertakers with the duties imposed by those regulations to prevent and remediate environmental damage (within the meaning of those regulations) that is treated as occurring by regulation 9A of those regulations (nutrient significant sewage disposal works: environmental damage).
- (4) Nothing in section 96B or 96G or this section affects—
- (a) any other obligation of a sewerage undertaker relating to nutrient levels in treated effluent of a plant, or any remedy available in respect of contravention of any such obligation;
 - (b) any power to impose an obligation relating to nutrient levels in treated effluent of a plant (including by means of a condition included in a permit under environmental permitting regulations); and, in particular, nothing in those sections or this section is to be taken to preclude any such power being exercised so as to require a lower concentration of total nitrogen or lower concentration of total phosphorus in treated effluent of a plant than section 96B requires.

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Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

96K Powers to amend sections 96D and 96F

- (1) The Secretary of State may by regulations amend any plant capacity for the time being specified in section 96D(1)(a) or (2)(a).
- (2) Regulations under subsection (1) may not have effect in relation to an area that is a sensitive catchment area when the regulations are made.
- (3) Subject to that, regulations under subsection (1)—
 - (a) may, in particular, amend section 96D so that different plant capacities are specified in relation to the nitrogen nutrient pollution standard and the phosphorus nutrient pollution standard;
 - (b) may, where different plant capacities will apply for different purposes or different areas as a result of regulations under subsection (1), amend section 96D so as to specify those capacities and the purposes or areas for which they apply.
- (4) The Secretary of State may by regulations—
 - (a) amend section 96F(1)(a)(i) so as to substitute a different concentration of total nitrogen;
 - (b) amend section 96F(2)(a)(i) so as to substitute a different concentration of total phosphorus.
- (5) Regulations under subsection (4) may not have effect in relation to an area that is a sensitive catchment area when the regulations are made.
- (6) Where, as a result of the regulations, different concentrations will apply for different purposes or different areas (including different plants within an area), the regulations may amend section 96F(1)(a)(i) or (2)(a)(i) to specify those concentrations and the purposes or areas for (or plants within an area to) which they apply.
- (7) A statutory instrument containing regulations under subsection (1) or (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (8) If a draft of a statutory instrument containing regulations under subsection (1) or (4) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with s. 247)

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96L Sections 96B to 96K, 96M and 96N: interpretation

(1) This section applies for the purposes of sections 96B to 96K, 96M and 96N.

(2) In those sections (and this section)—

“associated catchment area”—

- (a) in relation to a plant that is a nitrogen significant plant or is exempt in relation to the nitrogen nutrient pollution standard, means the nitrogen sensitive catchment area into which it discharges;
- (b) in relation to a plant that is a phosphorus significant plant or is exempt in relation to the phosphorus nutrient pollution standard, means the phosphorus sensitive catchment area into which it discharges;

“catchment permitting area” means a sensitive catchment area designated under section 96G(1) for the time being;

“environmental permit” means a permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016; and a reference to a condition imposed on such a permit is to be construed in accordance with those regulations;

“environmental permitting regulations” means—

- (a) the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) (as they have effect from time to time), or
- (b) any other provision made after the Levelling-up and Regeneration Act 2023 is passed that is, or could have been, made under section 2 of the Pollution Prevention and Control Act 1999;

“exempt plant”, in relation to a nutrient pollution standard, has the meaning given by section 96D;

“habitats site” means a European site within the meaning of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (see regulation 8);

“the initial period” has the meaning given by section 96E(4);

“nitrogen nutrient pollution standard”, in relation to references to a nitrogen significant plant meeting the standard, has the meaning given by section 96F(1);

“nitrogen sensitive catchment area” means an area designated under section 96C(1);

“nitrogen significant plant” has the meaning given by section 96B(3);

“nutrient pollution standard” means the nitrogen nutrient pollution standard or the phosphorus nutrient pollution standard;

“nutrient significant plant” means—

- (a) a nitrogen significant plant, or
- (b) a phosphorus significant plant;

“phosphorus nutrient pollution standard”, in relation to references to a phosphorus significant plant meeting the standard, has the meaning given by section 96F(2);

“phosphorus sensitive catchment area” means an area designated under section 96C(2);

“phosphorus significant plant” has the meaning given by section 96B(4);

“plant” means a sewage disposal works;

“related nutrient pollution standard”, in relation to a sensitive catchment area or a plant, means—

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- (a) if (or so far as) the area is a nitrogen sensitive catchment area or the plant is a nitrogen significant plant, the nitrogen nutrient pollution standard;
- (b) if (or so far as) the area is a phosphorus sensitive catchment area or the plant is a phosphorus significant plant, the phosphorus nutrient pollution standard;

“sensitive catchment area” means—

- (a) a nitrogen sensitive catchment area, or
- (b) a phosphorus sensitive catchment area;

“standard concentration”, in relation to the nutrient pollution standard that applies to a plant, means the concentration specified in section 96F(1)(a)(i) or (2)(a)(i) on the date that the designation of the associated catchment area as a sensitive catchment area takes effect;

“treated effluent” has the meaning given by section 96F(3);

“upgrade date”, in relation to a plant that discharges into a sensitive catchment area, has the meaning given by section 96E.

- (3) References to a plant discharging into a sensitive catchment area are to the plant discharging treated effluent into the area.
- (4) References to the sewerage system of a sewerage undertaker have the meaning given by section 17BA(7).

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

96M New and altered plants: modifications

- (1) The Secretary of State may by regulations provide for sections 96B to 96L to apply with prescribed modifications in relation to any plant that, after the Levelling-up and Regeneration Act 2023 is passed—
 - (a) operates for the first time, or
 - (b) is altered.

This is subject to subsection (3).

- (2) Regulations under this section may in particular provide for sections 96C(5) and 96D(4) and (10) to apply as if they specified periods other than 7 years.
- (3) But regulations under this section may not modify section 96F(1) or (2) or section 96G(4) so as to apply a higher concentration of total nitrogen or higher concentration of total phosphorus than would otherwise apply.

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

Status: This version of this Act contains provisions that are prospective.

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96N Setting and enforcing nutrient pollution standards

- (1) The Secretary of State may by regulations make provision about the setting and enforcing of nutrient pollution standards.
- (2) The Secretary of State may only exercise the power under subsection (1) if the Secretary of State considers that the provisions about the setting and enforcing of nutrient pollution standards will be at least as effective as the provision already in force under sections 96B to 96M, the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ([S.I. 810/2015](#)) or this section as a result of the exercise of this power, including in relation to—
 - (a) overall environmental protection (within the meaning of section 45 of the Environment Act 2021),
 - (b) nutrient pollution levels discharged by plants or across catchment areas,
 - (c) enforcement, or
 - (d) costs.
- (3) The regulations may, in particular—
 - (a) amend, repeal, revoke or otherwise modify—
 - (i) sections 96B to 96M,
 - (ii) the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, or
 - (iii) provision made under this section;
 - (b) provide for a sewerage undertaker’s compliance with the duty under section 96B (or an equivalent) to be determined by reference to matters other than the concentration of nitrogen or phosphorous in treated effluent discharged by a plant;
 - (c) include provision applying or corresponding to any provision in sections 96B to 96M (with or without modifications);
 - (d) include provision about the establishment of schemes involving sewerage undertakers and others for the purpose of encouraging or requiring sewerage undertakers to arrange or contribute to action in respect of the effect of nitrogen or phosphorous (from any source) on a habitats site;
 - (e) make different provision for different purposes or different areas.]

Textual Amendments

F983 Ss. 96B-96N inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 168(1), 255(6)** (with [s. 247](#))

Performance of sewerage undertaker’s functions by local authorities etc.

97 Performance of sewerage undertaker’s functions by local authorities etc.

- (1) A relevant authority may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker, carry out sewerage functions on that undertaker’s behalf in relation to such area comprising the whole or any part of that authority’s relevant area, together (where that authority are a local authority or an urban development corporation and the arrangements so provide) with parts of

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any adjacent relevant areas of other relevant authorities, as may be specified in the arrangements.

- (2) Arrangements entered into for the purposes of this section may contain any such provision as may be agreed between the relevant authority and the sewerage undertaker but shall not affect the availability to any person, other than the relevant authority, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out.
- (3) It is hereby declared that, if arrangements entered into for the purposes of this section so provide, a relevant authority shall be entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions.
- (4) Where arrangements entered into for the purposes of this section provide for a local authority to carry out the sewerage functions of a sewerage undertaker on the undertaker's behalf, section 101 of the ^{M26}Local Government Act 1972 (delegation of functions), so far as it relates to the carrying out of functions by a committee, sub-committee or officer of a local authority, shall have effect in relation to those sewerage functions only in so far as the arrangements do not otherwise provide.
- [^{F984}(4A) Where arrangements entered into for the purposes of this section provide for a local authority which are operating executive arrangements to carry out the sewerage functions of a sewerage undertaker on that undertaker's behalf—
 - (a) those sewerage functions shall be treated as functions of the authority for the purposes of section 13 of the Local Government Act 2000; and
 - (b) if or to the extent that those sewerage functions are the responsibility of the executive of that authority—
 - (i) subsection (4) above shall not apply; and
 - (ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply in relation to those sewerage functions only in so far as the arrangements do not provide otherwise.]
- (5) In this section—

[^{F985}“executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;]
“new town” has the same meaning as in the ^{M27}New Towns Act 1981;
“relevant area”—

 - (a) in relation to a local authority, means the area of the authority and the whole of any new town or urban development area any part of which is situated within the area of the authority;
 - (aa) [^{F986}in relation to the Mayoral development corporation for any Mayoral development area, means that area;]
 - (b) [^{F987}in relation to the English new towns residuary body, means any new town in England;
 - (ba) in relation to the Welsh new towns residuary body, means any new town in Wales;]
 - (c) in relation to the development corporation for any new town, means that new town; [^{F988}and]
 - (d) [^{F989}.....]

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(e) in relation to any urban development corporation for any urban development area, means that area;

“relevant authority” means any of the following, that is to say—

- (a) a local authority;
- (aa) [^{F990}the Mayoral development corporation for any Mayoral development area;]
- (b) the [^{F991}new towns residuary body], [^{F992}or a development corporation for a new town];
- (c) the urban development corporation for any urban development area;
 - “sewerage functions”, in relation to a sewerage undertaker, means any of the functions of the undertaker by virtue of its appointment under Chapter I of Part II of this Act as a sewerage undertaker, other than its functions relating to sewage disposal and its functions by virtue of Chapter III of this Part;
 - “urban development area” means any area so designated under Part XVI of the ^{M28}Local Government, Planning and Land Act 1980.

^{F993}(6)

Textual Amendments

- F984** S. 97(4A) inserted (11.7.2001 for E. and 1.4 2002 for W.) by [S.I. 2001/2237](#), [arts. 2, 27](#); [S.I. 2002/808](#), {art. 26(a)}
- F985** S. 97(5): definitions of "executive and executive arrangements" inserted (11.7.2001 for E. and 1. 4. 2002 for W.) by [S.I. 2001/2237](#), [arts. 2, 27](#); [S.I. 2002/808](#), [art. 26\(b\)](#)
- F986** Words in s. 97(5) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), [Sch. 22 para. 41\(a\)](#)
- F987** S. 97(5): paras. (b)(ba) in definition of "relevant area" substituted (1.12.2008) for para. (b) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 57\(a\)](#); [S.I. 2008/3068](#), [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in [arts. 6-13](#))
- F988** S. 97(5): word in para. (c) in definition of “relevant area” inserted (1.10.1998) by 1998 c. 38, s. 129(2), [Sch. 15 para. 17\(a\)](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244](#), [art. 4](#)
- F989** S. 97(5): para. (d) in definition of “relevant area” repealed (1.10.1998) by 1998 c. 38, s. 152, [Sch. 18 Pt. IV](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244](#), [art. 4](#)
- F990** Words in s. 97(5) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), [Sch. 22 para. 41\(b\)](#)
- F991** S. 97(5): words in definition of "relevant authority" substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 57\(2\)](#); [S.I. 2008/3068](#), [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in [arts. 6-13](#))
- F992** S. 97(5): words in para. (b) in definition of “relevant authority” substituted (1.10.1998) by 1998 c. 38, s. 129(2), [Sch. 15 para. 17\(b\)](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244](#), [art. 4](#)
- F993** S. 97(6) repealed (19.11.1998) by 1998 c. 43, s. 1(1), [Sch. 1 Pt. X](#), Group 3

Marginal Citations

- M26** 1972 c. 70.
M27 1981 c. 64.
M28 1980 c. 65.

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CHAPTER II

PROVISION OF SEWERAGE SERVICES

Requisition of public sewer

98 Duty to comply with sewer requisition.

(1) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if-

- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by one or more of the persons who under subsection (2) below are entitled to require the provision of the sewer for that locality;
 - (b) the premises in that locality the drainage of which would be by means of that sewer are—
 - (i) premises on which there are buildings; or
 - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out;
- and
- (c) the conditions specified in section 99 below are satisfied in relation to that requirement.

[^{F994}(1A) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

- (a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by one or more of the persons who under subsection (2A) below are entitled to require the provision of the lateral drain;
- (b) the premises the drainage of which would be by means of that lateral drain are—
 - (i) premises on which there are buildings; or
 - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in section 99 below are satisfied in relation to that requirement.]

(2) Each of the following persons shall be entitled to require the provision of a public sewer for any locality, that is to say—

- (a) the owner of any premises in that locality;
- (b) the occupier of any premises in that locality;
- (c) any local authority within whose area the whole or any part of that locality is situated;

[^{F995}(ca) where the whole or any part of that locality is situated within a Mayoral development area, the Mayoral development corporation;]

- (d) where the whole or any part of that locality is situated in a new town, within the meaning of the ^{M29}New Towns Act 1981—
 - (i) the [^{F996}new towns residuary body]; and
 - (ii) ^{F997} . . . the development corporation for the new town ^{F997} . . . ;

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and

- (e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the ^{M30}Local Government, Planning and Land Act 1980, the urban development corporation.

^{F998}(2A) Each of the following persons shall be entitled to require the provision of a lateral drain, that is to say—

- (a) the owner of the premises the drainage of which would be by means of that lateral drain;
- (b) the occupier of those premises;
- (c) any local authority within whose area those premises are situated;
- (d) where those premises are situated in a new town, within the meaning of the New Towns Act 1981—
 - (i) the ^{F999}new towns residuary body]; and
 - (ii) the development corporation for the new town; and
- (e) where those premises are situated within an area designated as an urban development area under Part 16 of the Local Government, Planning and Land Act 1980, the urban development corporation.]

^{F1000}(2B)

- (3) The duty of a sewerage undertaker under this section to provide a public sewer ^{F1001}or, as the case may be, a lateral drain] shall be owed to the person who requires the provision of the sewer ^{F1002}or lateral drain] or , as the case may be, to each of the persons who joins in doing so.
- (4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a ^{F1003}sewerage] undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (5) In this section the reference to domestic purposes, in relation to the drainage of premises ^{F1004} . . . to which a requirement under this section relates, is a reference—
 - (a) where there are buildings on ^{F1005}those premises] , to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and
 - (b) where any person is proposing to erect buildings on ^{F1006}those premises] , to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings.

Textual Amendments

F994 S. 98(1A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(2)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

F995 S. 98(2)(ca) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), **Sch. 22 para. 42**

F996 Words in s. 98(2)(d)(i) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), **ss. 56, 325, Sch. 8 para. 58(a)**; S.I. 2008/3068, **art. 2(1)(w)** (with savings and transitional provisions in [arts. 6-13](#))

F997 Words in s. 98(2)(d)(ii) repealed (1.10.1998) by [1998 c. 38](#), s. 152, **Sch. 18 Pt. IV** (with [ss. 137\(1\), 139\(2\), 143\(2\)](#)); S.I. 1998/2244, **art. 4**

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- F998** S. 98(2A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F999** Words in s. 98(2A)(d)(i) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), **ss. 56, 325, Sch. 8 para. 58(b)**; S.I. 2008/3068, **art. 2(1)(w)** (with savings and transitional provisions in **arts. 6-13**)
- F1000** S. 98(2B) omitted (E.) (31.10.2021) by virtue of [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), **regs. 1(2), 2(6)**
- F1001** Words in s. 98(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F1002** Words in s. 98(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(4)**, 105(3); S.I. 2004/641, **art. 4** (with [Sch. 3 para. 7](#))
- F1003** Word in s. 98(4) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 56(6), Sch. 1 para. 26**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), **art. 3, Sch. Pt. 1**
- F1004** Words in s. 98(5) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(5)(a), 101(2), 105(3), Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(i)** (with [Sch. 3 para. 7](#))
- F1005** Words in s. 98(5)(a) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(5)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F1006** Words in s. 98(5)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(5)(c)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

Marginal Citations

- M29** 1981 c. 64.
M30 1980 c. 65.

99 Financial conditions of compliance.

- (1) The conditions mentioned in section 98(1)(c) [^{F1007}or 98(1A)(c)] above are satisfied in relation to a requirement for the provision of a public sewer [^{F1008}or (as the case may be) lateral drain] by a sewerage undertaker if—
- (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) [^{F1009}or, as the case may be, subsection (2A)] below have been given by the person or persons who have required the provision of the sewer [^{F1008}or (as the case may be) lateral drain] ; and
 - (b) [^{F1010}such security as charging rules allow and the undertaker may have required] has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3) below, may be required to secure his undertakings.
- (2) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any public sewer are undertakings which—
- [^{F1011}(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and]
 - (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.
- [^{F1012}(2A) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any lateral drain are undertakings which—
- [^{F1013}(a)

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- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability apportioned in such manner as they may agree.]

[^{F1014}(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, a lateral drain if—

- (a) it was by virtue of section 98(2)(a) or (b) or (as the case may be) section 98(2A)(a) or (b) above that he required, or joined in requiring, the provision of the sewer or drain; and
(b) he is not a public authority.]

^{F1015}(4)

^{F1016}(5)

- (6) Any dispute between a sewerage undertaker and any other person as to—
(a) the undertakings or security required by the undertaker for the purposes of this section; or
(b) the amount [^{F1017}or amounts by way of charges] required to be paid in pursuance of any such undertaking,
[^{F1018}may be referred to the Authority for determination under section 30A above by either party to the dispute.]

[^{F1019}(7) [^{F1020}In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 100 and 100A below, respectively.]]

Textual Amendments

- F1007** Words in s. 99(1) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 95(6)(a)(i), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1008** Words in s. 99(1) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 95(6)(a)(ii), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1009** Words in s. 99(1)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 95(6)(a)(iii), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1010** Words in s. 99(1)(b) substituted (1.4.2018) by Water Act 2014 (c. 21), ss. 19(2)(a), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1011** S. 99(2)(a) substituted (1.4.2018) by Water Act 2014 (c. 21), ss. 19(2)(b), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1012** S. 99(2A) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 95(6)(b), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1013** S. 99(2A)(a) substituted (1.4.2018) by Water Act 2014 (c. 21), ss. 19(2)(c), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1014** S. 99(3) substituted (28.5.2004) by Water Act 2003 (c. 37), ss. 95(6)(c), 105(3); S.I. 2004/641, art. 4(c) (with Sch. 3 para. 7)
- F1015** S. 99(4) repealed (1.4.2018) by Water Act 2014 (c. 21), ss. 19(2)(d), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1016** S. 99(5) repealed (1.4.2018) by Water Act 2014 (c. 21), ss. 19(2)(d), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1017** Words in s. 99(6)(b) inserted (1.4.2018) by Water Act 2014 (c. 21), ss. 19(2)(e), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1018** Words in s. 99(6) substituted (28.5.2004) by Water Act 2003 (c. 37), ss. 93(1)(b)(4), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)

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F1019S. 99(7) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 93\(1\)\(c\)\(4\), 105\(3\); S.I. 2004/641, art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

F1020S. 99(7) repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 87; S.I. 2017/462, art. 5\(e\)\(iii\)](#) (with [art. 14](#)) (as amended by [S.I. 2017/926, art. 2\(3\)](#))

100 Calculation of “relevant deficit” for the purposes of section 99.

- [^{F1021}(1) For the purposes of section 99 above the relevant deficit for any year on a public sewer is the amount (if any) by which the drainage charges payable for the use during that year of that sewer are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.
- (2) The annual borrowing costs of a loan of the amount required for the provision of a public sewer is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that sewer as were not incurred in the provision of additional capacity had been borrowed, by the sewerage undertaker providing the sewer, on terms—
- (a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
 - (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.
- (3) A determination for the purposes of subsection (2) above shall be made either—
- (a) by the undertaker with the approval of the Director; or
 - (b) in default of such a determination, by the Director.
- (4) For the purposes of this section the costs reasonably incurred in providing a public sewer (“the new sewer”) shall include—
- (a) the costs reasonably incurred in providing such other public sewers and such pumping stations as it is necessary to provide in consequence of the provision of the new sewer; and
 - (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier public sewer as falls to be used in consequence of the provision of the new sewer.
- (5) In subsection (4) above the reference to an earlier public sewer, in relation to the new sewer, is a reference to any public sewer which—
- (a) has been provided in the period of twelve years immediately before the provision of the new sewer; and
 - (b) was so provided in pursuance of a public sewer requisition.
- (6) Any reference in this section to the provision of additional capacity in a public sewer provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that sewer as are carried out or done for the purpose of enabling that sewer to be used for purposes in addition to those for which it is necessary to provide the sewer in order to comply with the requirement.
- (7) Any reference in this section to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker is a reference to so much of the

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aggregate of any charges payable to the sewerage undertaker in respect of services provided in the course of that year as represents charges which—

- (a) have been imposed by the undertaker in relation to such of the premises connected with that sewer as are premises where there are buildings; and
 - (b) are reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purpose from those premises.
- (8) An approval or determination given or made by the Director for the purposes of subsection (2) above—
- (a) may be given or made in relation to the provision of a particular public sewer, in relation to the provision of sewers of a particular description or in relation to the provision of public sewers generally; and
 - (b) may be revoked at any time except in relation to a public sewer [^{F1022}in respect of which the conditions referred to in section 99(1) above have already been satisfied.]
- (9) In this section “public sewer requisition” means—
- (a) a requirement under section 98 above (including, by virtue of paragraph 1 of Schedule 2 to the ^{M31}Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 71 of the ^{M32}Water Act 1989);
 - (b) a requirement under the provisions of section 16 of the ^{M33}Water Act 1973 (sewer requisitions); or
 - (c) a requirement under any local statutory provision corresponding to section 98 above or to any of the provisions of that section 16.]

Textual Amendments

F1021 S. 100 repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 88](#); [S.I. 2017/462, art. 5\(e\)\(iii\)](#) (with [art. 14](#)) (as amended by [S.I. 2017/926, art. 2\(3\)](#))

F1022 Words in s. 100(8)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 93\(2\), 105\(3\)](#); [S.I. 2004/641, art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

Marginal Citations

M31 1991 c. 60.

M32 1989 c. 15.

M33 1973 c. 37.

[^{F1023}100] Calculation of “discounted aggregate deficit” for the purposes of section 99

- [^{F1024}(1) For the purposes of section 99 above the discounted aggregate deficit on a public sewer is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the sewer, in each case discounted in accordance with subsection (6) below.
- (2) The estimated relevant deficit for any year is the amount (if any) by which the estimated drainage charges payable for the use during that year of that sewer would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.
- (3) Subsections (2) to (6), (8) and (9) of section 100 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a public sewer)

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shall apply for the purposes of this section as they apply for the purposes of that section.

- (4) Any reference in this section to the estimated drainage charges payable for the use during any year of any sewer is a reference to so much of the aggregate of any charges expected to be payable to the sewerage undertaker for the provision of services in the course of that year as would represent charges—
 - (a) imposed by the undertaker in relation to such of the premises with which the sewer is expected to be connected as are premises where there are buildings; and
 - (b) reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purposes from those premises.
- (5) For the purposes of subsection (4) above, a thing is expected to be the case if, at the time the relevant calculation is made, it is reasonably likely to occur.
- (6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.
- (7) A determination made by the Authority for the purposes of subsection (6) above—
 - (a) may be made in relation to the provision of a particular public sewer or in relation to the provision of public sewers generally; and
 - (b) may be revoked at any time except in relation to a public sewer in respect of which the conditions referred to in section 99(1) above have already been satisfied.]]

Textual Amendments

F1023S. 100A inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 93\(3\)\(4\), 105\(3\)](#); [S.I. 2004/641, art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

F1024S. 100A repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 88](#); [S.I. 2017/462, art. 5\(e\)\(iii\)](#) (with [art. 14](#)) (as amended by [S.I. 2017/926, art. 2\(3\)](#))

[^{F1025}10]Determination of completion date and route for requisitioned sewer or lateral drain.

- (1) A sewerage undertaker shall not be in breach of a duty imposed by section 98 above in relation to any locality or (in the case of a lateral drain) in relation to any premises unless—
 - (a) the period of six months beginning with the relevant day has expired; and
 - (b) the sewerage undertaker has not, before the end of that period, so laid (as the case may be)—
 - (i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or
 - (ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,at the place or places determined under subsection (3) below.

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- (2) The period mentioned in subsection (1)(a) above may be extended—
- (a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
 - (b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under subsection (4) below.
- (3) The places mentioned in subsection (1)(b) above shall be—
- (a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
 - (b) in default of agreement, such place or places as are determined by the Authority on a reference under subsection (4) below to be the place or places at which it is reasonable, in all the circumstances—
 - (i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or
 - (ii) in relation to the provision of a lateral drain—
 - (a) for the lateral drain to communicate with a public sewer vested in the undertaker; and
 - (b) for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.
- (4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.
- (5) In this section “relevant day”, in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—
- (a) the day on which the conditions specified in section 99 above are satisfied in relation to the requirement; and
 - (b) the day on which the place or places where (as the case may be)—
 - (i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or
 - (ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,
 are determined under subsection (3) above.]

Textual Amendments

F1025S. 101 substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(7)(8)**, 105(3); [S.I. 2004/641](#), **art. 4(b)** (with [Sch. 3 para. 7](#))

^{F1026}Provision of public sewers otherwise than by requisition

Textual Amendments

F1026Cross heading and s. 101A inserted (1.2.1996 for specified purposes and otherwise 1.4.1996) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 103** (with [ss. 7\(6\)](#), 115, 117); [S.I. 1996/186](#), **arts. 2, 3**

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F1027 101A Further duty to provide sewers.

- (1) Without prejudice to section 98 above, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in subsection (2) below are satisfied.
- (2) The conditions mentioned in subsection (1) above are—
 - (a) that the premises in question, or any of those premises, are premises on which there are buildings ^{F1028} . . . ;
 - (b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and
 - (c) that the drainage of any of the premises in question ^{F1029} . . . is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this section by the Secretary of State and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question.
- (3) Without prejudice to the generality of subsection (2)(c) above, regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this section—
 - (a) the geology of the locality in question or of any other locality;
 - (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
 - (c) the costs of providing that sewer;
 - (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer; and
 - (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this section or otherwise) of public sewers, and the costs of so overcoming those effects.
- (4) Guidance issued by the Secretary of State under this section may—
 - (a) relate to how regard is to be had to the considerations mentioned in paragraphs (a) to (e) of subsection (3) above;
 - (b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter;
 - (c) set out considerations, other than those mentioned in paragraphs (a) to (e) of subsection (3) above, to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this section;
 - (d) relate to how regard is to be had to any such consideration as is mentioned in paragraph (c) above;
 - (e) without prejudice to paragraphs (a) to (d) above, relate to how a sewerage undertaker is to discharge its functions under this section.
- (5) ^{F1030} . . . the Secretary of State shall arrange for any guidance issued by him under this section to be published in such manner as he considers appropriate.

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- (6) Subject to the following provisions of this section, the duty of a sewerage undertaker by virtue of subsection (1) above shall be enforceable under section 18 above—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (7) ^{F1031}Subsections (7A) and (7B) apply where there is a dispute] between a sewerage undertaker and an owner or occupier of any premises in its area as to—
- (a) whether the undertaker is under a duty by virtue of subsection (1) above to provide a public sewer to be used for any such drainage of those premises as is mentioned in that subsection;
 - (b) the domestic sewerage purposes for which any such sewer should be provided; or
 - (c) the time by which any such duty of the undertaker should be performed,
- ^{F1032} ...
- [The dispute is to be determined by the appropriate person and may be referred to the
- ^{F1033}(7A) appropriate person for determination by either of the parties to the dispute.
- (7B) If the dispute is between a sewerage undertaker and an owner or occupier of premises in Wales, the NRBW must provide advice in relation to any of the matters mentioned in subsection (7)(a) to (c) if so requested by—
- (a) either of the parties to the dispute, or
 - (b) the appropriate person.
- (7C) Any advice provided by the NRBW under subsection (7B) must be provided to both parties to the dispute and to the appropriate person.]
- (8) The ^{F1034}appropriate person] —
- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under ^{F1035}subsection (7A)] above; and
 - (b) may make any such recommendations, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.
- (9) The decision of the ^{F1036}appropriate person] on any dispute referred to it under ^{F1037}subsection (7A)] above shall be final.
- (10) A sewerage undertaker shall only be taken to be in breach of its duty under subsection (1) above where, and to the extent that, it has accepted, or the ^{F1038}appropriate person] has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the ^{F1038}appropriate person] under this section, as the time by which the duty is to that extent to be performed has passed.
- [In this section “the ^{F1040}appropriate person] ” means—
- ^{F1039}(11) (a) the Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;
- (b) ^{F1041}the Welsh Ministers] , in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales^{F1042}, or such person as the Welsh Ministers may from time to time appoint as the appropriate person in relation to such disputes.]]

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[A person may be appointed as the appropriate person under subsection (11)(b) only if^{F1043}(12) the person is independent of the NRBW.

(13) A person is independent of the NRBW for the purposes of subsection (12) if the person is—

- (a) an individual who is not a member of the NRBW or the NRBW's staff, or
- (b) a body none of whose members is a member of the NRBW or the NRBW's staff.]]

Textual Amendments

- F1027**S. 101A inserted (1.2.1996 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 103** (with ss. 7(6), 115, 117); S.I. 1996/186, **arts. 2, 3**
- F1028**Words in s. 101A(2)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 94(a), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)
- F1029**Words in s. 101A(2)(c) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 94(b), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)
- F1030**Words in s. 101A(5) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(l), **Sch. 22 para. 17**
- F1031**Words in s. 101A(7) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(2)(a)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1032**Words in s. 101A(7) repealed (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(2)(b)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1033**Ss. 101A(7A)-(7C) inserted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(3)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1034**Words in s. 101A(8) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1035**Words in s. 101A(8)(a) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(4)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1036**Words in s. 101A(9) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1037**Words in s. 101A(9) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(4)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1038**Words in s. 101A(10) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1039**S. 101A(11) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 237(4)** (with Sch. 7)
- F1040**Words in s. 101A(11) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1041**Words in s. 101A(11)(b) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(6)(a)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1042**Words in s. 101A(11)(b) inserted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(6)(b)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)
- F1043**S. 101A(12)(13) inserted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(7)**, 94(3); S.I. 2015/1786, **art. 2** (with art. 3)

[^{F1044}**101B**^{F1044}**Power to construct lateral drains following provision of public sewer]**

- (1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by section 98 or section 101A above, the undertaker may, at the request of the person mentioned in subsection (2) below, also provide at the same time one or

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more lateral drains to be used for the drainage for domestic purposes of premises in its area and to communicate with that sewer.

- (2) A request under subsection (1) above may be made—
- (a) in the case of a public sewer to be provided under section 98 above, by the person who requires the provision of the sewer under that section; and
 - (b) in the case of a public sewer to be provided under section 101A above, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that section (but any request may only be for the provision of a lateral drain to his premises).
- (3) The person making a request under this section shall pay to the [^{F1045}sewerage] undertaker, following provision of the lateral drain, [^{F1046}such charges as the undertaker may impose in accordance with charging rules].
- [^{F1047}(3A) The sewerage undertaker may require the person making a request under this section to provide such security for the payment of the charges as charging rules allow.]
- (4) Any dispute between the sewerage undertaker and the person making a request under this section as to—
- (a) whether a lateral drain should be provided pursuant to the request; ^{F1048} ...
 - [^{F1049}(b) the amount of any charge imposed,][^{F1050}or
 - (c) the security required to be provided,]
- may be referred to the Authority for determination under section 30A above by either party to the dispute.
- (5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this section shall belong to the undertaker.]

Textual Amendments

- F1044**S. 101B inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(9)(10)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F1045**Word in s. 101B(3) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 89(a)**; S.I. 2017/462, **art. 5(e)(aa)(iv)** (with [art. 14](#)) (as amended by S.I. 2017/926, **art. 2(3)**)
- F1046**Words in s. 101B(3) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 19(3)(a)**, 94(3); S.I. 2017/462, **art. 5(b)** (with [art. 14](#))
- F1047**S. 101B(3A) inserted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 19(3)(b)**, 94(3); S.I. 2017/462, **art. 5(b)** (with [art. 14](#))
- F1048**Word in s. 101B(4)(a) repealed (1.4.2018 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 89(b)**; S.I. 2017/462, **art. 5(e)(bb)(iv)** (with [art. 14](#)) (as amended by S.I. 2017/926, **art. 2(3)**)
- F1049**S. 101B(4)(b) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 19(3)(c)**, 94(3); S.I. 2017/462, **art. 5(b)** (with [art. 14](#))
- F1050**S. 101B(4)(c) and word inserted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 19(3)(d)**, 94(3); S.I. 2017/462, **art. 5(b)** (with [art. 14](#))

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Adoption etc. of sewers and disposal works

102 Adoption of sewers and disposal works.

- (1) Subject to the following provisions of this section and to sections 103, 105 and 146(3) below, a sewerage undertaker may at any time declare that—
 - (a) any sewer which is situated within its area or which serves the whole or any part of that area,^{F1051} . . .
 - ^{F1052}(aa) any lateral drain which communicates or is to communicate with a public sewer which—
 - (i) is so situated or serves the whole or any part of that area; and
 - (ii) is vested in that undertaker; or]
 - (b) any sewage disposal works which are so situated or which serve the whole or any part of that area,shall, as from such date as may be specified in the declaration, become vested in the undertaker.
- (2) The owner, or any of the owners, of any sewer [^{F1053}, lateral drain] or sewage disposal works with respect to which a sewerage undertaker might make a declaration under this section may make an application to that undertaker requesting it to make a declaration under this section with respect to the sewer [^{F1053}, lateral drain] or works.
- (3) A declaration or application under this section may be made with respect to a part only of a sewer.
- (4) A sewerage undertaker which proposes to make a declaration under this section—
 - ^{F1054}(za) shall give notice of its proposal to any sewerage licensee which uses, or removes matter from, the undertaker's sewerage system in accordance with a retail, wholesale or disposal authorisation;]
 - (a) shall give notice of its proposal to the owner or owners of the sewer [^{F1055}, lateral drain] or works in question; and
 - (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under section 105 below or, as the case may be, until any appeal so lodged has been determined.
- (5) A sewerage undertaker, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—
 - (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
 - (b) whether the sewer [^{F1056}or lateral drain] is constructed under a highway or under land reserved by a planning scheme for a street;
 - (c) the number of buildings which the sewer [^{F1057}or lateral drain] is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
 - (d) the method of construction and state of repair of the sewer [^{F1058}, lateral drain] or works; and
 - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

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- (6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [F1059 or lateral drain] in question shall be entitled to use it, or any sewer [F1059 or lateral drain] substituted for it, to the same extent as if the declaration had not been made.
- (7) No declaration may be made under this section in respect of any sewer or works the construction of which was completed before 1st October 1937.

Textual Amendments

- F1051** Word in s. 102(1)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3), Sch. 9 Pt. 3; S.I. 2004/641, art. 4(b)(d)(i) (with Sch. 3 para. 7)
- F1052** S. 102(1)(aa) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1053** Words in s. 102(2) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(b)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1054** S. 102(4)(za) inserted (1.4.2017 for specified purposes) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 90; S.I. 2017/462, art. 3(k)(xi)
- F1055** Words in s. 102(4)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(c)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1056** Words in s. 102(5)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(i)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1057** Words in s. 102(5)(c) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(ii)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1058** Words in s. 102(5)(d) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(iii)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F1059** Words in s. 102(6) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(e)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)

Modifications etc. (not altering text)

- C104** S. 102 excluded (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), regs. 1(1)(b), 5(2) (with reg. 1(1)(c))

103 Adoption of cross-border sewers etc.

- (1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under section 102 above with respect to—
- (a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker; F1060 . . .
- [F1061(aa) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or]
- (b) any sewage disposal works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,
- it shall give notice to the other undertaker.

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(2) Where a sewerage undertaker is required to give notice under subsection (1) above to another undertaker, no declaration under section 102 above shall be made by the former undertaker until either—

- (a) the other undertaker has consented to the declaration; or
- (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

[^{F1062}(3) Where—

- (a) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and
- (b) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking,

a sewerage undertaker shall not make a declaration under section 102 above with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.]

(4) Where a sewerage undertaker makes a declaration under section 102 above with respect to—

- (a) a sewer [^{F1063}or lateral drain] which is situated within the area of another sewerage undertaker; or
 - (b) any sewage disposal works which are so situated,
- it shall forthwith give notice of the fact to that other undertaker.

(5) In this section “relevant body” means any sewerage undertaker, any local authority or county council or any railway undertakers or dock undertakers.

Textual Amendments

F1060 Word in s. 103(1)(a) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(a)(3), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, [art. 4\(b\)\(d\)\(i\)](#) (with [Sch. 3 para. 7](#))

F1061 S. 103(1)(aa) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(a)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

F1062 S. 103(3) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(b)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

F1063 Words in s. 103(4)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(c)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

104 Agreements to adopt sewer, drain or sewage disposal works, at future date

[^{F1064}(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
 - (i) any sewer;
 - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
 - (iii) any sewage disposal works; or

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- (b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,
 that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.]
- (2) A person [^{F1065}mentioned in paragraph (a) or (b) of subsection (1) above] may [^{F1066}request a sewerage undertaker to make an agreement under this section.]
- ^{F1067}(3)
- ^{F1068}(4)
- (5) Any agreement made under this section by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer [^{F1069}, lateral drain] or works to which it relates.
- [^{F1070}(5A) The reference in subsection (5) to an agreement made under this section includes a reference to—
- (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
- (b) any agreement which has been varied by order under section 105ZB(1).]
- (6) ^{F1071}
- ^{F1072}(6A)
- [^{F1073}(7) A sewerage undertaker shall not make an agreement under this section with respect to—
- (a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or
- (b) a drain which is intended to communicate with a sewer which—
- (i) is so situated; or
- (ii) is vested in another sewerage undertaker,
- until one of the conditions mentioned in subsection (8) below is satisfied.
- (8) The conditions are—
- (a) that other undertaker has consented to the making of the agreement; or
- (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.]
- [^{F1074}(9) Undertakers shall have regard to any guidance about agreements under this section issued by—
- (a) the Secretary of State, in relation to undertakers whose areas are wholly or mainly in England, or
- (b) the Welsh Ministers, in relation to undertakers whose areas are wholly or mainly in Wales.]

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Textual Amendments

- F1064**S. 104(1) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(a)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F1065**Words in s. 104(2) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(b)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F1066**Words in s. 104(2) substituted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(a)**, 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d)
- F1067**S. 104(3) repealed (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(b)**, 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d)
- F1068**S. 104(4) repealed (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(b)**, 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d)
- F1069**Words in s. 104(5) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(c)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F1070**S. 104(5A) inserted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(c)**, 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d)
- F1071**S. 104(6) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(d)**, 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(ii)** (with Sch. 3 para. 7)
- F1072**S. 104(6A) repealed (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(b)**, 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d)
- F1073**S. 104(7)(8) substituted (28.5.2004) for s. 104(7) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(f)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F1074**S. 104(9) added (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 42(3)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2012/2048, art. 2 (with art. 3)

105 Appeals with respect to adoption.

- (1) An owner of any sewer [^{F1075}, lateral drain] or sewage disposal works may appeal to the [^{F1076}Director] if—
- he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or
 - he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.

[^{F1077}(2) [^{F1078}A person who has entered or wants to enter an agreement under section 104 may appeal to the Authority about any matter concerning the agreement (including whether it is concluded, its terms and its operation).]]

- (3) The time for the making of an appeal under subsection (1) above by the owner of any sewer [^{F1079}, lateral drain] or sewage disposal works shall be—
- in the case of an appeal by virtue of paragraph (a) of that subsection, any time within two months after notice of the proposal is served on that owner; and
 - in the case of an appeal by virtue of paragraph (b) of that subsection, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this section, the [^{F1076}Director] may—
- in the case of an appeal under subsection (1) above, allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or

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- (b) [^{F1080}in the case of an appeal under subsection (2) above—
- (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;]

and any declaration made under paragraph (a) above shall have the same effect as if it had been made by the undertaker in question.

(5) Where the [^{F1076}Director] makes a declaration under subsection (4)(a) above, he may, if he thinks fit—

 - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that his declaration shall not take effect unless any conditions so specified are accepted.

(6) [^{F1081}Where the [^{F1076}Director] makes an agreement under subsection (4)(b) above on behalf of a sewerage undertaker, he may do so on such terms as he considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as he considers appropriate for ensuring that the terms of the agreement are reasonable.]

(7) The [^{F1076}Director], in deciding, on an appeal under this section, whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in section 102(5) above; [^{F1082}and for the purposes of this subsection, in its application in relation to an appeal under subsection (2) above, paragraphs (a) to (e) of section 102(5) above shall have effect with the necessary modifications.]

Textual Amendments

- F1075** Words in s. 105(1) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(5)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F1076** Word in s. 105 substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 35(7)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt. II
- F1077** S. 105(2) substituted (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 42(2)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2012/2048, art. 2 (with art. 3)
- F1078** S. 105(2) repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(a)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))
- F1079** Words in s. 105(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(5)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F1080** S. 105(4)(b) and word repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(b)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))
- F1081** S. 105(6) repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(c)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))
- F1082** Words in s. 105(7) repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(d)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))

Status: This version of this Act contains provisions that are prospective.

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[^{F1083}105ZA] Adoption at a future date: orders by Authority

- (1) This section applies where a person mentioned in section 104(1)(a) or (b) makes a request to a sewerage undertaker under section 104(2).
- (2) The person or the sewerage undertaker may apply to the Authority for an order under subsection (4) if the person and the sewerage undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the sewerage undertaker, make an order under subsection (4) if the Authority is satisfied that—
 - (a) where the person is such person as is mentioned in section 104(1)(a), it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
 - (b) the person and the sewerage undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
 - (a) require the sewerage undertaker to give such undertakings as to the vesting of the sewer, such part of the drain as constitutes the lateral drain or the works in the undertaker as the Authority may specify, and
 - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.
- (5) An order under subsection (4) has effect as an agreement under section 104 between the person and the sewerage undertaker.
- (6) The Authority may not make an order under subsection (4) with respect to—
 - (a) a sewer, drain or sewage disposal works situated in the area of another undertaker, or
 - (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated, or
 - (ii) is vested in another sewerage undertaker,until one of the conditions mentioned in subsection (7) is satisfied.
- (7) The conditions are that—
 - (a) the other sewerage undertaker has consented in writing to the making of the order, or
 - (b) the Minister, on an application made to the Minister, has disapplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.
- (8) “The Minister” means—
 - (a) the Secretary of State, as regards the consent of a sewerage undertaker whose area is wholly or mainly in England;
 - (b) the Welsh Ministers, as regards the consent of a sewerage undertaker whose area is wholly or mainly in Wales.
- (9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).

Status: This version of this Act contains provisions that are prospective.

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- (10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (11) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938, art. 2\(c\)\(ii\)](#); [S.I. 2017/462, arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288, art. 3\(d\)](#)

105ZB Variation and termination of section 104 agreements

- (1) On the application of a party to a section 104 agreement to vary (or terminate) the agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient that the section 104 agreement should be varied (or terminated),
 - (b) if the Authority is satisfied, in the case of an application to vary the agreement involving such person as is mentioned in section 104(1)(a), that it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
 - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
- by order vary (or terminate) the section 104 agreement.
- (2) If an order under subsection (1) is made in relation to a section 104 agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.

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- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 104 agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a section 104 agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the sewerage undertaker in complying with its obligations under the section 104 agreement in question and to the desirability of—
 - (a) facilitating effective competition within the sewerage services industry;
 - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.
- (7) In this section and sections 105ZC to 105ZI “section 104 agreement” means an agreement with a sewerage undertaker for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event and includes—
 - (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
 - (b) any agreement which has been varied by order under subsection (1).

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b); S.I. 2017/1288, art. 3(d)

105ZC Codes in respect of section 104 agreements

- (1) The Authority must issue a code in respect of section 104 agreements.
- (2) The code may make provision about—
 - (a) procedures in connection with making an agreement under section 104;
 - (b) procedures in connection with varying or terminating a section 104 agreement;

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- (c) procedures to be followed by the Authority in determining whether to make an order under section 105ZA(4) or 105ZB(1);
 - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a sewerage undertaker;
 - (e) the terms and conditions of a section 104 agreement;
 - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 104 agreement;
 - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
- (a) the nature of the work;
 - (b) the kind of premises supplied or to be supplied.
- (4) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
- (a) constructing associated infrastructure;
 - (b) vesting associated infrastructure in a sewerage undertaker;
 - (c) making a communication with public sewers.
- (5) If the Authority considers that a sewerage undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (6) The Authority may not give a direction under subsection (5) requiring a person to enter into, vary or terminate an agreement.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (8) The code may make different provision for different persons or descriptions of person.
- (9) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (10) A revised code may include provision for applying any of its revisions to section 104 agreements made before the revised code comes into force.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; [S.I. 2015/1938, art. 2\(c\)\(ii\)](#); [S.I. 2017/462, arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288, art. 3\(d\)](#)

105ZD Codes under section 105ZC: procedure

- (1) Before issuing a code under section 105ZC, the Authority must—
- (a) prepare a draft of the proposed code under section 105ZC, and
 - (b) consult such persons about the proposed code as it considers appropriate.

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- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 105ZC prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In this section “the Minister” means—
 - (a) the Secretary of State, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (6) The power under subsection (3) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (7) If the power under subsection (3) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) This section is subject to section 105ZE.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288](#), [art. 3\(d\)](#)

105ZE Codes under section 105ZC: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 105ZC and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZD does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and

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- (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938, art. 2\(c\)\(ii\)](#); [S.I. 2017/462, arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288, art. 3\(d\)](#)

105ZF Rules about charges in connection with a section 104 agreement

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a section 104 agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules may require a sewerage undertaker, upon declaring a sewer, drain or sewage disposal works to be vested in the undertaker in accordance with a section 104 agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.
- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
 - (a) revenue that might be derived from the sewer, drain or sewage disposal works in question;
 - (b) costs that might have been incurred in providing such a sewer, drain or sewage disposal works.
- (5) The rules may also make provision as to—
 - (a) the amount of security that may be required by a sewerage undertaker for the purposes of any charges imposed by the sewerage undertaker under a section 104 agreement;
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a sewerage undertaker by way of security.

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- (6) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different sewerage undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
 - (a) guidance is issued under section 105ZI, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (11) Revised rules may include provision for applying any of their revisions to section 104 agreements made before the revised rules come into effect.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b); S.I. 2017/1288, art. 3(d)

105ZG Rules under section 105ZF: procedure

- (1) Before issuing rules under section 105ZF, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any sewerage undertakers or other persons likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 105ZI in making rules under section 105ZF.
- (5) Before rules under section 105ZF prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—

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- (a) the Secretary of State, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 105ZH.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938, art. 2\(c\)\(ii\)](#); [S.I. 2017/462, arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288, art. 3\(d\)](#)

105ZH Rules under section 105ZF: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 105ZF and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZG does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
- (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
- whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.

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- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 105ZG.

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288](#), [art. 3\(d\)](#)

105ZI Rules under section 105ZF: guidance

- (1) The Minister may issue guidance as to the content of rules under section 105ZF.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.]

Textual Amendments

F1083 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [arts. 3\(e\)\(ii\), 4\(b\)](#); [S.I. 2017/1288](#), [art. 3\(d\)](#)

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[^{F1084}105] Schemes for the adoption of sewers, lateral drains and sewage disposal works

- (1) The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in paragraphs (a), (aa) and (b) of section 102(1) above.
- (2) The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State.
- (3) Each scheme shall relate to—
 - (a) the area of a sewerage undertaker, or part or parts of it; or
 - (b) the areas of more than one sewerage undertaker, or part or parts of them.
- (4) It shall be the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under section 102 above with a view to making the declaration referred to in subsection (1) of that section in relation to sewers, lateral drains or sewage disposal works which—
 - (a) fall within the area to which a scheme relates; and
 - (b) satisfy specified criteria.
- (5) The circumstances and the criteria shall each be—
 - (a) specified in the regulations; or
 - (b) determined in accordance with the regulations and specified in the scheme.
- (6) In relation to the exercise of those powers pursuant to that duty—
 - (a) section 102 above shall have effect—
 - (i) with the omission of subsections (2), (5) and (7);
 - (ii) as if in subsection (1) the words “sections 103, 105 and 146(3) below” read “section 105B below”;
 - (iii) with the omission of the words “or application” in subsection (3);
 - (iv) as if for subsection (4)(a) there were substituted—
 - “(a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question unless, after diligent enquiry, he or they cannot be traced;
 - (aa) shall publish notice of its proposal in the prescribed manner; and”;
 - (v) as if in subsection (4)(b) “two months” read “two months or, if longer, the period specified by virtue of section 105B(5) below” and “section 105 below” read “section 105B(4) or (5) below, or”; and
 - (vi) as if section 96(3) of the Water Act 2003 did not apply;
 - (b) sections 103 and 105 above shall not apply; and
 - (c) if the regulations so provide, section 146(3) below shall not apply in circumstances or cases specified in the regulations.
- (7) A duty imposed on a sewerage undertaker under subsection (4) above shall be enforceable by the Secretary of State under section 18 above.
- (8) A statutory instrument containing regulations under subsection (1) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

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Textual Amendments

F1084Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; [S.I. 2007/1021](#), **art. 2(b)**

[^{F1085}105A] Adoption schemes: appeals

- (1) Any person falling within subsection (2) below may appeal to the Authority if he is aggrieved by—
 - (a) the proposal of a sewerage undertaker to make a declaration under section 102 above in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker’s duty to do so under section 105A(4) above (the “relevant duty”); or
 - (b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty.
- (2) The persons referred to are—
 - (a) an owner of a sewer, lateral drain or sewage disposal works;
 - (b) any other person affected by the proposal, or the failure, in question.
- (3) The grounds upon which a person may appeal are—
 - (a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him;
 - (b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or
 - (c) any other prescribed ground.
- (4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—
 - (a) served on the owner of the sewer, lateral drain or sewage disposal works; or
 - (b) published in accordance with section 102(4) above as modified by section 105A(6) above,(or, if both occur, within two months after whichever is the later).
- (5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).
- (6) On the hearing of an appeal under subsection (1) above, the Authority may—
 - (a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or
 - (b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.
- (7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.

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- (8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.
- (9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—
- (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (10) A declaration made under subsection (6) above shall have the same effect as if it had been made by the undertaker.
- (11) The Secretary of State may by regulations make further provision in connection with appeals under this section.
- (12) The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under this section.]

Textual Amendments

F1085Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98**, 105(3); S.I. 2007/1021, **art. 2(b)**

[^{F1086}**105A** adoption schemes: supplementary

- (1) The Secretary of State may vary any scheme, or revoke it.
- (2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—
- (a) each sewerage undertaker which would be affected;
 - [any sewerage licensee which uses, or removes matter from, the sewerage
 - ^{F1087}(aa) system of any such sewerage undertaker in accordance with a retail, wholesale or disposal authorisation;]
 - (b) the Authority;
 - (c) the Council;
 - (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.]

Textual Amendments

F1086Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98**, 105(3); S.I. 2007/1021, **art. 2(b)**

F1087S. 105C(2)(aa) inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 93**; S.I. 2017/462, **art. 3(k)(xii)**

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Communication of drains and private sewers with public sewers

106 Right to communicate with public sewers.

[^{F1088}(1) Subject to the provisions of this section—

- (a) the owner or occupier of any premises, or
- (b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.]

[^{F1089}(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146 below—

- (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
- (b) for the purposes of paragraph (a) above—
 - (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under section 102 above or under an agreement made under section 104 above; and
 - (ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.]

[^{F1090}(1B) The right under subsection (1) is subject to section 106A.]

(2) Subject to the provisions of Chapter III of this Part, nothing in subsection (1) above shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
 - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or
 - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment; or
- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
 - (i) foul water into a sewer provided for surface water; or
 - (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.

(4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3) above, the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer

- [^{F1091}(a) does not satisfy the standards reasonably required by the undertaker; or
- (b) is such that the making of the communication would be prejudicial to the undertaker’s sewerage system.]

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- (5) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under subsection (3) above relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.
- [^{F1092}(5A) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under section 102 above.]
- (6) Any question arising under subsections [^{F1093}(3) to (5A)] above between a sewerage undertaker and a person proposing to make a communication as to—
- (a) the reasonableness of the undertaker’s refusal to permit a communication to be made; or
 - (b) as to the reasonableness of any requirement under subsection (5) [^{F1094}or (5A)] above,
- may, on the application of that person, be determined by [^{F1095}the Director under section 30A above][^{F1096}(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above).]
- ^{F1097}(7)
- (8) Where a person proposes under this section to make a communication between a drain or sewer and such a public sewer in Greater London as is used for the general reception of sewage from other public sewers and is not substantially used for the reception of sewage from private sewers and drains—
- (a) the grounds on which a sewerage undertaker may refuse to permit the communication shall be such grounds as the undertaker thinks fit; and
 - (b) no application to [^{F1098}the Director] may be made under subsection (6) above in respect of any refusal under this subsection.
- (9) In this section “factory” has the same meaning as in the ^{M34}Factories Act 1961.

Textual Amendments

- F1088**S. 106(1) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 43\(2\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt. I](#)
- F1089**S. 106(1A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 99\(2\), 105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F1090**S. 106(1B) inserted (2.5.2018 for W. for specified purposes, 7.1.2019 for W. in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 3 para. 16\(1\)](#) (with s. 49(1)(6)); S.I. 2018/557, arts. 2(b), 3(b)
- F1091**S. 106(4): paras. (a)(b) substituted (28.5.2004) for words by [Water Act 2003 \(c. 37\), ss. 99\(3\), 105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F1092**S. 106(5A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 99\(4\), 105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F1093**Words in s. 106(6) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 99\(5\)\(a\), 105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F1094**Words in s. 106(6)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 99\(5\)\(b\), 105\(3\)](#); S.I. 2004/641, [art. 4](#) (with [Sch. 3 para. 7](#))
- F1095**Words in s. 106(6) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(8\)\(a\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt.II](#)

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- F1096** Words in s. 106(6) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(c)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)
- F1097** S. 106(7) repealed (1.7.1992) and is expressed to cease to have effect (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **ss. 35(8)(b)**, 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, arts. 3, 4, Sch. Pts. I, II
- F1098** Words in s. 106(8)(b) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(8)(c)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

Modifications etc. (not altering text)

- C105** S. 106 applied (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 15(2)** (with savings in arts. 3(6), 12(3))
- C106** S. 106 applied (14.9.2006) by The Borough of Poole (Poole Harbour Opening Bridges) Order 2006 (S.I. 2006/2310), **art. 14(2)(4)**
- C107** S. 106 applied (3.7.2006) by The Port of Blyth (Battleship Wharf Railway) Order 2006 (S.I. 2006/1518), **art. 10(2)**
- C108** S. 106 applied (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 19(2)**
- C109** S. 106 applied (7.8.2012) by The Ipswich Barrier Order 2012 (S.I. 2012/1867), arts. 1, **13(2)** (with arts. 46-48, Sch. 8 para. 18)
- C110** S. 106 applied (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **13(2)** (with art. 26(2))
- C111** S. 106 applied (6.11.2012) by The Network Rail (North Doncaster Chord) Order 2012 (S.I. 2012/2635), arts. 1, **20(2)** (with art. 35(2))
- C112** S. 106 applied (13.11.2012) by The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012/2679), arts. 1, **19(2)** (with art. 42(2))
- C113** S. 106 modified (9.4.2013) by The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 (S.I. 2013/675), arts. 1, **16(2)**
- C114** S. 106 applied (9.4.2013) by The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648), arts. 1, **21(2)** (with arts. 48, 68, 79)
- C115** S. 106 applied (15.8.2013) by The North Blyth Biomass Power Station Order 2013 (S.I. 2013/1873), arts. 1, **11(2)** (with art. 30)
- C116** S. 106 applied (22.8.2013) by The Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013/1933), arts. 1, **13(2)**
- C117** S. 106 applied (6.11.2013) by The Transport for Greater Manchester (Light Rapid Transit System) (Second City Crossing) Order 2013 (S.I. 2013/2587), arts. 1, **20(2)** (with arts. 20(7), 42, 43)
- C118** S. 106 applied (9.1.2014) by The National Grid (King's Lynn B Power Station Connection) Order 2013 (S.I. 2013/3200), arts. 1, **14(2)** (with art. 14(7))
- C119** S. 106 applied (21.4.2014) by The Network Rail (Norton Bridge Area Improvements) Order 2014 (S.I. 2014/909), arts. 1, **18(2)** (with art. 34(2))
- C120** S. 106 applied (7.5.2014) by The National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052), arts. 1, **17(2)**
- C121** S. 106 applied (7.7.2014) by The East Anglia ONE Offshore Wind Farm Order 2014 (S.I. 2014/1599), arts. 1, **13(2)** (with arts. 37, 38, Sch. 9 para. 19)
- C122** S. 106 applied (24.7.2014) by The Daventry International Rail Freight Interchange Alteration Order 2014 (S.I. 2014/1796), arts. 1, **17(2)** (with arts. 17(7), 24(2), Sch. 6 para. 3)
- C123** S. 106 applied (6.8.2014) by The Rampion Offshore Wind Farm Order 2014 (S.I. 2014/1873), arts. 1, **20(2)** (with arts. 12, 13, 20(7), Sch. 12 Pt. 1 para. 19, Sch. 12 Pt. 2 para. 6, Sch. 12 Pt. 3 para. 5, Sch. 12 Pt. 4 para. 4, Sch. 12 Pt. 5 para. 4)
- C124** S. 106 applied (18.9.2014) by The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 (S.I. 2014/2269), arts. 1, **15(2)**
- C125** S. 106 applied (24.9.2014) by The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384), arts. 1, **19(2)**

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- C126** S. 106 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **18(2)** (with art. 33)
- C127** S. 106 applied (2.10.2014) by The North Killingholme (Generating Station) Order 2014 (S.I. 2014/2434), arts. 1, **14(2)** (with arts. 6, 13, 14(7), Sch. 8 Pt. 1 para. 6, Sch. 8 Pt. 3 paras. 4(3), 6, 17, Sch. 8 Pt. 5 para. 9)
- C128** S. 106 applied (21.10.2014) by The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (S.I. 2014/2637), arts. 1, **16(2)**
- C129** S. 106 applied (23.10.2014) by The South Hook Combined Heat and Power Plant Order 2014 (S.I. 2014/2846), arts. 1, **10(2)**
- C130** S. 106 modified (29.10.2014) by The Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935), **art. 20(2)** (with arts. 30(4), 53)
- C131** S. 106 applied (28.11.2014) by The Walney Extension Offshore Wind Farm Order 2014 (S.I. 2014/2950), arts. 1, **15(2)** (with arts. 38, 39)
- C132** S. 106 applied (15.12.2014) by The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102), arts. 1, **16(2)** (with Sch. 8 para. 45)
- C133** S. 106 applied (31.12.2014) by The Hornsea One Offshore Wind Farm Order 2014 (S.I. 2014/3331), arts. 1, **12(2)** (with arts. 37, 38)
- C134** S. 106 applied (7.1.2015) by The Willington C Gas Pipeline Order 2014 (S.I. 2014/3328), arts. 1, **14(2)**
- C135** S. 106 applied (2.2.2015) by The Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015 (S.I. 2015/23), arts. 1, **18(2)** (with art. 18(7))
- C136** S. 106 applied (25.2.2015) by The A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 (S.I. 2015/129), arts. 1, **16(2)**
- C137** S. 106 applied (11.3.2015) by The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (S.I. 2015/318), arts. 1, **17(2)** (with art. 17(7)(9), 40, 41, Sch. 12 Pt. 1 paras. 4, 9(2), 10, Sch. 12 Pt. 2 paras. 4(2)(3), 19, Sch. 12 Pt. 4 paras. 3, 4, 16)
- C138** S. 106 applied (1.4.2015) by The Knottingley Power Plant Order 2015 (S.I. 2015/680), arts. 1, **15(2)** (with art. 15(7), Sch. 8 para. 10)
- C139** S. 106 applied (21.4.2015) by The Network Rail (Ordsall Chord) Order 2015 (S.I. 2015/780), arts. 1, **17(2)** (with arts. 17(2), 36(2))
- C140** S. 106 applied (9.6.2015) by The White Moss Landfill Order 2015 (S.I. 2015/1317), arts. 1, **9(2)** (with art. 5)
- C141** S. 106 applied (23.6.2015) by The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 (S.I. 2015/1347), arts. 1, **17(2)**
- C142** S. 106 applied (30.6.2015) by The Swansea Bay Tidal Generating Station Order 2015 (S.I. 2015/1386), arts. 1, **13(2)** (with arts. 51, 53)
- C143** S. 106 applied (7.8.2015) by The Preesall Underground Gas Storage Facility Order 2015 (S.I. 2015/1561), arts. 1, **15(2)** (with art. 44)
- C144** S. 106 applied (14.8.2015) by The Progress Power (Gas Fired Power Station) Order 2015 (S.I. 2015/1570), arts. 1, **15(2)**
- C145** S. 106 applied (14.8.2015) by The Hirwaun Generating Station Order 2015 (S.I. 2015/1574), arts. 1, **14(2)**
- C146** S. 106 applied (26.8.2015) by The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (S.I. 2015/1592), arts. 1, **18(2)** (with arts. 40, 41)
- C147** S. 106 applied (19.11.2015) by The Ferrybridge Multifuel 2 Power Station Order 2015 (S.I. 2015/1832), arts. 1(2), **12(2)**
- C148** S. 106 applied (16.12.2015) by The Network Rail (Tinsley Chord) Order 2015 (S.I. 2015/1876), arts. 1, **8(2)**
- C149** S. 106 modified (30.12.2015) by The Port Talbot Steelworks Generating Station Order 2015 (S.I. 2015/1984), arts. 1, **10(2)** (with art. 26)
- C150** S. 106 applied (2.2.2016) by The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016/17), arts. 1, **22(2)**

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- C151** S. 106 applied (9.2.2016) by The National Grid (Hinkley Point C Connection Project) Order 2016 (S.I. 2016/49), arts. 1, **16(2)** (with art. 16(7)(8), 32)
- C152** S. 106 applied (18.2.2016) by The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (S.I. 2016/73), arts. 1, **15(2)** (with art. 37)
- C153** S. 106 applied (25.3.2016) by The Thorpe Marsh Gas Pipeline Order 2016 (S.I. 2016/297), arts. 1, **17(2)** (with art. 39)
- C154** S. 106 applied (1.6.2016) by The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (S.I. 2016/547), arts. 1, **17(2)** (with arts. 4, 5(3), 17(6))
- C155** S. 106 applied (14.6.2016) by The Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016 (S.I. 2016/545), arts. 1, **15(2)** (with art. 39)
- C156** S. 106 applied (2.8.2016) by The Meaford Gas Fired Generating Station Order 2016 (S.I. 2016/779), arts. 1, **16(2)**
- C157** S. 106 applied (2.8.2016) by The Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016/684), arts. 1, **20(2)** (with arts. 46, 47, Sch. 9 para. 4, Sch. 10 para. 12(2))
- C158** S. 106 applied (10.8.2016) by The York Potash Harbour Facilities Order 2016 (S.I. 2016/772), arts. 1, **14(2)** (with arts. 14(7), 35, 36)
- C159** S. 106 applied (19.8.2016) by The North Wales Wind Farms Connection Order 2016 (S.I. 2016/818), arts. 1, **16(2)** (with art. 35)
- C160** S. 106 applied (7.9.2016) by The Hornsea Two Offshore Wind Farm Order 2016 (S.I. 2016/844), arts. 1(2), **15(2)** (with arts. 37, 38)
- C161** S. 106 applied (15.9.2016) by The River Humber Gas Pipeline Replacement Order 2016 (S.I. 2016/853), arts. 1, **18(2)** (with art. 43)
- C162** S. 106 applied (23.9.2016) by The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (S.I. 2016/863), arts. 1, **17(2)**
- C163** S. 106 applied (27.9.2016) by The Triton Knoll Electrical System Order 2016 (S.I. 2016/880), arts. 1(2), **12(2)** (with arts. 39, 40, Sch. 8 para. 19)
- C164** S. 106 applied (28.10.2016) by The Brechfa Forest Wind Farm Connection Order 2016 (S.I. 2016/987), arts. 1, **15(2)** (with arts. 15(7), 37)
- C165** S. 106 applied (24.11.2016) by The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016 (S.I. 2016/1035), arts. 1, **21(2)** (with arts. 21(7), 43, 44)
- C166** S. 106 applied (18.3.2017) by The North London Heat and Power Generating Station Order 2017 (S.I. 2017/215), arts. 1, **16(6)**
- C167** S. 106 applied (29.3.2017) by The Glyn Rhonwy Pumped Storage Generating Station Order 2017 (S.I. 2017/330), arts. 1, **17(2)** (with art. 31)
- C168** S. 106 applied (5.4.2017) by The Keuper Underground Gas Storage Facility Order 2017 (S.I. 2017/433), arts. 1, **16(2)**
- C169** S. 106 applied (8.8.2017) by The Wrexham Gas Fired Generating Station Order 2017 (S.I. 2017/766), arts. 1, **15(2)**
- C170** S. 106 applied (24.8.2017) by The National Grid (Richborough Connection Project) Development Consent Order 2017 (S.I. 2017/817), arts. 1, **16(2)** (with arts. 16(7), 22)
- C171** S. 106 applied (29.8.2017) by The East Anglia THREE Offshore Wind Farm Order 2017 (S.I. 2017/826), arts. 1, **13(2)** (with arts. 5(9), 36, 37, Sch. 8 para. 34)
- C172** S. 106 applied (5.9.2017) by The London Overground (Barking Riverside Extension) Order 2017 (S.I. 2017/830), arts. 1, **14(2)** (with art. 14(7), Sch. 8 para. 20)
- C173** S. 106 applied (19.12.2017) by The Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017/1150), arts. 1, **15(2)** (with art. 32(2))
- C174** S. 106 applied (22.12.2017) by The M20 Junction 10a Development Consent Order 2017 (S.I. 2017/1202), arts. 1, **18(2)** (with arts. 4, 37)
- C175** S. 106 applied (2.1.2018) by The Boston Barrier Order 2017 (S.I. 2017/1329), arts. 1, **19(2)** (with arts. 55-57, Sch. 8 para. 13)
- C176** S. 106 applied (4.1.2018) by The Blackpool Tramway (Blackpool North Extension) Order 2017 (S.I. 2017/1214), arts. 1, **19(2)** (with arts. 19(7), 58, 59)

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- C177** S. 106 applied (18.4.2018) by The Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018/446), arts. 1, **14(2)** (with arts. 14(7), 24(8), 33(2))
- C178** S. 106 applied (31.5.2018) by The Silvertown Tunnel Order 2018 (S.I. 2018/574), arts. 1(2), **14(2)**
- C179** S. 106 applied (24.8.2018) by The Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018/923), arts. 1, **16(2)** (with arts. 16(7), 31(2))
- C180** S. 106 applied (3.10.2018) by The A19/A184 Testo’s Junction Alteration Development Consent Order 2018 (S.I. 2018/994), arts. 1, **17(2)(7)** (with arts. 3(3), 5)
- C181** S. 106 applied (12.10.2018) by The Eggborough Gas Fired Generating Station Order 2018 (S.I. 2018/1020), arts. 1, **14(2)** (with arts. 6, 42)
- C182** S. 106 applied (13.3.2019) by The Port of Tilbury (Expansion) Order 2019 (S.I. 2019/359), arts. 1, **18(2)** (with arts. 18(6), 55, 56)
- C183** S. 106 applied (3.4.2019) by The Millbrook Gas Fired Generating Station Order 2019 (S.I. 2019/578), arts. 1, **16(2)**
- C184** S. 106 applied (10.10.2019) by The Abergelli Power Gas Fired Generating Station Order 2019 (S.I. 2019/1268), arts. 1, **16(2)**
- C185** S. 106 applied (25.10.2019) by The Drax Power (Generating Stations) Order 2019 (S.I. 2019/1315), arts. 1, **16(2)**
- C186** S. 106 applied (30.10.2019) by The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019/1358), arts. 1, **21(2)** (with art. 21(8), Sch. 13 Pt. 1 para. 19)
- C187** S. 106 applied (25.2.2020) by The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020/114), arts. 1, **19(2)** (with arts. 19(7), 37(2))
- C188** S. 106 applied (27.2.2020) by The A30 Chiverton to Carland Cross Development Consent Order 2020 (S.I. 2020/121), arts. 1, **20(2)** (with art. 3(1))
- C189** S. 106 applied (14.4.2020) by The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 (S.I. 2020/325), arts. 1, **15(2)** (with arts. 7, 15(7))
- C190** S. 106 applied (30.4.2020) by The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 (S.I. 2020/402), arts. 1, **17(2)** (with arts. 5, 17(7), 44)
- C191** S. 106 applied (1.5.2020) by The Riverside Energy Park Order 2020 (S.I. 2020/419), arts. 1, **18(2)** (with arts. 7, 18(6))
- C192** S. 106 applied (21.5.2020) by The Lake Lothing (Lowestoft) Third Crossing Order 2020 (S.I. 2020/474), arts. 1, **15(2)** (with arts. 15(6), 51, 56)
- C193** S. 106 applied (25.5.2020) by The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020/511), arts. 1, **21(2)** (with art. 21(7))
- C194** S. 106 applied (11.6.2020) by The M42 Junction 6 Development Consent Order 2020 (S.I. 2020/528), arts. 1, **21(2)** (with art. 37)
- C195** S. 106 applied (18.6.2020) by The A63 (Castle Street Improvement, Hull) Development Consent Order 2020 (S.I. 2020/556), arts. 1, **17(2)** (with arts. 5, 44)
- C196** S. 106 applied (19.6.2020) by The Cleve Hill Solar Park Order 2020 (S.I. 2020/547), arts. 1, **13(2)** (with art. 37)
- C197** S. 106 applied (22.7.2020) by The Norfolk Vanguard Offshore Wind Farm Order 2020 (S.I. 2020/706), arts. 1, **15(2)** (with arts. 41, 42, Sch. 16 para. 66)
- C198** S. 106 applied (6.8.2020) by The A19 Downhill Lane Junction Development Consent Order 2020 (S.I. 2020/746), arts. 1, **17(2)** (with arts. 5, 17(7))
- C199** S. 106 applied (1.9.2020) by The Immingham Open Cycle Gas Turbine Order 2020 (S.I. 2020/847), arts. 1, **15(2)** (with Sch. 9 para. 144)
- C200** S. 106 applied (15.10.2020) by The Great Yarmouth Third River Crossing Development Consent Order 2020 (S.I. 2020/1075), arts. 1, **20(2)**
- C201** S. 106 applied (29.10.2020) by The Southampton to London Pipeline Development Consent Order 2020 (S.I. 2020/1099), arts. 1, **18(2)** (with art. 32, Sch. 9 para. 36)
- C202** S. 106 applied (11.11.2020) by The West Burton C (Gas Fired Generating Station) Order 2020 (S.I. 2020/1148), arts. 1, **11(2)** (with reg. 11(7))
- C203** S. 106 applied (31.12.2020) by The Network Rail (Cambridgeshire Level Crossing Reduction) Order 2020 (S.I. 2020/1485), arts. 1, **17(2)**

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- C204** S. 106 applied (19.1.2021) by The Network Rail (Suffolk Level Crossing Reduction) Order 2020 (S.I. 2020/1663), arts. 1, **17(2)**
- C205** S. 106 applied (22.1.2021) by The Hornsea Three Offshore Wind Farm Order 2020 (S.I. 2020/1656), arts. 1, **15(2)** (with arts. 40, 41, Sch. 9 Pt. 5 para. 18)
- C206** S. 106 applied (9.2.2021) by The A1 Birtley to Coal House Development Consent Order 2021 (S.I. 2021/74), arts. 1, **20(2)** (with arts. 5, 20(7), Sch. 27 para. 36)
- C207** S. 106 applied (19.2.2021) by The A303 Sparkford to Ilchester Dualling Development Consent Order 2021 (S.I. 2021/125), arts. 1, **20(2)** (with arts. 4, 47)
- C208** S. 106 applied (15.3.2021) by The Wheelabrator Kemsley K3 Generating Station Order 2021 (S.I. 2021/173), arts. 1, **10(2)**
- C209** S. 106 applied (2.12.2021) by The South Humber Bank Energy Centre Order 2021 (S.I. 2021/1259), arts. 1, **15(2)** (with Sch. 8 para. 48)
- C210** S. 106 applied (22.12.2021) by The Morlais Demonstration Zone Order 2021 (S.I. 2021/1478), arts. 1, **12(2)** (with arts. 15, 50, Sch. 11 para. 29)
- C211** S. 106 applied (1.1.2022) by The Norfolk Boreas Offshore Wind Farm Order 2021 (S.I. 2021/1414), arts. 1, **15(2)** (with arts. 15(6), 41, 42, Sch. 17 para. 66)
- C212** S. 106 applied (5.3.2022) by The Norfolk Vanguard Offshore Wind Farm Order 2022 (S.I. 2022/138), arts. 1, **15(2)** (with arts. 15(6), 41, 42, Sch. 16)
- C213** S. 106 applied (10.3.2022) by The Thurrock Flexible Generation Plant Development Consent Order 2022 (S.I. 2022/157), arts. 1, **16(2)** (with Sch. 8 Pt. 6 para. 19)
- C214** S. 106 applied (25.3.2022) by The Bridgwater Tidal Barrier Order 2022 (S.I. 2022/299), arts. 1, **19(4)** (with art. 55)
- C215** S. 106 applied (22.4.2022) by The East Anglia TWO Offshore Wind Farm Order 2022 (S.I. 2022/433), arts. 1(2), **16(2)** (with arts. 16(7), 40, 41)
S. 106 applied (22.4.2022) by The East Anglia ONE North Offshore Wind Farm Order 2022 (S.I. 2022/432), arts. 1(2), **16(2)** (with arts. 16(7), 40, 41)
- C216** S. 106 applied (27.4.2022) by The Little Crow Solar Park Order 2022 (S.I. 2022/436), arts. 1, **9(2)**
- C217** S. 106 applied (12.5.2022) by The M54 to M6 Link Road Development Consent Order 2022 (S.I. 2022/475), arts. 1, **17(2)**
- C218** S. 106 applied (2.6.2022) by The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 (S.I. 2022/549), arts. 1, **19(2)** (with arts. 6, 19(6), 34)
- C219** S. 106 applied (6.6.2022) by The M25 Junction 28 Development Consent Order 2022 (S.I. 2022/573), arts. 1, **19(2)** (with arts. 5, 19(7), 36)
- C220** S. 106 applied (30.6.2022) by The Network Rail (Essex and Others Level Crossing Reduction) Order 2022 (S.I. 2022/651), arts. 1, **16(2)** (with art. 16(7))
- C221** S. 106 applied (13.7.2022) by The A47 Blofield to North Burlingham Development Consent Order 2022 (S.I. 2022/738), arts. 1, **21(2)** (with arts. 4, 50)
- C222** S. 106 applied (1.8.2022) by The Northumberland Line Order 2022 (S.I. 2022/820), arts. 1, **5(2)** (with Sch. 10 paras. 21, 43)
- C223** S. 106 applied (11.8.2022) by The Sizewell C (Nuclear Generating Station) Order 2022 (S.I. 2022/853), arts. 1, **25(7)** (with arts. 25(9), 62, 76, 87)
- C224** S. 106 applied (2.9.2022) by The A47 North Tuddenham to Easton Development Consent Order 2022 (S.I. 2022/911), arts. 1, **20(2)** (with arts. 4, 20(6), 53)
- C225** S. 106 applied (8.9.2022) by The Manston Airport Development Consent Order 2022 (S.I. 2022/922), arts. 1, **16(2)** (with arts. 5, 40)
- C226** S. 106 applied (8.9.2022) by The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (S.I. 2022/934), arts. 1, **20(2)** (with art. 53)
- C227** S. 106 applied (3.11.2022) by The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022/1067), arts. 1, **22(2)** (with art. 22(7))
- C228** S. 106 applied (4.11.2022) by The A47/A11 Thickethorn Junction Development Consent Order 2022 (S.I. 2022/1070), arts. 1, **21(2)** (with arts. 4, 52, Sch. 9 para. 82)
- C229** S. 106 applied (5.12.2022) by The Portishead Branch Line (MetroWest Phase 1) Order 2022 (S.I. 2022/1194), arts. 1, **22(2)** (with art. 51)

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- C230** S. 106 applied (7.12.2022) by The A417 Missing Link Development Consent Order 2022 (S.I. 2022/1248), arts. 1, **21(2)** (with arts. 4, 21(6))
- C231** S. 106 applied (7.12.2022) by The A57 Link Roads Development Consent Order 2022 (S.I. 2022/1206), arts. 1, **19(2)** (with arts. 5, 19(7))
- C232** S. 106 applied (29.12.2022) by The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (S.I. 2022/1396), arts. 1, **14(2)** (with art. 32, Sch. 10 paras. 26(2), 68)
- C233** S. 106 applied (11.1.2023) by The Network Rail (Cambridge South Infrastructure Enhancements) Order 2022 (S.I. 2022/1406), arts. 1, **16(2)** (with arts. 16(7), 34(2), Sch. 12 paras. 5, 47, 79)
- C234** S. 106 applied (13.2.2023) by The East Northamptonshire Resource Management Facility Order 2023 (S.I. 2023/110), arts. 1, **11(2)** (with art. 9)
- C235** S. 106 applied (10.3.2023) by The A47 Wansford to Sutton Development Consent Order 2023 (S.I. 2023/218), arts. 1, **21(2)** (with arts. 4, 21(6), 50)
- C236** S. 106 applied (18.7.2023) by The Longfield Solar Farm Order 2023 (S.I. 2023/734), arts. 1, **15(2)** (with art. 15(7))
- C237** S. 106 applied (27.7.2023) by The Boston Alternative Energy Facility Order 2023 (S.I. 2023/778), arts. 1, **20(2)** (with arts. 5, 20(6), 53, Sch. 8 paras. 6, 64)
- C238** S. 106 applied (2.8.2023) by The Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023 (S.I. 2023/815), arts. 1, **16(2)** (with art. 42)
- C239** S. 106 applied (3.8.2023) by The Hornsea Four Offshore Wind Farm Order 2023 (S.I. 2023/800), arts. 1, **15(2)** (with arts. 15(7), 42, 43, Sch. 9 Pt. 1 para. 4, Sch. 9 Pt. 3 para. 6(1), Sch. 9 Pt. 4 para. 20, Sch. 9 Pt. 9 para. 4)
- C240** S. 106 applied (4.8.2023) by The A303 (Amesbury to Berwick Down) Development Consent Order 2023 (S.I. 2023/834), arts. 1, **13(2)** (with arts. 6(2), 13(6), 18, Sch. 11 paras. 5, 30)
- C241** S. 106 applied (7.9.2023) by The A38 Derby Junctions Development Consent Order 2023 (S.I. 2023/923), arts. 1, **20(2)** (with arts. 4, 20(9), 45, Sch. 9 paras. 6, 46, 54(1))
- C242** S. 106 applied (11.10.2023) by The Awel y Môr Offshore Wind Farm Order 2023 (S.I. 2023/1033), arts. 1, **14(2)** (with arts. 36, 37, Sch. 9 paras. 14, 44(1), 76, 103)
- C243** S. 106 applied (7.2.2024) by The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (S.I. 2024/70), arts. 1, **15(2)** (with art. 43, Sch. 12 paras. 5, 24)
- C244** S. 106 applied (9.2.2024) by The A12 Chelmsford to A120 Widening Development Consent Order 2024 (S.I. 2024/60), arts. 1, **24(2)** (with arts. 4, 24(8), 52, Sch. 11 paras. 6, 24, 39(1), 55(1), 84)
- C245** S. 106 applied (11.3.2024) by The Net Zero Teesside Order 2024 (S.I. 2024/174), arts. 1, **17(2)** (with arts. 42, 43, Sch. 12 paras. 5, 51, 91, 129, 136, 234, 345, 356)
- C246** S. 106 applied (13.3.2024) by The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 (S.I. 2024/230), arts. 1, **18(2)** (with art. 18(6), Sch. 11 paras. 5, 22, 37, 47, 82, 110)
- C247** S. 106 applied (28.3.2024) by The A66 Northern Trans-Pennine Development Consent Order 2024 (S.I. 2024/360), arts. 1, **13(2)** (with arts. 18, 35, Sch. 9)
- C248** S. 106 applied (5.4.2024) by The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 (S.I. 2024/393), arts. 1, **19(2)** (with arts. 19(7), 44, Sch. 15)
- C249** S. 106(8) restricted (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 13**
- C250** S. 106(8) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 40, **Sch. 14 para. 16**
- C251** S. 106(8) excluded (24.9.2014) by The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384), art. 1, **Sch. 19 Pt. 1 para. 5**
- C252** S. 106(8) excluded (23.2.2017) by High Speed Rail (London - West Midlands) Act 2017 (c. 7), s. 70(1), **Sch. 21 para. 7**

Marginal Citations

M34 1961 c. 34.

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^{F1099}106A Sustainable drainage

- (1) This section applies to a drainage system construction of which required approval under Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).
- (2) A person may exercise the right under section 106(1) in respect of surface water only if—
 - (a) the construction of the drainage system was approved under that Schedule, and
 - (b) the proposals for approval included a proposal for the communication with the public sewer.
- (3) Where subsection (2) is satisfied, the connection may not be refused—
 - (a) under section 106(4), or
 - (b) on grounds that the drainage system absorbs water from more than one set of premises or sewer, or from land that is neither premises nor a sewer.]

Textual Amendments

F1099S. 106A inserted (2.5.2018 for W. for specified purposes, 7.1.2019 for W. in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 3 para. 16\(2\)](#) (with s. 49(1)(6)); S.I. 2018/557, arts. 2(b), 3(b)

^{F1100}106B Requirement to enter into agreement before construction

- (1) A person may exercise the right under section 106(1) in respect of a lateral drain or sewer constructed after the commencement of this section only if Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that an agreement was entered into under section 104 in respect of the drain or sewer.
- (3) Condition 2 is that the agreement included—
 - (a) provision about the standards according to which the drain or sewer was to be constructed, and
 - (b) provision about adoption of the drain or sewer by the sewerage undertaker.
- (4) Provision for the purposes of Condition 2(a) must either—
 - (a) incorporate or accord with standards published by the Minister, or
 - (b) depart from those standards by express consent of the parties to the agreement.
- (5) Provision for the purposes of Condition 2(b) must—
 - (a) include provision for adoption to occur automatically upon the occurrence of specified events, and
 - (b) comply with any regulations made by the Minister (which may concern the provision required by paragraph (a) of this subsection).
- (6) Subsection (1) does not apply—
 - (a) to drainage systems required to be approved in accordance with Schedule 3 to the Flood and Water Management Act 2010, or
 - (b) in other circumstances specified by the Minister in regulations.

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- (7) Where a person seeks to exercise the right under section 106(1) in reliance on satisfying Conditions 1 and 2, an undertaker may not refuse connection—
- (a) whether or not in reliance on section 106(4), and
 - (b) whether or not the terms of the agreement under section 104 (including terms required by this section) have been complied with.
- (8) In this section “the Minister” means—
- (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.]

Textual Amendments

F1100 S. 106B inserted (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 42(1), 49(3)** (with [s. 49\(1\)\(6\)](#)); [S.I. 2010/2169](#), art. 4; [S.I. 2012/2048](#), art. 2 (with art. 3)

107 Right of sewerage undertaker to undertake the making of communications with public sewers.

- (1) Where a person gives to a sewerage undertaker notice under section 106 above of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may—
- (a) within fourteen days after the receipt of the notice; or
 - (b) if any question arising under the notice requires to be determined by ^{F1101}the Director], within fourteen days after the determination of that question, give notice to that person that the undertaker intends itself to make the communication.
- ^{F1102}(1A) A sewerage undertaker may not give notice to a person under subsection (1) if—
- (a) the undertaker and the person entered into an agreement under section 104, and
 - (b) the agreement provides for the communication to which the person's proposal relates to be made by the person.]
- (2) If, after a notice has been given to any person under subsection (1) above, that person proceeds himself to make the communication, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (3) Where a sewerage undertaker has given a notice under subsection (1) above—
- (a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but
 - (b) it shall not be obligatory on the undertaker to make the communication until either—
 - (i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of ^{F1103}the amount by way of charges that the undertaker may impose in accordance with charging rules for making the connection] , as the undertaker may have required to be paid to it; or

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(ii) there has been given to the undertaker [F1104such security for the payment of that amount as charging rules allow and it may have required.]

[F1105(4) If a payment to a sewerage undertaker under subsection (3) exceeds the charges that may, in the event, be imposed in accordance with charging rules for making the connection in question, the excess is to be repaid by the undertaker; and, if and so far as those charges are not covered by a payment under subsection (3), those charges are to be paid by the person for whom the work was undertaken.]

F1106[(4A) Any dispute between a sewerage undertaker and any other person as to—

(a) whether the undertaker’s estimate [F1107of the amount of charges] given under subsection (3)(b)(i) above is reasonable,

[F1108(b) the security required by the undertaker, or]

[F1109(c) whether any excess is repayable, or any charges are payable, under subsection (4), or the amount of any such excess or charges,]

may be referred to the Director for determination under section 30A above by either party to the dispute.]

(5) Sections 291, 293 and 294 of the M35Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

(6) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

[F1110(7) A reference in this section to an agreement under section 104 includes a reference to—

(a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and

(b) an agreement which has been varied by order under section 105ZB(1).]

Textual Amendments

F1101 Words in s. 107(1)(b) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(9\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)

F1102 S. 107(1A) inserted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\), ss. 11\(4\), 94\(3\)](#); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d)

F1103 Words in s. 107(3)(b)(i) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 19\(4\)\(a\), 94\(3\)](#); S.I. 2017/462, art. 5(b) (with art. 14)

F1104 Words in s. 107(3)(b)(ii) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 19\(4\)\(b\), 94\(3\)](#); S.I. 2017/462, art. 5(b) (with art. 14)

F1105 S. 107(4) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 19\(4\)\(c\), 94\(3\)](#); S.I. 2017/462, art. 5(b) (with art. 14)

F1106 S. 107(4A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(9\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)

F1107 Words in s. 107(4A) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 19\(4\)\(d\), 94\(3\)](#); S.I. 2017/462, art. 5(b) (with art. 14)

F1108 S. 107(4A)(b) substituted (1.4.2018) by [Water Act 2014 \(c. 21\), ss. 19\(4\)\(e\), 94\(3\)](#); S.I. 2017/462, art. 5(b) (with art. 14)

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Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F1109** S. 107(4A)(c) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 19(4)(f)**, 94(3); S.I. 2017/462, art. 5(b) (with art. 14)
- F1110** S. 107(7) inserted (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 95**; S.I. 2017/462, art. 4(d)(iii) (as substituted by S.I. 2017/926, art. 2(2))

Marginal Citations

M35 1936 c. 49.

108 Communication works by person entitled to communication.

- (1) Where a sewerage undertaker does not under section 107 above elect itself to make a communication to which a person is entitled under section 106 above [^{F1111}or may not make such an election because of section 107(1A)], the person making it shall—
 - (a) before commencing the work, give reasonable notice to any person directed by the undertaker to superintend the carrying out of the work; and
 - (b) afford any such person all reasonable facilities for superintending the carrying out of the work.
- (2) For the purpose—
 - (a) of exercising his rights under section 106 above; or
 - (b) of examining, repairing or renewing any drain or private sewer draining his premises into a public sewer,

the owner or occupier of any premises shall be entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker by sections 158 and 161(1) below.
- (3) The provisions of Part VI of this Act shall apply, with the necessary modifications, in relation to the power conferred by subsection (2) above as they apply in relation to the power conferred by sections 158 and 161(1) below.

Textual Amendments

F1111 Words in s. 108(1) inserted (1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(5)**, 94(3); S.I. 2017/1288, art. 3(d)

109 Unlawful communications.

- (1) Any person who causes a drain or sewer to communicate with a public sewer—
 - (a) in contravention of any of the provisions of section 106 or 108 above; or
 - (b) before the end of the period mentioned in subsection (4) of that section 106,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this section, such an undertaker may—
 - (a) close any communication made in contravention of any of the provisions of section 106 or 108 above; and
 - (b) recover from the offender any expenses reasonably incurred by the undertaker in so doing.

Status: This version of this Act contains provisions that are prospective.

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- (3) Sections 291, 293 and 294 of the ^{M36}Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

Marginal Citations

M36 1936 c. 49.

Connections between public sewers

110 Determination of disputes with respect to cross boundary sewers.

- (1) Where any part of a sewer is vested in a sewerage undertaker by virtue of section 70 of the ^{M37}Water Act 1989 (cross boundary sewers), the terms on which that part of that sewer—
- (a) communicates with such parts of that sewer or of any other sewer; or
 - (b) discharges into any such sewage disposal works,
- as immediately before 1st September 1989 were vested in the same water authority as that part of that sewer but, by virtue of that section, are vested in another sewerage undertaker shall be determined, in default of agreement, by the Director.
- (2) A determination by the Director under this section shall have effect as an agreement between the sewerage undertakers in question but may be varied or revoked by a subsequent determination made by the Director on the application of either of those undertakers, as well as by agreement between the undertakers.
- (3) In making a determination under this section, the Director shall have regard to the desirability of a sewerage undertaker’s recovering the costs resulting from its allowing the sewers of other sewerage undertakers to communicate with its sewers or to discharge into its sewage disposal works and of its securing a reasonable return on its capital.

Marginal Citations

M37 1989 c. 15.

[^{F1112}110] Main connections

- (1) This section applies where—
- (a) a qualifying person requests a sewerage undertaker to permit a main connection into the established undertaker’s sewerage system for the benefit of the qualifying person, or
 - (b) a sewerage undertaker proposes such an arrangement;
- and references in this section to the established undertaker are references to the sewerage undertaker who is to permit the main connection.
- (2) In this section “qualifying person” means—

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- (a) a sewerage undertaker, or
 - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the established undertaker, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of this Part that the established undertaker should permit a main connection into its sewerage system, and
 - (b) if the Authority is satisfied that the established undertaker and qualifying person cannot reach agreement,
- by order require the established undertaker to permit the connection for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the established undertaker and the qualifying person.
- (6) If the Authority makes an order under subsection (3) on the application of a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
- (a) the person becomes a sewerage undertaker for the area specified in the order, or
 - (b) the person becomes a sewerage undertaker for an area that includes the area specified in the order (in the case of a sewerage undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement with a sewerage undertaker for it to permit a main connection into its sewerage system for the benefit of a qualifying person, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with such agreement as is mentioned in subsection (7), and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the established undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the established undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.

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- (10) In this section and section 110B “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 110B(1) which would result in, or which would vary or terminate, a main connection agreement, means—
- (a) the Environment Agency, in a case where all parties to the main connection agreement are or would be—
 - (i) a sewerage undertaker whose area is wholly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
 - (b) the NRBW, in a case where all parties to the main connection agreement are or would be—
 - (i) a sewerage undertaker whose area is wholly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
 - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 110B to 110J—
- “main connection” means—
- (a) a connection between a sewer or disposal main and a sewer or disposal main, or
 - (b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works;
- “main connection agreement” means an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
 - (b) any agreement which has been varied by order under section 110B(1).]

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), [ss. 9\(1\), 94\(3\)](#) (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

[^{F1112}110B] Variation and termination of main connection agreements

- (1) On the application of any party to a main connection agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of this Part that the main connection agreement should be varied or terminated, and
 - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,
- by order vary or terminate the main connection agreement.

Status: This version of this Act contains provisions that are prospective.

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- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency.
- (3) If an order under subsection (1) is made in relation to a main connection agreement, the agreement—
 - (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a main connection agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a main connection agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the established undertaker in complying with its obligations under the main connection agreement in question and to the desirability of—
 - (a) facilitating effective competition within the sewerage services industry;
 - (b) the established undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the established undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (8) In this section and sections 110C to 110J “established undertaker”, in relation to a sewerage agreement, means the sewerage undertaker which is required by the agreement to permit a main connection into its sewerage system.

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

110C Codes in respect of main connection agreements

- (1) The Authority may issue one or more codes in respect of main connection agreements.

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- (2) A code may make provision about—
 - (a) procedures in connection with making an agreement to permit a main connection into a sewerage undertaker's sewerage system;
 - (b) procedures in connection with varying or terminating a main connection agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 110A(3) or 110B(1);
 - (d) the terms and conditions of a main connection agreement, including terms as to the duration of such an agreement;
 - (e) principles for determining the terms and conditions that should or should not be incorporated into a main connection agreement;
 - (f) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) The Authority may not give a direction under subsection (3) requiring a person to enter into, vary or terminate an agreement.
- (5) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (6) A code may make different provision for different persons or different descriptions of person.
- (7) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (8) A revised code may include provision for applying any of its revisions to main connection agreements made before the revised code comes into force.

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

110D Codes under section 110C: procedure

- (1) Before issuing a code under section 110C, the Authority must—
 - (a) prepare a draft of the proposed code under section 110C, and
 - (b) consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 110C prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or

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- (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In subsection (3) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to main connection agreements under which—
 - (i) the main connection into a sewerage system, or
 - (ii) each such connection,
 is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
 - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to main connection agreements under which—
 - (i) the main connection into a sewerage system, or
 - (ii) each such connection,
 is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to main connection agreements under which one main connection into a sewerage system is or would be—
 - (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
 - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such main connection agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such main connection agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 9\(1\), 94\(3\)](#) (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

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110E Codes under section 110C: minor or urgent revisions

- (1) This section applies if the Authority propose to issue a revised code under section 110C and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 110D does not apply to the revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 9\(1\), 94\(3\)](#) (with [s. 9\(2\)\(3\)](#)); [S.I. 2016/1007, art. 2\(c\)\(i\)](#); [S.I. 2017/1288, art. 3\(b\)](#); [S.I. 2018/397, art. 2\(b\)](#)

110F Rules about charges for permitting main connections

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a main connection agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—

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- (a) make different provision for different sewerage undertakers or different descriptions of sewerage undertaker;
 - (b) make different provision for different purposes;
 - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
- (a) guidance is issued under section 110J, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of the revisions to main connection agreements made before the revised rules come into effect.

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

110G Rules under section 110F: provision about the reduction of charges

- (1) Rules under section 110F may provide for the reduction of charges payable under a main connection agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
- (a) specify conditions by reference to any party to a main connection agreement;
 - (b) require that steps be taken for the purpose of reducing the cost to a sewerage undertaker of permitting a main connection into its sewerage system;
 - (c) specify conditions about reducing charges payable by a person who—
 - (i) is not party to the agreement, and
 - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the sewerage undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
- (a) make provision as to the content of the notice;
 - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
- (a) the provision of the rules that brings about the reduction in the charge;
 - (b) the amount of the charge, with and without the reduction;
 - (c) the period for which the reduction has effect.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

110H Rules under section 110F: procedure

- (1) Before issuing rules under section 110F, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 110J in making rules under section 110F.
- (4) Before rules under section 110F prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
 - (a) the Secretary of State, so far as rules prepared by the Authority relate to main connection agreements under which—
 - (i) the main connection into a sewerage system, or
 - (ii) each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
 - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to main connection agreements under which—
 - (i) the main connection into a sewerage system, or
 - (ii) each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to main connection agreements under which one main connection into a sewerage system is or would be—
 - (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
 - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(7) This section is subject to section 110I.

Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

110I Rules under section 110F: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 110F and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 110H does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
 whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 110H.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

110J Rules under section 110F: guidance

- (1) The Minister may issue guidance as to the content of rules under section 110F.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Welsh Ministers;
 - (b) the Secretary of State;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, in relation to main connection agreements under which—
 - (i) any main connection into a sewerage system, or
 - (ii) each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
 - (b) the Welsh Ministers, in relation to main connection agreements under which—
 - (i) any main connection into a sewerage system, or
 - (ii) each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to main connection agreements under which one main connection into a sewerage system is or would be—
 - (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
 - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.]

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Textual Amendments

F1112 Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J, 1.4.2018 for E. for specified purposes, 1.4.2019 for W. in so far as not already in force) by [Water Act 2014](#) (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2017/1288, art. 3(b); S.I. 2018/397, art. 2(b)

^{F1113} Provision of sewerage services by sewerage licensees etc

Textual Amendments

F1113 Ss. 110K-110O and cross-heading inserted (6.3.2017 for the insertion of s. 110K, 1.4.2017 in so far as not already in force) by [Water Act 2014](#) (c. 21), **ss. 32, 94(3)**; S.I. 2017/58, art. 2(a) (with art. 3(2)); S.I. 2017/462, art. 3(g)

110K Provision by sewerage licensee

- (1) The owner or occupier of any premises may serve a notice on a sewerage undertaker—
 - (a) informing the undertaker that sewerage services to the premises are to be provided by a sewerage licensee, and
 - (b) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises.
- (2) Where the charges for the sewerage services provided by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice is to fall at least two working days after the notice is served.
- (3) In this section a reference to two working days is a reference to a period of 48 hours calculated after disregarding any time falling on—
 - (a) a Saturday or Sunday, or
 - (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

110L Interim duty: sewerage undertakers and sewerage licensees

- (1) This section applies where—
 - (a) a sewerage licensee (“the previous licensee”) ceases to provide sewerage services to any premises, and
 - (b) the owner or occupier of the premises has not notified the sewerage undertaker in whose area the premises are that—
 - (i) he has made arrangements for the continuation of the provision of sewerage services to the premises, or
 - (ii) he intends any provision of sewerage services to the premises to cease.
- (2) It is to be the duty of the sewerage undertaker to continue to provide the sewerage services to the premises which were provided by the previous licensee.

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- (3) But the Authority may give a direction to an eligible sewerage licensee (an “interim licensee”) providing that it is to be the duty of that licensee to provide the sewerage services instead.
- [Where the premises are in a retail exit area the Authority must give a direction under ^{F1114}(3A) subsection (3).]
- (4) An “eligible sewerage licensee” is a sewerage licensee with a retail authorisation who has elected to be an eligible sewerage licensee for the purposes of this section in accordance with the code issued under section 110O.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible sewerage licensee—
- (a) the Authority must give notice of the proposed direction to the licensee, and
 - (b) the licensee may, in accordance with the code issued under section 110O, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.
- (6) Where sewerage services are provided by an undertaker under subsection (2)—
- (a) the charges payable in respect of the provision of the services are to be fixed from time to time by a charges scheme under section 143, and
 - (b) the services are to be provided until—
 - (i) services are provided by an interim licensee by virtue of a direction under subsection (3),
 - (ii) services are provided by a sewerage licensee following the service of a notice under section 110K, or
 - (iii) services are provided to the premises by another sewerage undertaker following the service of a notice by the owner or occupier of the premises on the undertaker providing services under subsection (2) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises (see section 110M(5)),whichever is the earlier.
- (7) Where sewerage services are provided by an interim licensee by virtue of a direction given under subsection (3)—
- (a) the provision of services by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to provide services to the premises,
 - (b) the terms and conditions in accordance with which the services are to be provided are to be—
 - (i) those provided for by a scheme made under section 110N, or
 - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
 - (c) the services are to be provided until they are discontinued in accordance with the terms and conditions mentioned in paragraph (b).
- (8) Subsections (9) and (10) apply if, within a period of three months beginning with the date on which the previous licensee ceased to provide sewerage services to the premises, the owner or occupier of the premises serves notice—
- (a) under section 110K, on the sewerage undertaker continuing the provision of services under subsection (2), or

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- (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the provision of services by virtue of a direction given under subsection (3),
that instead another sewerage licensee (“the new licensee”) is to continue the provision of the services to the premises which were provided by the previous licensee.
- (9) The notice must—
- (a) specify the time from which the new licensee is to continue the provision of the services in question, and
- (b) be served in accordance with the code issued under section 110O.
- (10) In the case of a notice served as mentioned in subsection (8)(a), the provision of services by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to provide services to the premises.

Textual Amendments

F1114 S. 110L(3A) inserted (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), reg. 1(2), **Sch. 2 para. 8**

110M Interim duty: supplementary

- (1) Where a duty is imposed by section 110L(2), or by virtue of a direction given under section 110L(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (2) But in any proceedings brought against a sewerage undertaker or sewerage licensee in pursuance of subsection (1), it is a defence for the undertaker or licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.
- (3) For the purposes of section 110L, premises which are outside a sewerage undertaker's area are to be treated as being within that area if they are provided with sewerage services using the undertaker's sewerage system.
- (4) In subsection (3), the reference to the undertaker's sewerage system is to be construed in accordance with section 17BA(7).
- (5) Section 110K(2) and (3) apply to a notice served under section 110L(6)(b)(iii) as they apply to a notice served under section 110K.

110N Interim licensees: schemes for terms and conditions

- (1) A person who is an eligible sewerage licensee for the purposes of section 110L must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to the provision of sewerage services by the licensee by virtue of a direction given under section 110L(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
- (3) As soon as practicable after a sewerage licensee makes or revises a scheme under this section the licensee is to—

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- (a) publish the scheme, or revised scheme, on the licensee's website, and
 - (b) send a copy of the scheme, or revised scheme, to the Authority.
- (4) The Authority may give a direction that terms and conditions applying to the provision of sewerage services in accordance with a scheme under this section must be modified as specified in the direction.
- (5) A direction under subsection (4) may apply—
- (a) generally to terms and conditions applying in accordance with a scheme under this section, or
 - (b) to terms and conditions so applying in any particular case.
- (6) It is the duty of a sewerage licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

110O Interim duty: code

- (1) The Authority must issue a code in relation to—
- (a) the provision of sewerage services under section 110L, and
 - (b) its power of direction under section 110L(3) (power to direct that eligible sewerage licensee provides interim sewerage services).
- (2) The code may, in particular, make provision about—
- (a) the procedure for electing to be an eligible sewerage licensee for the purposes of section 110L;
 - (b) the procedure for temporarily suspending such an election under section 110L(5)(b);
 - (c) the circumstances in which the Authority's power of direction under section 110L(3) or 110N(4) may or may not be exercised;
 - (d) how the Authority will determine the date on which a sewerage licensee ceased to provide sewerage services to premises for the purposes of section 110L;
 - (e) terms and conditions contained in schemes made under section 110N;
 - (f) eligible sewerage licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 110N, before agreeing any terms and conditions as mentioned in section 110L(7)(b)(ii);
 - (g) the giving of notices as mentioned in section 110L(8) (that a new licensee is to continue the provision of the sewerage services provided by the previous licensee) including, in particular, provision about—
 - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the provision of the sewerage services provided by a previous licensee;
 - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a sewerage licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.

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- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 110L to the code issued under this section are to the code issued under this section that has effect at the time in question.]

Provisions protecting sewerage system

111 Restrictions on use of public sewers.

- (1) Subject to the provisions of Chapter III of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer—
 - (a) any matter likely to injure the sewer or drain, to interfere with the free flow of its contents or to affect prejudicially the treatment and disposal of its contents; or
 - (b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than [^{F1115}forty-three degrees Celsius] , as by virtue of subsection (2) below is a prohibited substance; or
 - (c) any petroleum spirit or carbide of calcium.
- (2) For the purposes of subsection (1) above, chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that subsection is a prohibited substance if (either alone or in combination with the contents of the sewer or drain in question) it is or, in the case of the liquid, is when so heated—
 - (a) dangerous;
 - (b) the cause of a nuisance; or
 - (c) injurious, or likely to cause injury, to health.
- (3) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) For the purposes of so much of subsection (3) above as makes provision for the imposition of a daily penalty—
 - (a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and
 - (b) where a court has fixed such a period, the daily penalty shall not be imposed in respect of any day before the end of that period.
- (5) In this section the expression “petroleum spirit” means any such—
 - (a) crude petroleum;
 - (b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or
 - (c) product of petroleum or mixture containing petroleum,

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as, when tested in the manner prescribed by or under the ^{M38}Petroleum (Consolidation) Act 1928, gives off an inflammable vapour at a temperature of less than [^{F1116}twenty-three degrees Celsius] .

Textual Amendments

F1115 Words in s. 111(1)(b) substituted (1.4.2007) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 39\(2\)\(a\)](#); S.I. 2007/1021, [art. 2\(d\)](#)

F1116 Words in s. 111(5) substituted (1.4.2007) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 39\(2\)\(b\)](#); S.I. 2007/1021, [art. 2\(d\)](#)

Modifications etc. (not altering text)

C253 S. 111 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 8](#) (with [ss. 42, 46](#)).

C254 S. 111 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](#))

C255 S. 111 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 paras. 1\(3\), 2 Table 9](#) (with [regs. 1\(3\), 77-79, Sch. 4](#))

Marginal Citations

M38 [1928 c. 32](#).

112 Requirement that proposed drain or sewer be constructed so as to form part of general system.

- (1) Where—
 - (a) a person proposes to construct a drain or sewer; and
 - (b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,
the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.
- (2) If any person on whom requirements are imposed under this section by a sewerage undertaker is aggrieved by the requirements, he may within twenty-eight days appeal to the [^{F1117}Director].
- (3) On an appeal under subsection (2) above with respect to any requirements, the [^{F1117}Director] may either disallow the requirements or allow them with or without modification.
- (4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this section to comply with those requirements.
- (5) The duty of any person by virtue of subsection (4) above to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.
- (6) A sewerage undertaker which exercises the powers conferred on it by this section shall—

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- (a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and
 - (b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.
- (7) Nothing in this section shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertakers or dock undertakers in or on land which—
- (a) belongs to them; and
 - (b) is held or used by them for the purposes of their undertaking.
- [^{F1118}(8) A requirement imposed under this section may not be inconsistent with, or more onerous than, standards published for the purposes of section 106B.]

Textual Amendments

F1117 Word in s. 112(2)(3) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. **35(10)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt. II

F1118 S. 112(8) added (1.10.2010 for specified purposes; 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), ss. **42(4)**, **49(3)** (with s. **49(1)(6)**); S.I. 2010/2169, art. 4, Sch.; S.I. 2012/2048, art. 2 (with art. 3)

Modifications etc. (not altering text)

C256 S. 112 excluded (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), regs. **1(1)(b)**, **6(7)** (with reg. **1(1)(c)**)

113 Power to alter drainage system of premises in area.

- (1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but that system of drainage, though sufficient for the effectual drainage of the premises—
- (a) is not adapted to the general sewerage system of the area; or
 - (b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,
- the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any, and do any work necessary for that purpose.
- (2) The power conferred on a sewerage undertaker by subsection (1) above shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—
- (a) is equally effectual for the drainage of the premises; and
 - (b) communicates with a public sewer.
- (3) A sewerage undertaker which proposes to carry out any work under this section shall give [^{F1119}notice of its proposals to the owner of the premises in question.][^{F1119}notice of its proposals to—
- (a) the owner of the premises in question, and

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- (b) any sewerage licensee providing sewerage services to those premises.]
- (4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may [^{F1120}refer the matter to the Director for determination under section 30A above].
- ^{F1121}(5)
- (6) The Secretary of State may by regulations make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of this section.
- (7) In this section—
 - “cesspool” includes a settlement tank or other tank for the reception or disposal of foul matter from buildings; and
 - “trade effluent” has the same meaning as in Chapter III of this Part.

Textual Amendments

- F1119** Words in s. 113(3) substituted (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 96](#); [S.I. 2017/462](#), art. 4(d)(iii) (as substituted by [S.I. 2017/926](#), art. 2(2))
- F1120** Words in s. 113(4) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. [35\(11\)\(a\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt.II
- F1121** S. 113(5) repealed (1.7.1992) and is expressed to cease to have effect (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. [35\(11\)\(b\)](#), [56\(7\)](#), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), arts. 3, 4, Sch. Pts. I, II

Modifications etc. (not altering text)

- C257** S. 113(6) amended (27.8.1993) by [1993 c. 12](#), ss. [40](#), [51\(2\)](#), [Sch. 3 Pt. I para. 8](#) (with ss. [42](#), [46](#)).
- C258** S. 113(6) 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](#))
- C259** S. 113(6) modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. [1\(1\)](#), Sch. 23 paras. [1\(3\)](#), [2](#) Table 9 (with regs. [1\(3\)](#), [77-79](#), Sch. 4)

114 Power to investigate defective drain or sewer.

- (1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—
 - (a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or
 - (b) that any such drain or private sewer is so defective as to admit subsoil water, the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.
- (2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

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[^{F1122}Sustainable drainage

Textual Amendments

F1122S. 114A and cross-heading inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 21(1)**, 94(2)(d)

114A Drainage systems relieving public sewers

- (1) Sewerage undertakers may construct, on their own or on another's land, drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (2) A sewerage undertaker may maintain and operate a drainage system constructed by it under subsection (1).
- (3) In this section—
 - “drainage system” means a structure designed to receive rainwater and other surface water, other than a natural watercourse;
 - “natural watercourse” means a river or stream;
 - “rainwater” includes snow and other precipitation;
 - “structure” includes—
 - (a) any part of an existing or proposed structure, and
 - (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or other surface water.
- (4) The powers conferred by subsections (1) and (2) are not to be regarded as functions of a sewerage undertaker for the purposes of section 155 (compulsory purchase of land required for the purposes of carrying out functions of relevant undertakers).]

Use of pipes for sewerage purposes

115 Use of highway drains as sewers and vice versa.

- (1) Subject to the provisions of this section, a relevant authority and a sewerage undertaker may agree that—
 - (a) any drain or sewer which is vested in the authority in their capacity as a highway authority may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or streets;
 - (b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the authority for conveying surface water from roads repairable by the authority.
- (2) Where a sewer or drain with respect to which a relevant authority and a sewerage undertaker propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage disposal works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.

Status: This version of this Act contains provisions that are prospective.

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- (3) Subject to subsection (4) below, a consent given by a sewerage undertaker for the purposes of subsection (2) above may be given on such terms as that undertaker thinks fit.
- (4) Neither a relevant authority nor a sewerage undertaker shall—
- (a) unreasonably refuse to enter into an agreement for the purposes of this section; or
 - (b) insist unreasonably upon terms unacceptable to the other party;
- and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.
- (5) Any question arising under this section as to whether or not any authority or undertaker is acting unreasonably shall be referred to the Secretary of State, whose decision shall be final.
- [^{F1123}(5A) A sewerage undertaker must accept any use by a highway authority which is in accordance with a drainage system approved under Schedule 3 to the Flood and Water Management Act 2010.]
- (6) The powers by virtue of paragraph (a) of subsection (1) above of a relevant authority and a sewerage undertaker to enter into an agreement shall be exercisable by two relevant authorities as they would be exercisable if one of them were a sewerage undertaker.
- (7) Nothing in this section shall be construed as limiting the rights of a relevant authority under section 264 of the ^{M39}Highways Act 1980.
- (8) Part XII of the ^{M40}Public Health Act 1936 shall apply for the purposes of the provisions of this section which confer functions on relevant authorities as they apply for the purposes of the provisions of that Act.
- (9) In this section “relevant authority” means a county council or any local authority except a non-metropolitan district council.
- (10) The provisions of this section are subject to the provisions of section 146(4) below.

Textual Amendments

F1123 S. 115(5A) inserted (2.5.2018 for W. for specified purposes, 7.1.2019 for W. in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 3 para. 16\(3\)](#) (with s. 49(1)(6)); S.I. 2018/557, arts. 2(b), 3(b)

Marginal Citations

M39 1980 c. 66.
M40 1936 c. 49.

116 Power to close or restrict use of public sewer.

- (1) Subject to subsection (3) below, a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.
- (2) A discontinuance or prohibition under this section may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.

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- (3) Before any person who is lawfully using a sewer for any purpose is deprived under this section by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—
- (a) provide a sewer which is equally effective for his use for that purpose; and
 - (b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this subsection.
- ^{F1124}(4) Any dispute arising under subsection (3)(a) above between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to the Director for determination under section 30A above by either party to the dispute.]

Textual Amendments

F1124S. 116(4) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(12\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

^{F1125}*[Complaints*

Textual Amendments

F1125S. 116A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 c. 43, s.33](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

^{F1126}**116A Procedures for dealing with complaints.**

- (1) Each sewerage undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the provision of sewerage services.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
 - (a) the sewerage undertaker has consulted the [^{F1127}regional committee] to which it has been allocated; and
 - (b) the proposed procedure or modification has been approved by the Director.
- (3) The sewerage undertaker shall—
 - (a) publicise the procedure in such manner as may be approved by the Director; and
 - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to a sewerage undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.
- (5) A direction under subsection (4) above—
 - (a) may specify the manner in which the review is to be conducted; and
 - (b) shall require a written report of the review to be made to the Director.

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- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the sewerage undertaker, direct the undertaker to make such modifications of—
 - (a) the procedure; or
 - (b) the manner in which the procedure operates,as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.
- (8) The duty of a sewerage undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by the Director under section 18 above.
- (9) Where the Director is considering whether to exercise his powers under subsection (4) or (6) above in relation to a sewerage undertaker, it shall be the duty of that undertaker to give him such information as he may reasonably require for the purpose of assisting him in coming to a decision.
- (10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.]

Textual Amendments

F1126S. 116A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s.33; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F1127Words in s. 116A(2)(a) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 7 para. 27(3); S.I. 2005/2714, art. 2(1)(v)(aa) (with Sch. para. 8)

Interpretation of Chapter II

117 Interpretation of Chapter II.

- (1) In this Chapter, except in so far as the context otherwise requires—
 - “dock undertakers” means persons authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any dock, harbour, canal or inland navigation;
 - “domestic sewerage purposes”, in relation to any premises, means any one or more of the following purposes, that is to say—
 - (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
 - (b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and
 - (c) the removal, from such buildings and such land, of surface water;but does not, by virtue of paragraph (b) of this definition, include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

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- (2) References in this Chapter to the construction of a sewer or of any sewage disposal works include references to the extension of any existing sewer or works.
- (3) In this Chapter “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.
- (4) Every application made or consent given under this Chapter shall be made or given in writing.
- (5) Nothing in sections 102 to 109 above or in sections 111 to 116 above shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—
 - (a) in contravention of any applicable provision of the ^{M41}Water Resources Act 1991 or [^{F1128}the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)]; or
 - (b) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.
- (6) A sewerage undertaker shall so carry out its functions under sections 102 to 105, 112, 115 and 116 above as not to create a nuisance.

Textual Amendments

F1128 Words in s. 117(5)(a) substituted (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 29 para. 8(2)** (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

M41 1991 c. 57.

[^{F1129}CHAPTER 2A

DUTIES RELATING TO SEWERAGE SERVICES: SEWERAGE LICENSEES

Textual Amendments

F1129 Pt. 4 Ch. 2A inserted (1.9.2015 for the insertion of s. 117G (except s. 117G(2)(e)(7)), 1.9.2015 for the insertion of s. 117K (except s. 117K(2)(e)(8)), 1.4.2016 for the insertion of ss. 117G(2)(e), 117P(4), 117R, 117S, 1.9.2016 for the insertion of ss. 117I for specified purposes, 117J, 117K(2)(e)(8), 117L, 30.3.2017 for the insertion of s. 117G so far as not already in force and ss. 117F, 117H) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 4**; [S.I. 2015/773](#), **art. 3(d)** (with art. 5); [S.I. 2015/1469](#), **art. 3(e)**; [S.I. 2016/465](#), arts. 2(k), **3(f)** (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), **art. 16**); [S.I. 2017/462](#), **art. 2(d)**

Modifications etc. (not altering text)

C260 Pt. 4 Ch. 2A applied (with modifications) (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **53**

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Duties of sewerage undertakers as regards enabling the provision of sewerage services

117A Use of undertaker's sewerage system

- (1) This section applies where a sewerage licensee with a retail authorisation (“L”) requests a sewerage undertaker to permit the use of the undertaker's sewerage system for the purpose of enabling L to provide sewerage services in respect of premises that—
- (a) L is to serve in accordance with L's retail authorisation, and
 - (b) are in the area of the sewerage undertaker.

- (2) Where this section applies, the undertaker must in accordance with a section 117E agreement take such steps—
- (a) for the purpose of connecting the drains or sewers of the premises in question to the undertaker's sewerage system, or
 - (b) in respect of that system,
- as may be provided for in that agreement in order to enable the requested use of that system.

^{F1130} [A sewerage undertaker is not required by this section to take any steps to enable the use of its sewerage system at a time when it is required to take those steps by virtue of a notice under section 98(1) or (1A) or a request under section 101B(1).]

- (3) A sewerage undertaker is not required by this section to permit the use of its sewerage system, or to take any steps to enable its use, if the sewerage licensee making a request has not secured by means of—
- (a) a request under section 117B made by the licensee, or
 - (b) a request under section 117C made by the licensee or another sewerage licensee,

that there is to be provision for dealing with or removing matter from the sewerage system in quantities determined by reference to the extent of sewerage services provided in respect of the premises in question.

- (4) Where—
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

- (5) For the purposes of this section and sections 117B and 117C—
- (a) premises which are outside a sewerage undertaker's area are to be treated as being within that area if they are provided with sewerage services using the undertaker's sewerage system, and
 - (b) any sewers or drains of the sewerage undertaker which are used for the purpose of serving premises as mentioned in paragraph (a) are to be treated as

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being part of the undertaker's sewerage system (if they would not otherwise be part of it).

- (6) In this section and sections 117B to 117D—
- (a) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7);
 - (b) references to the retail authorisation of a sewerage licensee are to be construed in accordance with Schedule 2B.

Textual Amendments

F1130 S. 117A(2A) inserted (E.) (31.10.2021) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), 2(7)

117B Matter dealt with by sewerage undertaker

- (1) This section applies where a sewerage licensee with a retail authorisation (“L”) requests a sewerage undertaker to deal effectually with certain quantities of matter in its sewerage system in circumstances where—
- (a) sewerage services are to be provided in accordance with L's retail authorisation in respect of particular premises in the area of the undertaker, and
 - (b) the quantities to be dealt with are to be determined by reference to the extent of sewerage services provided in respect of those premises.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117E agreement—
- (a) take such steps in respect of the undertaker's sewerage system as may be provided for in that agreement in order to enable the use of that system for the purpose in subsection (1), and
 - (b) having taken those steps, deal with matter as requested.
- (3) Where—
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

117C Removal of matter from sewerage system by a sewerage licensee

- (1) This section applies where a sewerage licensee with a wholesale authorisation (“L”) requests a sewerage undertaker to permit L to remove certain quantities of matter from the undertaker's sewerage system in circumstances where—

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- (a) sewerage services are to be provided in accordance with a retail authorisation (whether L's or another's) in respect of particular premises in the area of the undertaker, and
 - (b) the quantities to be removed are to be determined by reference to the extent of sewerage services provided in respect of those premises.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117E agreement—
 - (a) take such steps, including steps in respect of the undertaker's sewerage system, as may be provided for in that agreement in order to enable L to remove matter from the undertaker's sewerage system as requested, and
 - (b) having taken those steps, permit that requested removal of matter from that sewerage system.
- (3) Where—
 - (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.
- (4) A pipe connecting a sewerage undertaker's sewerage system to a sewage disposal works that is laid because of subsection (2)(a) is to be regarded as a disposal main for the purposes of this Act, subject to any provision to the contrary.
- (5) In this section, a reference to a wholesale authorisation is to be construed in accordance with Schedule 2B.

117D Connections for the purposes of a disposal authorisation

- (1) This section applies where a sewerage licensee with a disposal authorisation (“L”) requests a sewerage undertaker to permit L to remove matter from the undertaker's sewerage system.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117E agreement—
 - (a) take such steps, including steps in respect of the undertaker's sewerage system, as may be provided for in that agreement in order to enable L to remove matter from the undertaker's sewerage system as requested, and
 - (b) having taken those steps, permit that requested removal of matter from that sewerage system.
- (3) Where—
 - (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or

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agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

- (4) A pipe connecting a sewerage undertaker's sewerage system to a sewage disposal works that is laid because of subsection (2)(a) is to be regarded as a disposal main for the purposes of this Act, subject to any provision to the contrary.
- (5) In this section, a reference to a disposal authorisation is to be construed in accordance with Schedule 2B.

117E Agreements as to duties under sections 117A to 117D

- (1) On the application of—
 - (a) a sewerage licensee that has made a request under sections 117A to 117D, or
 - (b) a sewerage undertaker to which such a request has been made,
 the Authority may by order require a sewerage undertaker to perform the duty in question under sections 117A to 117D, for such period and on such terms and conditions as may be specified in the order.
- (2) The Authority may make an order under subsection (1) only if—
 - (a) it appears to the Authority that the sewerage undertaker is required to perform the duty in question, and
 - (b) it is satisfied that the parties cannot reach agreement within a reasonable time.
- (3) An order under subsection (1) has effect as an agreement between—
 - (a) the sewerage licensee, and
 - (b) the sewerage undertaker required to perform the duty in question.
- (4) On the application of a party to a section 117E agreement, the Authority may, if it is satisfied that the parties cannot reach agreement on the variation or termination of the agreement, by order vary or terminate the agreement.
- (5) If an order under subsection (4) is made in relation to a section 117E agreement, the agreement—
 - (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.
- (6) An order under subsection (4) may require one party to the agreement to pay compensation to the other.
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the performance of a duty under sections 117A to 117D by a sewerage undertaker, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement for the performance of a duty under sections 117A to 117D by a sewerage undertaker, and

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- (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In this Chapter a reference to a section 117E agreement is a reference to—
- (a) an agreement for the performance of a duty under sections 117A to 117D by a sewerage undertaker, or
 - (b) an order deemed to be such an agreement under subsection (3), or
 - (c) an agreement varied by order under subsection (4).

117F Codes in respect of section 117E agreements

- (1) The Authority may issue one or more codes in respect of section 117E agreements.
- (2) A code may make provision about—
- (a) procedures in connection with making a section 117E agreement;
 - (b) procedures in connection with varying or terminating a section 117E agreement;
 - (c) the terms and conditions of a section 117E agreement, including terms as to the duration of such an agreement;
 - (d) principles for determining the terms and conditions that should or should not be incorporated into a section 117E agreement.
- (3) A code may make provision about the steps to be taken by the Authority in determining for the purposes of section 117E(2) whether a sewerage undertaker is, in the particular case, required to perform a duty under sections 117A to 117D.
- (4) If the Authority considers that a sewerage undertaker or a sewerage licensee is not acting as required by a code, the Authority may give the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a sewerage undertaker or a sewerage licensee to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make—
- (a) different provision for different persons or descriptions of person;
 - (b) different provision for different duties under sections 117A to 117D.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to section 117E agreements made before the revised code comes into effect.

117G Codes under section 117F: procedure

- (1) Before issuing a code under section 117F, the Authority must—
- (a) prepare a draft of the proposed code under section 117F, and

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- (b) consult persons in accordance with subsections (2) and (3).
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the appropriate agency;
 - (c) the Council;
 - (d) any sewerage undertakers likely to be affected by the proposed code;
 - (e) any sewerage licensees likely to be affected by the proposed code;
 - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 117F prepared by the Authority is issued for the first time, the Secretary of State may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (5) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (6) In this section “the appropriate agency” means—
 - (a) the Environment Agency, in relation to section 117E agreements made with sewerage undertakers whose areas are wholly in England;
 - (b) both the Environment Agency and the NRBW, in relation to section 117E agreements made with sewerage undertakers whose areas are partly in England and partly in Wales.
- (7) This section is subject to section 117H.

117H Codes under section 117F: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 117F and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 117G does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have

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effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

117I Rules about charges

- (1) The Authority must issue rules about charges that may be imposed by sewerage undertakers under a section 117E agreement.
- (2) The rules may in particular make provision about—
 - (a) the types of charges that may be imposed;
 - (b) the amount or the maximum amount, or methods for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charges may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules must include provision for and in connection with requiring a sewerage undertaker to impose on a sewerage licensee only such charges as would enable the licensee, where the services it provides to a person under its retail authorisation are services to which a section 142(2)(b) agreement would apply if the undertaker had continued to provide the services, to charge for those services at the same rate or rates as would have applied if the section 142(2)(b) agreement had applied.
- (4) In subsection (3) “section 142(2)(b) agreement” means an agreement to which section 142(2)(b) applies.
- (5) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may—
 - (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
 - (b) in a case where a section 117E agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the sewerage licensee in question to modify the agreement.
- (6) It is the duty of a sewerage undertaker or a sewerage licensee to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (7) The rules may—
 - (a) make different provision for different persons or descriptions of person;
 - (b) make different provision for different purposes;
 - (c) make provision subject to exceptions.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
 - (a) guidance is issued under section 117M, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of the revisions to section 117E agreements made before the revised rules come into effect.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

117J Rules about charges: provision about the reduction of charges

- (1) Rules under section 117I may provide for the reduction of charges payable under a section 117E agreement where—
 - (a) a sewerage licensee that has a retail authorisation is party to the section 117E agreement, and
 - (b) other conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
 - (a) specify conditions relating to any party to the section 117E agreement;
 - (b) specify conditions about persons taking steps for the purpose of reducing or managing demand for sewerage services;
 - (c) specify conditions about the premises by reference to which such steps are to be taken;
 - (d) specify conditions about reducing charges payable by a person who—
 - (i) is not party to the section 117E agreement, and
 - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition specified under paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the sewerage undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
 - (a) make provision as to the content of the notice;
 - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
 - (a) the amount of the charge, with and without the reduction;
 - (b) the period for which the reduction has effect.

117K Rules under section 117I: procedure

- (1) Before issuing rules under section 117I, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the appropriate agency;
 - (c) the Council;
 - (d) any sewerage undertakers likely to be affected by the proposed rules;
 - (e) any sewerage licensees likely to be affected by the proposed rules;
 - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 117M in making rules under section 117I.

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- (5) Before rules under section 117I prepared by the Authority are issued, the Secretary of State may direct the Authority not to issue the rules.
- (6) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) In this section “the appropriate agency” means—
 - (a) the Environment Agency, in relation to section 117E agreements made with sewerage undertakers whose areas are wholly in England;
 - (b) both the Environment Agency and the NRBW, in relation to section 117E agreements made with sewerage undertakers whose areas are partly in England and partly in Wales.
- (8) This section is subject to section 117L.

117L Rules under section 117I: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 117I and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 117K does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Secretary of State of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Secretary of State may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Secretary of State notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.

Status: This version of this Act contains provisions that are prospective.

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117M Rules under section 117I: guidance

- (1) The Minister may issue guidance as to the content of rules under section 117I.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are such persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means the Secretary of State.

117N Designation of strategic sewerage provision

- (1) Subsection (2) applies if at any time the Authority determines that the removal of matter from a sewerage undertaker's sewerage system that the undertaker is required to permit under section 117C or 117D in accordance with a section 117E agreement constitutes strategic sewerage provision.
- (2) The Authority must designate the removal of matter as strategic sewerage provision.
- (3) Subsection (4) applies if—
 - (a) a sewerage undertaker requests the Authority to make a determination that a particular removal of matter constitutes strategic sewerage provision for the purposes of subsection (1), or
 - (b) the Authority otherwise proposes to make a determination that a particular removal of matter constitutes strategic sewerage provision for the purposes of subsection (1).
- (4) The Authority must give notice of the request or proposed determination to—
 - (a) the Secretary of State;
 - (b) the appropriate agency;
 - (c) the other party or parties, or the parties, to the section 117E agreement; and
 - (d) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) A notice under subsection (4) must specify the time within which representations or objections with respect to the request or proposed determination may be made.

The time specified may not be less than 28 days from the date on which the notice was given.
- (6) The Authority must consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that a particular removal of matter designated under this section as strategic sewerage provision no longer constitutes such provision, it must cancel its designation.

Status: This version of this Act contains provisions that are prospective.

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- (8) If the Authority proposes to make a determination under subsection (7) that a particular removal of matter no longer constitutes strategic sewerage provision, it must give notice of the proposed determination to—
- (a) the Secretary of State;
 - (b) the appropriate agency; and
 - (c) the parties to the section 117E agreements in question.
- (9) Subsection (5) applies to a notice under subsection (8) as it applies to a notice under subsection (4), and subsection (6) applies accordingly.
- (10) For the purposes of this section, a removal of matter from a sewerage system is strategic sewerage provision if, without that removal of matter, there is a substantial risk that the sewerage undertaker would be unable—
- (a) to maintain its services to its own customers, and
 - (b) to fulfil its obligations under section 117B to deal with matter in its sewerage system.
- (11) In this section and section 117O “the appropriate agency”, in relation to a determination in respect of the removal of matter from a sewerage undertaker's system, means—
- (a) the Environment Agency, in a case where the undertaker's area is wholly in England;
 - (b) both the Environment Agency and the NRBW, in a case where the undertaker's area is partly in England and partly in Wales.

117O Designation of collective strategic sewerage provision

- (1) Subsection (2) applies if at any time the Authority determines that two or more cases of the removal of matter from a sewerage system—
- (a) each of which is a removal by a sewerage licensee, and
 - (b) each of which is a removal that a sewerage undertaker is required to permit under section 117C or 117D in accordance with a section 117E agreement, constitute collective strategic sewerage provision.
- (2) The Authority must designate the cases of the removal of matter as collective strategic sewerage provision.
- (3) Subsection (4) applies if—
- (a) a sewerage undertaker requests the Authority to make a determination that two or more cases of the removal of matter from a sewerage system constitute collective strategic sewerage provision for the purposes of subsection (1), or
 - (b) the Authority otherwise proposes to make a determination that two or more cases of the removal of matter from a sewerage system constitute collective strategic sewerage provision for the purposes of subsection (1).
- (4) The Authority must give notice of the request or proposed determination to—
- (a) the Secretary of State;
 - (b) the appropriate agency;
 - (c) the other party or parties, or the parties, to the section 117E agreements in question; and
 - (d) such other persons (if any) as the Authority thinks it appropriate to notify.

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- (5) A notice under subsection (4) must specify the time within which representations or objections with respect to the request or proposed determination may be made.
- The time specified may not be less than 28 days from the date on which the notice was given.
- (6) The Authority must consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that the cases of the removal of matter from a sewerage system designated under this section as collective strategic sewerage provision no longer constitute such provision, it must cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) that the cases of the removal of matter from a sewerage system no longer constitute collective strategic sewerage provision, it must give notice of the proposed determination to—
- (a) the Secretary of State;
 - (b) the appropriate agency; and
 - (c) the parties to the section 117E agreements in question.
- (9) Subsection (5) applies to a notice under subsection (8) as it applies to a notice under subsection (4), and subsection (6) applies accordingly.
- (10) For the purposes of this section, two or more cases of the removal of matter from a sewerage system are collective strategic sewerage provision if, without those cases of the removal of matter, there is a substantial risk that the sewerage undertaker would be unable—
- (a) to maintain its services to its own customers, and
 - (b) to fulfil its obligations under section 117B to deal with matter in its sewerage system.

Offences

117P ^{F1129} **Prohibition on unauthorised use of sewerage system**

- (1) No person may use the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the purpose of providing sewerage services to premises of—
- (a) a customer,
 - (b) the person so using that system, or
 - (c) a person associated with that person.
- (2) Subsection (1) is subject to subsections (3) and (4) and section 117R.
- (3) Subsection (1) does not apply where that use of the system is made by—
- (a) the sewerage undertaker, or
 - (b) a sewerage licensee in pursuance of its sewerage licence.
- (4) The Secretary of State may by regulations specify further circumstances in which subsection (1) does not apply.
- (5) A person who contravenes subsection (1) is guilty of an offence.

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- (6) An undertaking entered into which involves a contravention of subsection (1) is unenforceable.
- (7) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (8) Proceedings for an offence under this section may not be instituted except by—
 - (a) the Secretary of State, or
 - (b) the Authority.
- (9) For the purposes of this section, a person (A) is associated with another person (B) if they would be associated with each other for the purposes of Schedule 2B if A were a sewerage licensee.
- (10) In this section and sections 117Q and 117R, references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7).

Modifications etc. (not altering text)

C261 S. 117P(1) excluded (1.4.2017) by [The Sewerage Services \(Exception from Sewerage System Prohibition\) \(England\) Regulations 2017 \(S.I. 2017/244\)](#), regs. 1, **2(1)**

117Q Prohibition on unauthorised removal of matter from sewerage system

- (1) No person other than the undertaker may remove matter from the sewerage system of a sewerage undertaker whose area is wholly or mainly in England.
- (2) Subsection (1) is subject to subsections (3) and (4) and section 117R.
- (3) Subsection (1) does not apply where —
 - (a) matter is removed by a sewerage licensee in pursuance of its sewerage licence, or
 - (b) matter is removed by another sewerage undertaker under a main connection agreement (within the meaning of section 110A).
- (4) The Secretary of State may by regulations specify further circumstances in which subsection (1) does not apply.
- (5) An undertaking entered into which involves a contravention of subsection (1) is unenforceable.
- (6) A person who contravenes subsection (1) is guilty of an offence.
- (7) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £20,000;
 - (b) on conviction on indictment, to a fine.
- (8) For the purposes of section 210, the penalty on conviction on indictment of an offence under this section is to be deemed to include imprisonment for a term not exceeding two years (in addition to or instead of a fine).
- (9) Proceedings for an offence under this section may not be instituted except by—
 - (a) the Secretary of State, or

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- (b) the Authority.

117R Sections 117P and 117Q: exemptions

- (1) The Secretary of State may by order made by statutory instrument grant exemption from section 117P(1) or 117Q(1) to—
 - (a) a person or persons of a class;
 - (b) generally or to such extent as may be specified in the order;
 - (c) unconditionally or subject to such conditions as may be specified in the order.
- (2) Before making an order under subsection (1), the Secretary of State must give notice—
 - (a) stating that the Secretary of State proposes to make such an order and setting out the terms of the proposed order;
 - (b) stating the reasons why the Secretary of State proposes to make the order in the terms proposed; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,

and must consider any representations or objections which are duly made and not withdrawn.
- (3) The notice required by subsection (2) is to be given—
 - (a) by serving a copy of it on the Authority, and
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a particular person is to be given—
 - (a) by serving a copy of the exemption on the person, and
 - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a particular class is to be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
 - (a) persons of that class, and
 - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
 - (a) indefinitely, or
 - (b) for a period specified in, or determined by or under, the exemption.
- (7) The conditions that may be specified may, in particular, require any person carrying on any activity allowed by the exemption—
 - (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
 - (b) except in so far as the Secretary of State or the Authority consents to the person's doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified;

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- (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

117S Section 117R: supplementary

- (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a particular person under section 117R(1) or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
 - (a) at the person's request,
 - (b) in accordance with any provision of the order by which the exemption was granted, or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a particular class under section 117R(1) or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
 - (a) in accordance with any provision of the order by which the exemption was granted, or
 - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a particular class under section 117R(1) from any person of that class—
 - (a) at the person's request,
 - (b) in accordance with any provision of the order by which the exemption was granted, or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (4) Before making an order under subsection (1)(b) or (c) or (2) or giving a direction under subsection (3)(b) or (c), the Secretary of State must—
 - (a) consult the Authority, and
 - (b) give notice—
 - (i) stating that the Secretary of State proposes to make such an order or give such a direction,
 - (ii) stating the reasons why the Secretary of State proposes to make such an order or give such a direction, and
 - (iii) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,and must consider any representations or objections which are duly made and not withdrawn.
- (5) The notice required by subsection (4)(b) is to be given—
 - (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;

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- (b) where the Secretary of State is proposing to make an order under subsection (2), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted;
 - (c) where the Secretary of State is proposing to give a direction under subsection (3)(b) or (c), by serving a copy of it on the person from whom the Secretary of State proposes to withdraw the exemption.
- (6) A statutory instrument containing—
- (a) an order under subsection (1) or (2), or
 - (b) an order under section 117R(1),
- is subject to annulment in pursuance of a resolution of either House of Parliament.]

CHAPTER III

TRADE EFFLUENT

Modifications etc. (not altering text)

- C262** 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](#)
- C263** 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](#))
- C264** Pt. 4 Ch. 3 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 paras. 1\(3\), 2 Table 9](#) (with [regs. 1\(3\), 77-79, Sch. 4](#))

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 [^{F1131}in England] 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.
- [^{F1132}(1A) Subject to the following provisions of this Chapter and section 34D of the Environmental Protection Act 1990, the occupier of any trade premises in Wales in the area of a sewage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if the occupier 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.
- (3) The following, that is to say—
 - (a) the restrictions imposed by paragraphs (a) and (b) of section 106(2) above; and

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- (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.

Textual Amendments

F1131 Words in s. 118(1) inserted (6.4.2024) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), ss. **66(2)(a)**, 88(3)(b); S.I. 2023/1096, art. 3

F1132 S. 118(1A) inserted (6.4.2024) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), ss. **66(2)(b)**, 88(3)(b); S.I. 2023/1096, art. 3

Modifications etc. (not altering text)

C265 S. 118 excluded (18.7.2023) by [The Longfield Solar Farm Order 2023 \(S.I. 2023/734\)](#), arts. 1, **6(1)**

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 ^{F1133}the appropriate agency] the questions—
- (a) whether the discharges to which the notice relates should be prohibited; and

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- (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 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 [^{F1133}the appropriate 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.
- ^{F1134}(9) If a sewerage undertaker fails, within the period provided by subsection (2) above, to refer to [^{F1133}the appropriate agency] any question which he is required by subsection (1) above to refer to [^{F1133}the appropriate 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 [^{F1133}the appropriate agency] becomes aware of any such failure as is mentioned in subsection (9) above, [^{F1133}the appropriate 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

F1133 Words in s. 120 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 239** (with Sch. 7)

F1134 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

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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.

(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.

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- (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.
- (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 [F1135Merchant Shipping Act 1995].
- (7) This section has effect subject to the provisions of sections 133 and 135(3) below.

Textual Amendments

F1135 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.

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- (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.

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

- (1) Where a reference is made to [F1136the [F1137appropriate 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 [F1136the [F1137appropriate 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 [F1136the [F1137appropriate agency]]; and
 - (b) has been sent a copy of the notice of [F1136the [F1138appropriate 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

F1136 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**

F1137 Words in s. 123 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 240(2)** (with Sch. 7)

F1138 Words in s. 123(3)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 240(3)** (with Sch. 7)

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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.
- (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

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- (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.
- (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.

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- (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 ^{F1139}[the ^{F1140}appropriate 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 category effluent from those premises into a sewerage undertaker's public sewer, ^{F1141}[the ^{F1140}appropriate 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, ^{F1142}the ^{F1140}appropriate 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 ^{F1142}the ^{F1143}appropriate 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 ^{F1144}giving effect to any ^{F1145}assimilated] obligation or enabling Her Majesty's Government in the United Kingdom to give effect] 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

F1139 Words in s. 127 sidenote 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**

F1140 Words in s. 127 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 241(2)** (with Sch. 7)

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- F1141** Words in s. 127(1) 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**
- F1142** 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**
- F1143** Words in s. 127(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 241(3)** (with Sch. 7)
- F1144** Words in s. 127(3)(a) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **3(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F1145** Word in s. 127(3)(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 30(2)(c)**

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.
- (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.

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- (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 [F1146the [F1147appropriate 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 [F1146the [F1147appropriate 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.
- (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 [F1146the [F1147appropriate 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.
- ^{F1148}(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 [F1147appropriate agency] any question which he is required by that subsection to refer to [F1149the appropriate 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 [F1147appropriate 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

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- (b) that the sewerage undertaker has not referred to ^{F1149}the appropriate agency] any question which it is required to refer to ^{F1149}the appropriate agency] by that subsection,
- ^{F1149}the appropriate agency] may proceed as if the reference required by that subsection had been made.
- (9) If the ^{F1147}appropriate 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 ^{F1147}appropriate agency] any question which he is required by that subsection to refer to ^{F1149}the appropriate agency], ^{F1149}the appropriate 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

- F1146** 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**
- F1147** Words in s. 130 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 242(2)** (with Sch. 7)
- F1148** 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**
- F1149** Words in s. 130 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 242(3)** (with Sch. 7)

131 Review by ^{F1150}[the ^{F1151}appropriate 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, the reception or disposal of special category effluent, ^{F1152}the ^{F1151}appropriate 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, ^{F1152}the ^{F1151}appropriate 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 ^{F1152}the ^{F1153}appropriate 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

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- (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 [^{F1154}giving effect to any [^{F1155}assimilated] obligation or enabling Her Majesty's Government in the United Kingdom to give effect] 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

- F1150** Words in s. 131 sidenote 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**
- F1151** Words in s. 131 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 243(2)** (with Sch. 7)
- F1152** 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**
- F1153** Words in s. 131(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 243(3)** (with Sch. 7)
- F1154** Words in s. 131(3)(a) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **3(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F1155** Word in s. 131(3)(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 30(2)(d)**

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 [^{F1156}the [^{F1157}appropriate agency]] under section 120, 123 or 130 above; and
 - (b) any review by [^{F1156}the [^{F1157}appropriate agency]] under section 127 or 131 above.
- (2) On a reference or review to which this section applies, it shall be the duty of [^{F1156}the [^{F1158}appropriate 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 [^{F1159}the [^{F1160}appropriate agency]]—
 - [^{F1161}(ai) where the Environment Agency is the appropriate agency, to the NRBW if the discharge or proposed discharge of special category effluent is from trade premises in England;

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (bi) where the NRBW is the appropriate agency, to the Environment Agency if the discharge or proposed discharge of special category effluent is from trade premises in Wales;]
 - (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 [F1162the [F1163appropriate agency]] with respect to those questions by a person to whom [F1162the [F1163appropriate 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, F1164[the [F1165appropriate agency]] shall serve notice on [F1166any person consulted under subsection (2)(a)] 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 F1167[the [F1168appropriate 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 [F1169the appropriate agency], by virtue of subsection (4)(b) above, to specify such conditions as [F1169the appropriate agency] considers appropriate in a notice under this section.
 - F1170(7)
 - (8) F1171[The [F1172appropriate agency]] shall send a copy of every notice served under this section to the Director.

Textual Amendments

F1156 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**

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F1157** Words in s. 132(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(2)** (with Sch. 7)
- F1158** Words in s. 132(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(a)** (with Sch. 7)
- F1159** Words in s. 132(2)(a) 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**
- F1160** Words in s. 132(2)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(b)(i)** (with Sch. 7)
- F1161** S. 132(2)(ai)(bi) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(b)(ii)** (with Sch. 7)
- F1162** 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**
- F1163** Word in s. 132(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(c)** (with Sch. 7)
- F1164** Words in s. 132(3) 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**
- F1165** Words in s. 132(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(4)(a)** (with Sch. 7)
- F1166** Words in s. 132(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(4)(b)** (with Sch. 7)
- F1167** Words in s. 132(4)(c) 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**
- F1168** Words in s. 132(4)(c) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(5)** (with Sch. 7)
- F1169** Words in s. 132(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(6)** (with Sch. 7)
- F1170** 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**
- F1171** Words in s. 132(8) 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**
- F1172** Words in s. 132(8) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(7)** (with Sch. 7)

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.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- ^{F1173}[(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 [^{F1174}appropriate agency] may, for the purpose of securing compliance with the provisions of a notice under section 132 above, by serving notice on [^{F1175}any person consulted under section 132(2)(a)] 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

F1173 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**

F1174 Words in s. 133(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 245(a)** (with Sch. 7)

F1175 Words in s. 133(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 245(b)** (with Sch. 7)

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

- (1) Subject to subsection (2) below, [^{F1176}the [^{F1177}appropriate 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 [^{F1176}the [^{F1177}appropriate 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) [^{F1176}The [^{F1178}appropriate 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 [^{F1176}the [^{F1178}appropriate agency]] of material information which was not reasonably available to [^{F1179}the appropriate 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.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

- F1176** 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**
- F1177** Words in s. 134(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 246(2)** (with Sch. 7)
- F1178** Words in s. 134(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 246(3)(a)** (with Sch. 7)
- F1179** Words in s. 134(2)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 246(3)(b)** (with Sch. 7)

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
 - (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] ^{F1180}Power of the [^{F1181}appropriate 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 [^{F1182}appropriate agency] may, by notice in writing served on any person, require that person to furnish such information specified in the notice as [^{F1183}that appropriate 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.

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- (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

- F1180** 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**
- F1181** Words in s. 135A heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 247(3)** (with Sch. 7)
- F1182** Words in s. 135A(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 247(2)(a)** (with Sch. 7)
- F1183** Words in s. 135A(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 247(2)(b)** (with Sch. 7)

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 [^{F1184}Senior Courts Act 1981](which relates to the jurisdiction of the Court of Appeal); but no appeal to 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

- F1184** 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 [^{F1185}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.

Status: This version of this Act contains provisions that are prospective.

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- [^{F1186}(1A) If trade effluent is produced, or to be produced, by operating [^{F1187}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 [^{F1188}the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)];
- [^{F1189}(aa) the expressions “Part A activity”, “Part A installation” and “Part A mobile plant” have the same meaning as in [^{F1190}those Regulations];]
- (b) “permit” means a permit [^{F1191}granted under [^{F1192}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) [^{F1193}In subsection (2) and (3) above]—
- (a) “authorisation”, “enforcing authority” and “prescribed process” have the meanings given by section 1 of the ^{M42}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

F1185 Words in s. 138(1) substituted (1.8.2000) by [S.I. 2000/1973, reg. 39, Sch. 10 para. 8\(a\)](#)

F1186 S. 138(1A)(1B) inserted (1.8.2000) by [S.I. 2000/1973, reg. 39, Sch. 10 para. 8\(b\)](#)

F1187 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\(2\)](#)

Status: This version of this Act contains provisions that are prospective.

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- F1188** Words in s. 138(1B)(a) substituted (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 29 para. 8(3)** (with regs. 1(3), 77-79, Sch. 4)
- F1189** 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)**
- F1190** 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)
- F1191** 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)**
- F1192** 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)
- F1193** Words in s. 138(4) substituted (1.8.2000) by [S.I. 2000/1973](#), reg. 39, **Sch. 10 para. 8(c)**

Marginal Citations

M42 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.
- (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 ^{M43}Water Consolidation (Consequential Provisions) Act 1991 or to sections 16 and 17 of the ^{M44}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 ^{M45}Water Act 1989.

Marginal Citations

M43 1991 c. 60.

M44 1978 c. 30.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

M45 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—
- [^{F1194}“appropriate agency” means—
- (a) in relation to the discharge or proposed discharge of special category effluent to a public sewer that directly or indirectly discharges or is to discharge (other than via a storm-water overflow sewer) that effluent to any controlled waters in England, the Environment Agency;
- (b) in relation to the discharge or proposed discharge of special category effluent to a public sewer that directly or indirectly discharges or is to discharge (other than via a storm-water overflow sewer) that effluent to any controlled waters in Wales, the NRBW;]
- “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 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.

Textual Amendments

F1194 Words in s. 141(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 248](#) (with Sch. 7)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F1195}CHAPTER 4

STORM OVERFLOWS

Textual Amendments

F1195 Pt. 4 Ch. 4 inserted (9.1.2022) by [Environment Act 2021 \(c. 30\)](#), ss. 80(1), 147(2)(j) (with s. 144)

141A Storm overflow discharge reduction plan

- (1) The Secretary of State must prepare a plan for the purposes of—
 - (a) reducing discharges from the storm overflows of sewerage undertakers whose area is wholly or mainly in England, and
 - (b) reducing the adverse impacts of those discharges.
- (2) The reference in subsection (1)(a) to reducing discharges of sewage includes—
 - (a) reducing the frequency and duration of the discharges, and
 - (b) reducing the volume of the discharges.
- (3) The reference in subsection (1)(b) to reducing adverse impacts includes—
 - (a) reducing adverse impacts on the environment, and
 - (b) reducing adverse impacts on public health.
- (4) The plan may in particular include proposals for—
 - (a) reducing the need for anything to be discharged by the storm overflows;
 - (b) treating sewage that is discharged by the storm overflows;
 - (c) monitoring the quality of watercourses, bodies of water or water in underground strata into which the storm overflows discharge;
 - (d) obtaining information about the operation of the storm overflows.
- (5) When preparing the plan the Secretary of State must consult—
 - (a) the Environment Agency,
 - (b) the Authority,
 - (c) the Council,
 - (d) Natural England,
 - (e) sewerage undertakers whose area is wholly or mainly in England, or persons representing them, and
 - (f) such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must publish the plan before 1 September 2022.
- (7) The Secretary of State may at any time revise the plan, having consulted the persons referred to in subsection (5), and must publish any revised version.
- (8) The plan, and any revised version of it, must be laid before Parliament once it is published.

141B Progress reports on storm overflow discharge reduction plan

- (1) The Secretary of State must publish reports (“progress reports”) relating to the plan under section 141A.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) A progress report is to contain the Secretary of State’s assessment of—
 - (a) the progress made, during the period to which the report relates, in implementing the proposals in the plan (or any revised version of it), and
 - (b) the effect of that progress on the matters referred to in section 141A(1)(a) and (b).
- (3) The first progress report must relate to the period of three years beginning with the day on which the plan under section 141A is first published.
- (4) Subsequent progress reports must relate to successive periods of five years after the period referred to in subsection (3).
- (5) A progress report must be published within 12 weeks following the last day of the period to which it relates.
- (6) A progress report must be laid before Parliament once it is published.

141C Annual reports on discharges from storm overflows

- (1) A sewerage undertaker whose area is wholly or mainly in England must publish annual reports in relation to the undertaker’s storm overflows (“storm overflow reports”).
- (2) A storm overflow report must specify, for each of the sewerage undertaker’s storm overflows—
 - (a) the location of the storm overflow;
 - (b) the watercourse, body of water or underground strata into which the storm overflow discharges;
 - (c) the frequency and duration of discharges from the storm overflow in the period to which the report relates;
 - (d) where the information is available, the volume of each discharge in that period;
 - (e) information on any investigations that have taken place or improvement works that have been undertaken in relation to the storm overflow during that period.
- (3) Storm overflow reports are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by a sewerage undertaker before 1 April in the year after the calendar year to which it relates.
- (5) A storm overflow report must—
 - (a) be in a form which allows the public readily to understand the information contained in the report, and
 - (b) be published in a way which makes the report readily accessible to the public.
- (6) The duties of a sewerage undertaker under this section are enforceable under section 18 by—
 - (a) the Secretary of State, or
 - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.

Status: This version of this Act contains provisions that are prospective.

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141D Environment Agency reports

- (1) The Environment Agency must publish annual reports in relation to the operation of storm overflows of sewerage undertakers whose area is wholly or mainly in England.
- (2) A report under this section must specify—
 - (a) the location of the storm overflows;
 - (b) the watercourse, body of water or underground strata into which the storm overflows discharge;
 - (c) the frequency and duration of discharges from the storm overflows in the period to which the report relates;
 - (d) where the information is available, the volume of each discharge in that period.
- (3) Reports under this section are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by the Environment Agency —
 - (a) before 1 April in the year after the calendar year to which it relates, and
 - (b) in such manner as the Environment Agency thinks fit.

141DB Monitoring quality of water potentially affected by discharges from storm overflows and sewage disposal works

- (1) A sewerage undertaker whose area is wholly or mainly in England must continuously monitor the quality of water upstream and downstream of an asset within subsection (2) for the purpose of obtaining the information referred to in subsection (3).
- (2) The assets referred to in subsection (1) are—
 - (a) a storm overflow of the sewerage undertaker, and
 - (b) sewage disposal works comprised in the sewerage system of the sewerage undertaker,where the storm overflow or works discharge into a watercourse.
- (3) The information referred to in subsection (1) is information as to the quality of the water by reference to—
 - (a) levels of dissolved oxygen,
 - (b) temperature and pH values,
 - (c) turbidity,
 - (d) levels of ammonia, and
 - (e) anything else specified in regulations made by the Secretary of State.
- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by—
 - (a) the Secretary of State, or
 - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (5) The Secretary of State may by regulations make —
 - (a) provision as how the duty under subsection (1) is to be carried out (for example, provision as to the type of monitor to be used and where monitors must be placed);

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- (b) provision for exceptions from the duty in subsection (1) (for example, by reference to descriptions of asset, frequency of discharge from an asset or the level of risk to water quality);
 - (c) provision for the publication by sewerage undertakers of information obtained pursuant to subsection (1).
- (6) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) The Secretary of State may not make regulations under this section unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.]

Textual Amendments

F1196S. 141DB inserted (3.11.2023 for specified purposes) by [Environment Act 2021 \(c. 30\)](#), ss. **82(1)**, **147(3)** (with s. 144); S.I. 2023/1170, reg. 2(a)(i)

141E Interpretation of Chapter 4

- (1) In this Chapter, references to a storm overflow of a sewerage undertaker are to any structure or apparatus—
- (a) which is comprised in the sewerage system of the sewerage undertaker, and
 - (b) which, when the capacity of other parts of the system downstream or of storage tanks at sewage disposal works is exceeded, relieves them by discharging their excess contents into inland waters, underground strata or the sea.
- (2) References in this Chapter to discharges from a storm overflow do not include discharges occurring as a result of—
- (a) electrical power failure at sewage disposal works,
 - (b) mechanical breakdown at sewage disposal works,
 - (c) rising main failure, or
 - (d) blockage of any part of the sewerage system downstream of the storm overflow.
- (3) Section 17BA(7) (meaning of sewerage system of a sewerage undertaker) applies for the purposes of subsection (1).]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

PART V

FINANCIAL PROVISIONS

CHAPTER I

CHARGES

Manner of fixing charges

142 Powers of undertakers to charge.

- (1) Subject to the following provisions of this Chapter, the powers of every relevant undertaker shall include power—
- (a) to fix charges for any services provided in the course of carrying out its functions and, in the case of a sewerage undertaker, charges to be paid in connection with the carrying out of its trade effluent functions; and
 - (b) to demand and recover charges fixed under this section from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions.

- (2) [^{F1197}Subject to subsections (2A), (3) and (3A)] below, the powers conferred by subsection (1) above shall be exercisable—
- (a) by or in accordance with a charges scheme under section 143 below; or
 - (b) by or in accordance with agreements with the persons to be charged.

- [^{F1198}(2A) Paragraph (b) of subsection (2) above shall not have effect in relation to—
- (a) charges for the supply of water to a dwelling, or
 - (b) charges for the provision of sewerage services in respect of a dwelling,
- but this subsection does not affect any agreement made before the commencement of section 3 of the Water Industry Act 1999.

- ^{F1198}(2B) In subsection (2A) above, “dwelling” has the meaning given by paragraph 1(2) of Schedule 4A to this Act.]

- (3) Paragraph (b) of subsection (2) above shall have effect in relation to the exercise of powers with respect to charges in connection with the carrying out of a sewerage undertaker’s trade effluent functions only in so far as provision for the fixing, demanding or recovery of such charges may be contained in an agreement entered into in accordance with section 129 above.

- ^{F1199}[(3A) The power of a sewerage undertaker to charge, by virtue of subsection (1) above, for any services provided in the course of carrying out its duty under section 101A(1) above shall be exercisable only by or in accordance with a charges scheme under section 143 below.]

- (4) Except in so far as this Chapter otherwise provides, a relevant undertaker may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to the undertaker to be appropriate.

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- (5) The powers in relation to which this section has effect shall not be exercised so as to contravene any local statutory provision which expressly provides that no charge shall be made for a particular service.
- (6) Nothing in subsections (1) to (5) above or in any charges scheme under section 143 below shall affect any power of a relevant undertaker to fix charges under any power conferred otherwise than by virtue of this Chapter.
- [^{F1200}(6A) If an undertaker makes an agreement that falls within subsection (2)(b), it must notify the Authority of the provisions of the agreement.
- (6B) The requirement in subsection (6A) is enforceable by the Authority under section 18.]
- (7) References in this section to a sewerage undertaker’s trade effluent functions are references to its functions under Chapter III of Part IV of this Act.

Textual Amendments

F1197 Words in s. 142(2) substituted (1.4.2000) by 1999 c. 9, s. 3(1); S.I. 1999/3440, art. 3

F1198 S. 142(2A)(2B) inserted (1.4.2000) by 1999 c. 9, s. 3(1); S.I. 1999/3440, art. 3

F1199 S. 142(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 114(1)(2) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

F1200 S. 142(6A)(6B) inserted (14.7.2014) by Water Act 2014 (c. 21), ss. 33(2), 94(2)(h)

Modifications etc. (not altering text)

C266 S. 142 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), Sch. 1 para. 11(1) (with reg. 1(1)(c))

143 Charges schemes.

- (1) A relevant undertaker may make a scheme (“a charges scheme”) which [^{F1201}has effect in relation to a specified period of twelve months and]does any one or more of the following, that is to say—
- (a) fixes the charges to be paid for any services provided by the undertaker in the course of carrying out its functions;
 - (b) in the case of a sewerage undertaker, requires such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme—
 - (i) a notice containing an application for a consent is served on the undertaker under section 119 above;
 - (ii) such a consent as is necessary for the purposes of Chapter III of Part IV of this Act is given by the undertaker; or
 - (iii) a discharge is made in pursuance of such a consent;
 and
 - (c) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.
- (2) The persons who may be required by a charges scheme to pay any charge fixed by virtue of subsection (1)(b) above shall be the person who serves the notice, the person to whom the consent is given or, as the case may be, any person who makes a discharge

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in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

- (3) A charges scheme which requires the payment of charges where a discharge has been made in pursuance of such a consent as is mentioned in subsection (1)(b) above may impose—
- (a) a single charge in respect of the whole period for which the consent is in force;
 - (b) separate charges in respect of different parts of that period; or
 - (c) both such a single charge and such separate charges.
- [^{F1202}(3A) A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker's costs of providing a sewer by virtue of its duty under section 101A(1) above, causes those costs to be borne by the undertaker's customers generally; and a sewerage undertaker's duty under this subsection shall be enforceable under section 18 above—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.]
- (4) A charges scheme may—
- (a) make different provision for different cases, including different provision in relation to different circumstances or localities; and
 - (b) contain supplemental, consequential and transitional provision for the purposes of the scheme;
- and such a scheme may revoke or amend a previous charges scheme.
- (5) Nothing in any charges scheme shall affect—
- (a) any power of a relevant undertaker [^{F1203}in a case not falling within section 142(2A) above]to enter into such an agreement with any person in any particular case as determines the charges to be made for the services provided to that person by the undertaker; or
 - (b) the power of a sewerage undertaker to enter into any agreement under section 129 above on terms that provide for the making of payments to the undertaker.
- [^{F1204}(6) If the Authority considers that a relevant undertaker's charges scheme does not comply with—
- (a) subsection (2), (3) or (5),
 - (b) regulations under section 143A,
 - (c) rules under section 143B, or
 - (d) section 144A(9), (10) or (11)(a),
- the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction.
- (6A) The Authority must issue rules (and, if it revises rules it has issued, must issue revised rules) about consulting the Council about proposed charges schemes.
- (6B) The rules must require a relevant undertaker that proposes to make a charges scheme to consult the Council about its proposed scheme.
- (6C) If the Authority considers that a relevant undertaker has not complied with those rules, it may give the undertaker a direction to do, or not to do, a thing specified in the direction.

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(6D) It is the duty of a relevant undertaker to comply with a direction under subsection (6) or (6C), and this duty is enforceable by the Authority under section 18.]

Textual Amendments

F1201 Words in s. 143(1) inserted (23.12.1999) by 1999 c. 9, s. 4(2); S.I. 1999/3440, art. 2

F1202 S. 143(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 114(1)(2) (with ss. 6(6), 115, 117); S.I. 1996/186, art. 3

F1203 Words in s. 143(5)(a) inserted (1.4.2000) by 1999 c. 9, s. 3(2); S.I. 1999/3440, art. 3

F1204 S. 143(6)-(6D) substituted for s. 143(6)-(9) (1.11.2015) by Water Act 2014 (c. 21), ss. 16(1), 94(3); S.I. 2015/1469, art. 4(a) (with art. 5(4)(5))

Modifications etc. (not altering text)

C267 S. 143 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), Sch. 1 para. 11(2) (with reg. 1(1)(c)) (as amended (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), 30(12)(b))

^{F1205} 143 Regulations as to provisions to be included in charges schemes.

- (1) The provisions of any charges scheme under section 143 above must comply with any requirements prescribed by the Secretary of State by regulations.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—
 - (a) prescribe items with respect to which a consumer is, or is not, to be liable to pay a charge;
 - (b) make provision as to the matters by reference to which charges may be fixed and as to methods and principles to be adopted in calculating and imposing charges;
 - (c) require alternative bases of charging to be made available to consumers; and
 - (d) require special provision, including exemption from specified charges, to be made for the purpose of assisting individuals who are or would be liable to pay any charges and who fall within any class of individuals appearing to the Secretary of State to require special provision.
- (3) Regulations under this section imposing requirements for the purpose mentioned in subsection (2)(d) may—
 - (a) prescribe the classes of persons for whom special provision is to be made in relation to any premises by reference to matters such as age, ill-health or disability, the age, ill-health or disability of any of their dependants or of any other persons who have their homes in the premises, or their financial circumstances;
 - (b) make provision as to the method by which a person may establish his entitlement to assistance under the regulations; and
 - (c) make provision as to responsibility for costs incurred for the purpose of establishing that entitlement.
- (4) The power to make regulations under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.]

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Textual Amendments

F1205S. 143A inserted (30.6.1999 for certain purposes and 23.12.1999 otherwise) by ss. 5, 17(2); [S.I. 1999/3440](#), [art. 2](#)

Modifications etc. (not altering text)

C268 S. 143A: certain functions transferred to the National Assembly for Wales (15.11.1999) by [S.I. 1999/2787](#), [art. 3](#)

[^{F1206}143] **Rules about charges schemes**

- (1) The Authority may issue rules about charges schemes under section 143.
- (2) Rules under this section may in particular—
 - (a) make provision about the types of charges that may be imposed;
 - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
 - (c) make provision about the principles for determining what types of charges may or may not be imposed;
 - (d) make provision about principles for determining the amount of any charge that may be imposed;
 - (e) require particular schemes of charges to be available in specified cases;
 - (f) make provision about the timing of payment of charges;
 - (g) require charges schemes to be published;
 - (h) make provision about how charges schemes are to be published.
- (3) The rules may provide for the reduction of charges under a charges scheme where conditions specified by the rules are satisfied.
- (4) Rules made by virtue of subsection (3) may in particular specify conditions about—
 - (a) taking steps for the purpose of reducing or managing water consumption;
 - (b) taking steps for the purpose of reducing or managing the discharge of matter from premises;
 - (c) taking steps for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (5) The provisions of charges schemes must comply with rules issued under this section.
- (6) The rules may make different provision for different cases, including different provision in relation to different, or different descriptions of, persons, circumstances or localities.
- (7) The power to make rules under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
 - (a) guidance is issued under section 143E, and

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- (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of their revisions to charges schemes under section 143 made before the revised rules come into effect.

Textual Amendments

F1206Ss. 143B-143E inserted (15.7.2015 for the insertion of s. 143C(1)-(7), 1.11.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 16(2), 94(3)**; S.I. 2015/1469, arts. 2(a), 4(a) (with art. 5(4)(5))

Modifications etc. (not altering text)

C269 S. 143B applied (with modifications) by S.I. 2013/1582, Sch. 11(2A) (as inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(d)**)

143C Rules under section 143B: procedure

- (1) The Authority must have regard to guidance issued under section 143E in making rules under section 143B (as well as to any guidance issued under section 43 or 44 of the Flood and Water Management Act 2010).
- (2) Before issuing rules under section 143B, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any relevant undertakers likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 143B prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 143D.

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Textual Amendments

F1206Ss. 143B-143E inserted (15.7.2015 for the insertion of s. 143C(1)-(7), 1.11.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 16(2)**, 94(3); S.I. 2015/1469, arts. 2(a), 4(a) (with art. 5(4)(5))

Modifications etc. (not altering text)

C270 S. 143C applied (with modifications) by S.I. 2013/1582, Sch. 11(2B) (as inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(d)**)

143D Rules under section 143B: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 143B and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 143C does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 143C.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1206Ss. 143B-143E inserted (15.7.2015 for the insertion of s. 143C(1)-(7), 1.11.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 16(2)**, 94(3); S.I. 2015/1469, arts. 2(a), 4(a) (with art. 5(4)(5))

Modifications etc. (not altering text)

C271 S. 143D applied (with modifications) by S.I. 2013/1582, Sch. 11(2C) (as inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(d)**)

143E Rules under section 143B: guidance

- (1) The Minister may issue guidance as to the content of rules under section 143B.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.]

Textual Amendments

F1206Ss. 143B-143E inserted (15.7.2015 for the insertion of s. 143C(1)-(7), 1.11.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 16(2)**, 94(3); S.I. 2015/1469, arts. 2(a), 4(a) (with art. 5(4)(5))

Modifications etc. (not altering text)

C272 S. 143E applied (with modifications) by S.I. 2013/1582, Sch. 11(2D) (as inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(d)**)

144 Liability of occupiers etc. for charges.

- (1) Subject to the following provisions of this section and except in so far as provision to the contrary is made by any agreement to which the undertaker is a party—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) supplies of water provided by a water undertaker shall be treated for the purposes of this Chapter as services provided to the occupiers for the time being of any premises supplied; and
 - (b) sewerage services provided by a sewerage undertaker shall be treated for the purposes of this Chapter as provided to the occupiers for the time being of any premises which—
 - (i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water or surface water or both; or
 - (ii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.
- (2) Subject to subsection (3) below, charges which, under the preceding provisions of this Chapter, are fixed in relation to any premises by reference to volume may be imposed so that a person is made liable in relation to those premises to pay charges for services provided by a relevant undertaker after that person has ceased to be the occupier of the premises.
- (3) A person shall not be made liable by virtue of subsection (2) above for any charges fixed in relation to any premises by any relevant undertaker, except where—
 - (a) he fails to inform the undertaker of the ending of his occupation of the premises at least two working days before he ceases to occupy them; and
 - (b) the charges are in respect of a period ending no later than with the first relevant day.
- (4) For the purposes of subsection (3) above, “the first relevant day”, in relation to a case in which a person has ceased to be the occupier of any premises in relation to which charges are fixed by a relevant undertaker, means whichever of the following first occurs after he ceases to occupy the premises, that is to say—
 - (a) where that person informs the undertaker of the ending of his occupation of the premises less than two working days before, or at any time after, he ceases to occupy them, the twenty-eighth day after he so informs the undertaker;
 - (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
 - (c) any day on which any other person informs the undertaker that he has become the new occupier of the premises.
- (5) Where—
 - (a) any person who is the occupier of any premises to which a supply of water is provided by a water undertaker has served notice on the undertaker for the purposes of section 62 above; and
 - (b) that notice is given otherwise than in connection with that person’s ceasing to be the occupier of the premises in a case in which provision is made by virtue of subsection (2) above for a person who has ceased to be the occupier of the premises to be made liable for any charges,then, notwithstanding that that person continues to be the occupier of those premises, he shall not be liable to the undertaker (otherwise than in pursuance of a demand for a supply made since the service of the notice) for any charges in respect of any supply of water to those premises after the appropriate time.
- (6) In subsection (5) above “the appropriate time”, in relation to a case in which a notice has been served for the purposes of section 62 above, means whichever is the later of—

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Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) the expiry of the notice; and
 - (b) the end of the period of two working days beginning with the service of the notice.
- (7) In this section any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on—
- (a) a Saturday or Sunday; or
 - (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the ^{M46}Banking and Financial Dealings Act 1971.
- (8) Where, in the case of any premises—
- (a) the person who was liable, immediately before 1st September 1989, to pay charges in respect of a supply of water to those premises was the owner of those premises, rather than the occupier;
 - (b) that person was so liable (under section 54 of Schedule 3 to the ^{M47}Water Act 1945 or any other local statutory provision) otherwise than by virtue of an agreement; and
 - (c) the person who was in fact the occupier of the premises on that date has not ceased to be the occupier before the coming into force of this Act,
- then the person who is the owner from time to time of those premises shall continue, until the person mentioned in paragraph (c) above does cease to be the occupier of the premises, to be the person liable and, accordingly, shall be treated for the purposes of this section as if he were the occupier of the premises.

Modifications etc. (not altering text)

C273 S. 144 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 11(3)** (with reg. 1(1)(c)) (as amended (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(e)**)

Marginal Citations

M46 1971 c. 80.

M47 1945 c. 42.

^{F1207}Rules about undertakers' charges

Textual Amendments

F1207 [Ss. 144ZA-144ZD](#) and cross-heading inserted (6.4.2015 for the insertion of s. 144ZD, 15.7.2015 for the insertion of s. 144ZB for specified purposes, 1.4.2016 for E. in so far as not already in force, 15.12.2017 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 17**, 94(3); [S.I. 2015/773](#), art. 2(1)(b); [S.I. 2015/1469](#), art. 2(b) (with art. 5(1)(5)); [S.I. 2016/465](#), art. 2(d) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16); [S.I. 2017/1288](#), art. 2(a)

144ZA Rules about charges for connections etc

- (1) The Authority may issue rules about charges that may be imposed by a relevant undertaker under—

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- (a) section 42(2)(a) (provision of new water main);
 - (b) section 45(6) (connections with water main);
 - (c) section 46(7)(b) (ancillary works for domestic connection);
 - (d) section 99(2)(a) or (2A)(a) (provision of public sewer or lateral drain);
 - (e) section 101B(3) (lateral drains);
 - (f) section 107(3)(b)(i) (communications with public sewers);
 - (g) section 185(5) (moving of pipes etc).
- (2) Rules under this section may in particular—
- (a) make provision about the types of charges that may be imposed;
 - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
 - (c) make provision about the principles for determining what types of charges may or may not be imposed;
 - (d) make provision about the principles for determining the amount of any charge that may be imposed;
 - (e) provide for charges to be payable over a period;
 - (f) make provision about publication of the charges that may be imposed.
- (3) The charges that may be imposed by a water undertaker under section 42(2)(a) for the provision of a new water main may include charges for—
- (a) providing such other infrastructure, including other water mains, as it is necessary to provide in consequence of the provision of the new water main;
 - (b) doing works to increase the capacity of an existing water main, or procuring the doing of such works, where the use of that increased capacity is a consequence of the provision of the new water main.
- (4) The charges that may be imposed by a sewerage undertaker under section 99(2)(a) for the provision of a new public sewer may include charges for—
- (a) providing such other infrastructure, including other public sewers, as it is necessary to provide in consequence of the provision of the new public sewer;
 - (b) doing works to increase the capacity of an existing public sewer, where the use of that increased capacity is a consequence of the provision of the new public sewer.
- (5) The rules may make provision as to—
- (a) the amount of security that may be required by a relevant undertaker under section 42(1)(b), 47(2)(a), 99(1)(b), 101B(3A), 107(3)(b)(ii) or 185(4);
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a relevant undertaker by way of security.
- (6) If the Authority considers that a relevant undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction.
- (7) It is the duty of a relevant undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make—
- (a) different provision for different persons or different descriptions of person;

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- (b) different provision for different powers to impose charges or different descriptions of such powers.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
 - (a) guidance is issued under section 144ZD, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

144ZB Rules under section 144ZA: procedure

- (1) The Authority must have regard to guidance issued under section 144ZD in making rules under section 144ZA.
- (2) Before issuing rules under section 144ZA, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any relevant undertakers likely to be affected by the rules;
 - (e) any water supply or sewerage licensees likely to be affected by the rules;
 - (f) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 144ZA prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 144ZC.

144ZC Rules under section 144ZA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 144ZA and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.

Status: This version of this Act contains provisions that are prospective.

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- (2) Section 144ZB does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 144ZB.

144ZD Rules under section 144ZA: guidance

- (1) The Minister must issue guidance as to the content of rules under section 144ZA.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—

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- (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
- (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.]

[^{F1208}General guidance on charges

Textual Amendments

F1208Ss. 144ZE, 144ZF inserted (1.1.2015 for W. for specified purposes, 6.4.2015 for W. for specified purposes, 1.4.2016 for E. in so far as not already in force, 15.12.2017 for W. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. 38, 94(3); S.I. 2014/3320, art. 2(1)(b) (with art. 3); S.I. 2015/773, art. 2(3)(b) (with art. 6); S.I. 2016/465, art. 2(h) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16); S.I. 2017/1288, art. 2(b)

144ZE General guidance on charges

- (1) The Minister must issue guidance about the principles to be applied by the Authority in determining the provisions of—
 - (a) rules under section 66E;
 - (b) rules under section 117I;
 - (c) rules under section 143B.
- (2) The Minister may issue guidance about the principles to be applied by the Authority in determining the provisions of—
 - (a) rules under section 40E;
 - (b) rules under section 51CD;
 - (c) rules issued in accordance with regulations under section 66M;
 - (d) rules under section 105ZF;
 - (e) rules under section 110F;
 - (f) rules under section 144ZA.
- (3) Guidance under subsection (1) or (2) may include other guidance about the provisions of any of the rules mentioned in subsection (1) or (2).
- (4) The Minister may issue guidance about the principles to be applied by the Authority in determining the contents of other documents produced by the Authority about charges that may be imposed by relevant undertakers or water supply or sewerage licensees.
- (5) Guidance under subsection (4) may include other guidance about the contents of the documents mentioned in subsection (4).
- (6) The Authority must have regard to guidance issued under this section when making rules to which the guidance relates (as well as to any guidance relating to those rules issued under another provision of this Act).
- (7) If—
 - (a) the Minister issues guidance under this section in respect of rules made under a particular provision, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise rules made by it under that provision,

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the Authority must issue revised rules under that provision.

- (8) Before issuing guidance under this section, the Minister must—
- (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft;
 - (c) comply with the requirements of section 144ZF.
- (9) The relevant persons are—
- (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any relevant undertakers likely to be affected by the proposed guidance;
 - (e) any water supply licensees or sewerage licensees likely to be affected by the proposed guidance;
 - (f) such other persons as the Minister thinks appropriate.
- (10) The Minister may from time to time revise guidance issued under this section and issue revised guidance.
- (11) Subsections (8) and (9) apply to revised guidance as they apply to the original guidance.
- (12) The Minister must arrange for the publication of guidance issued under this section.
- (13) In this section “the Minister” means—
- (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.

Modifications etc. (not altering text)

C274 S. 144ZE applied (with modifications) by S.I. 2013/1582, Sch. 11(3A) (as inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(f)**)

144ZF Guidance under section 144ZE: procedure

- (1) Before issuing guidance under section 144ZE, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.
- (2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with—
 - (a) the day on which the draft is laid before both Houses of Parliament, or
 - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.
- (4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued, or

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- (b) both Houses are adjourned for more than four days.
- (5) Before issuing guidance under section 144ZE, the Welsh Ministers must lay a draft of the proposed guidance before the Assembly.
- (6) The Welsh Ministers must not issue the guidance until after the period of 40 days beginning with the day on which the draft is laid before the Assembly.
- (7) If before the end of that period the Assembly resolves that the guidance should not be issued, the Welsh Ministers may not issue it.
- (8) In reckoning any period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.
- (9) Nothing in this section prevents the Secretary of State and the Welsh Ministers issuing a single document containing guidance under section 144ZE, and preparing draft guidance accordingly.]

Modifications etc. (not altering text)

C275 S. 144ZF applied (with modifications) by S.I. 2013/1582, Sch. 11(3B) (as inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **30(12)(f)**)

^{F1209} Restrictions on charging

Textual Amendments

F1209S. 144A and crossheading preceding it inserted (1.4.2000) by [1999 c. 9, s. 6; S.I. 1999/3440, art. 3](#)

^{F1210}144A **Right of consumer to elect for charging by reference to volume.**

- (1) Where—
- (a) water is supplied by a water undertaker to premises in which, or in any part of which, a person has his home, and
 - (b) charges in respect of those premises are fixed by virtue of any charges scheme under section 143 above without reference to the volume of water supplied,
- the consumer may at any time give the undertaker a notice (in this section referred to as a “measured charges notice”) requiring the undertaker to fix charges in respect of the supply by reference to the volume of water supplied.
- (2) Subject to subsection (3) below, a water undertaker must give effect to a measured charges notice before the end of a period determined in accordance with the undertaker’s charges scheme.
- (3) A water undertaker is not obliged to give effect to a measured charges notice if—
- (a) it is not reasonably practicable to fix charges in respect of the premises by reference to the volume of water supplied, or
 - (b) to do so would involve the incurring by the undertaker of unreasonable expense.

Status: This version of this Act contains provisions that are prospective.

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- (4) Any dispute between a water undertaker and a consumer as to the application of paragraph (a) or (b) of subsection (3) above may be referred to the Director for determination under section 30A above by either party to the dispute.
- (5) Where—
- (a) either the conditions in subsection (6) below or the conditions in subsection (7) below are satisfied in relation to premises in respect of which a measured charges notice has been given, and
 - (b) such other conditions as may be prescribed are also satisfied in relation to the premises,
- the consumer may, at any time before the end of the period of twelve months beginning with the day on which the supply began to be measured by volume for charging purposes, revoke the measured charges notice by notice to the water undertaker.
- (6) The conditions in this subsection are—
- (a) that the person who gave the measured charges notice had not given any previous measured charges notice in relation to the premises, and
 - (b) that he remains the consumer in respect of the premises.
- (7) The conditions in this subsection are—
- (a) that the person who gave the measured charges notice has, since the notice was given, ceased to be the consumer in respect of the premises,
 - (b) that neither he nor the person who has become the consumer had given any previous measured charges notice in respect of the premises, and
 - (c) that any person who was in occupation of the premises when the measured charges notice was given remains in occupation.
- (8) Where a measured charges notice has been revoked under subsection (5) above, the water undertaker must—
- (a) if reasonably practicable, before the end of the period of twelve months referred to in that subsection, or
 - (b) in any other case, as soon as reasonably practicable after the end of that period, revert to fixing the charges for the supply in respect of the premises without reference to the volume of water supplied.
- (9) If and so long as a water undertaker is obliged under subsection (2) above to fix charges for the supply of water in respect of any premises by reference to the volume of water supplied, a sewerage undertaker is under a corresponding obligation to fix charges in respect of foul water drainage provided by the sewerage undertaker in respect of those premises by reference to that volume.
- (10) If a water undertaker is obliged under subsection (8) above to fix charges without reference to volume, a sewerage undertaker is under a corresponding obligation in respect of charges for services provided by it.
- (11) Any charges scheme under section 143 above—
- (a) must contain provision for determining the period mentioned in subsection (2) above, and
 - (b) shall have effect subject to the preceding provisions of this section.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1210S. 144A and crossheading preceding it inserted (1.4.2000) by [1999 c. 9, s. 6](#); [S.I. 1999/3440, art. 3](#)

Modifications etc. (not altering text)

C276 S. 144A: certain functions transferred to the National Assembly for Wales (15.11.1999) by [S.I. 1999/2787, art. 3](#)

C277 S. 144A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 11\(4\)](#) (with reg. 1(1)(c))

Restriction on undertakers' power to require fixing of charges by reference to volume.

- (1) Subsection (2) below applies where—
- (a) water is supplied to any premises in which, or in any part of which, a person has his home,
 - (b) charges in respect of those premises have previously been fixed without reference to volume, and
 - (c) such conditions as may be prescribed are satisfied in relation to the premises.
- (2) Where this subsection applies, a relevant undertaker may not by virtue of any charges scheme under section 143 above begin to fix the charges in respect of those premises by reference to volume unless either—
- (a) the consumer—
 - (i) has given the undertaker a measured charges notice under section 144A above which has not been revoked under that section, or
 - (ii) has consented to the charges in respect of the premises being so fixed and has not revoked that consent under section 144A, or
 - (b) there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer.
- (3) A change in the persons occupying any premises does not constitute a change in the occupation of the premises for the purposes of subsection (2)(b) above if any person who was in occupation of the premises before the change remains in occupation after the change.
- (4) Where a consumer gives consent for the purposes of subsection (2)(a)(ii) above in relation to premises in which, or in any part of which, a person has his home, he shall be treated for the purposes of subsections (5) to (8) of section 144A above as having given a measured charges notice under that section.]]

Textual Amendments

F1211S. 144B inserted (30.6.1999 for certain purposes and 1.4.2000 otherwise) by [1999 c. 9, ss. 7, 17\(2\)\(f\)](#); [S.I. 1999/3440, 3](#)

Modifications etc. (not altering text)

C278 S. 144B: certain function transferred to the National Assembly for Wales (15.11.1999) by [S.I. 1999/2787, art. 3](#)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F1212}144C] Non-owner occupiers

- (1) This section applies to residential premises which are occupied by one or more persons other than the owner (and not by the owner).
- (2) The owner must arrange for the undertaker to be given information about the occupiers.
- (3) If the owner fails to comply with subsection (2), the occupiers' liability for charges under this Chapter becomes shared jointly and severally with the owner.
- (4) The Minister may make regulations—
 - (a) about the information to be given under subsection (2);
 - (b) about timing and procedure in connection with subsection (2) or (3).
- (5) The Minister may make regulations exempting owners from liability under subsection (3) where—
 - (a) information supplied by them is false or incomplete, but
 - (b) they have taken steps specified by the regulations to ensure its accuracy or completeness.
- (6) “Residential premises” means premises that are—
 - (a) occupied by one or more persons as a home (but not necessarily as their only or main home), and
 - (b) a “dwelling”, a “house in multiple occupation” or “accommodation for the elderly” within the meaning of paragraphs 1 to 3 of Schedule 4A.
- (7) Where a person is the “owner” of premises by virtue of being agent or trustee (see section 219(1)) the duty and liability under this section attach to the principal (and not to the agent or trustee).
- (8) “The Minister” means—
 - (a) the Secretary of State, in relation to services provided by an undertaker whose area is wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to services provided by an undertaker whose area is wholly or mainly in Wales (for which purpose section 213 applies with references to the Secretary of State and either House of Parliament being taken as references to the Welsh Ministers and the National Assembly for Wales).]

Textual Amendments

F1212S. 144C inserted (1.10.2010 for specified purposes, 1.1.2015 for W. in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\), ss. 45\(1\), 49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); [S.I. 2010/2169](#), art. 4; [S.I. 2014/3155](#), art. 2

General restrictions on charging

[^{F1213}145]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1213S. 145 and the heading preceding it repealed (30.6.1999) by 1999 c. 9, ss. 8, 15(2), 17(2), Sch. 4 Pt. I

146 Connection charges etc. and charges for highway drainage.

- (1) Subject to subsection (2) below, nothing in this Chapter or in any other enactment shall entitle any relevant undertaker to fix, demand or recover an initial charge for its becoming, or for its taking steps for the purpose of becoming—
 - (a) the person who provides a supply of water for domestic purposes to any premises; or
 - (b) the person who provides sewerage services for the purposes of the drainage for domestic sewerage purposes of any premises.
 - (2) Subject to subsection (3) below, nothing in subsection (1) above or in any other enactment shall be construed as prohibiting the fixing, demand or recovery by a relevant undertaker of—
 - (a) a charge for the connection to a water supply of premises which have never at any previous time (whether before or after the coming into force of the restriction contained in this section) been connected to a supply of water provided for domestic purposes by a water undertaker or by any other authority or body which at that time provided supplies of water in the course of carrying out functions under any enactment; or
 - (b) a charge for the connection to a public sewer of premises which have never at any previous time (whether before or after the coming into force of the restriction contained in this section) been connected to a sewer used for the drainage for domestic sewerage purposes of those premises by a sewerage undertaker or by any other authority or body which at that time provided sewerage services in the course of carrying out functions under any enactment.
 - (3) Nothing in this Chapter or in any other enactment or in the terms of any agreement under section 104 above shall authorise a sewerage undertaker to require any payment to be made to the undertaker in respect of the making by the undertaker of any declaration of vesting under Chapter II of Part IV of this Act or in respect of any agreement to make such a declaration.
- [^{F1214}(3A) The reference in subsection (3) to an agreement under section 104 includes a reference to—
- (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
 - (b) an agreement which has been varied by order under section 105ZB(1).]
- (4) Nothing in this Chapter or in any other enactment shall authorise a sewerage undertaker [^{F1215}or a sewerage licensee] to require any payment to be made to the undertaker [^{F1216}or the licensee (as the case may be)] by a highway authority in respect of the drainage of any highway or the disposal of the contents of any drain or sewer used for draining any highway.
 - (5) The preceding provisions of this section, so far as they restrict the making of certain charges [^{F1217}by relevant undertakers] , shall be without prejudice—
 - (a) to enactments by virtue of which a relevant undertaker may recover expenses incurred by it in [^{F1218}, or charges imposed by it for,] carrying out works; and

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) to the power of any such undertaker, by virtue of section 142(4) above, to fix the amount of any of its other charges by reference to such matters as it thinks appropriate.
- (6) In this section “domestic sewerage purposes” has the same meaning as in Chapter II of Part IV of this Act.

Textual Amendments

- F1214**S. 146(3A) inserted (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 98\(2\)](#); S.I. 2017/462, art. 4(d)(iv) (as substituted by S.I. 2017/926, art. 2(2))
- F1215**Words in s. 146(4) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 98\(3\)\(a\)](#); S.I. 2017/462, art. 3(k)(bb)(xiv)
- F1216**Words in s. 146(4) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 98\(3\)\(b\)](#); S.I. 2017/462, art. 3(k)(bb)(xiv)
- F1217**Words in s. 146(5) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 98\(4\)](#); S.I. 2017/462, art. 3(k)(bb)(xiv)
- F1218**Words in s. 146(5)(a) inserted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), [ss. 19\(5\)](#), 94(3); S.I. 2017/462, art. 5(b) (with art. 14)

147 Charging for emergency use of water.

- (1) Notwithstanding anything [^{F1219}in section 38(2) of the Fire and Rescue Services Act 2004, or anything] in section 142 above or in any charges scheme under section 143 above or in any agreement as to charges in respect of any supply of water, no charge may be made by any water undertaker [^{F1220}or water supply licensee] in respect of—
 - (a) water taken for the purpose of extinguishing fires or taken by a [^{F1221}fire and rescue authority] for any other emergency purposes;
 - (b) water taken for the purpose of testing apparatus installed or equipment used for extinguishing fires or for the purpose of training persons for fire-fighting; or
 - (c) the availability of water for any purpose mentioned in paragraph (a) or (b) above.
- (2) This section shall not prevent the making of charges in respect of work carried out at the request of or for the benefit of any person receiving a supply of water for the purposes mentioned in paragraph (a) or (b) of subsection (1) above.
- (3) This section shall not have the effect, where any water is used or made available for any of the purposes mentioned in paragraph (a) or (b) of subsection (1) above, of requiring a reduction in the charges imposed in respect of the provision for other purposes of the supply from which that water is taken.
- (4) ^{F1222}

Textual Amendments

- F1219**Words in s. 147(1) inserted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), [ss. 53, 61](#), {[Sch. 1 para. 77\(a\)](#)}; S.I. 2004/2304, [art. 2\(2\)](#) (subject to savings in art. 3); S.I. 2004/2917, [art. 2](#)
- F1220**Words in s. 147(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 99](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(q\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F1221** Words in s. 147(1)(a) substituted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 53, 61, {Sch. 1 para. 77(b)}; [S.I. 2004/2304](#), [art. 2\(2\)](#) (subject to savings in [art. 3](#)); [S.I. 2004/2917](#), [art. 2](#)
- F1222** S. 147(4) repealed (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 54, 61, {Sch. 2}; [S.I. 2004/2304](#), [art. 2\(2\)](#) (subject to savings in [art. 3](#)); [S.I. 2004/2917](#), [art. 2](#)

Metering

148 Restriction on charging for metering works.

- (1) Subject to subsections (2) to (4) below and section 177 below, where any meter [^{F1223}capable of being used] in determining the amount of any charges is installed by or at the request of any relevant undertaker then, notwithstanding the provisions of any enactment or of any agreement to the contrary between the undertaker and any other person, the undertaker shall bear—
- (a) the expenses of installing and connecting the meter;
 - (b) any expenses incurred in maintaining, repairing, disconnecting or removing the meter in accordance with any requirements of the undertaker; and
 - (c) any expenses incurred in carrying out any works for purposes connected with the installation and connection of the meter or with the maintenance, repair, disconnection or removal of the meter in accordance with any such requirements.
- ^{F1224}[(1A) References in subsection (1) above to expenses include references to expenses incurred in meeting the needs of a disabled person.]
- (2) Subject to subsection (3) below, subsection (1) above shall not require any relevant undertaker to bear, or prevent any such undertaker from recovering from any other person—
- (a) any expenses incurred for the purpose of enabling a condition imposed by virtue of subsection (2)(c) or (d) of section 47 above to be satisfied;
 - (b) any sums which it is entitled to recover in pursuance of any terms or conditions determined under section 56 above;
 - ^{F1225}(c) in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any sums which it is entitled to recover from that person by virtue of section 64(3)(b) above;]
 - ^{F1226}(cc) any sums which it is entitled to recover under an agreement under section 66D [^{F1227}or 117E] above;]
 - (d) any expenses incurred in relation to a meter which is or is to be used in determining the amount of—
 - (i) any charges which are to be paid in connection with the carrying out of a sewerage undertaker's functions under Chapter III of Part IV of this Act; or
 - (ii) any charges provision for which is contained in an agreement entered into in accordance with section 129 above;
 - ^{F1225}(e) in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any expenses incurred in consequence of the exercise by the consumer of any option to be

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charged by the undertaker in relation to those premises by reference to volume rather than by reference to other matters.]

(3) For the purposes of subsection (2) above the expenses which an undertaker may require someone else to bear, or may recover from another, by virtue of that subsection shall not include any expenses incurred for the purpose of enabling conditions such as are mentioned in paragraph (a) of that subsection to be satisfied in a case in which the conditions could not have been imposed but for the exercise by the undertaker of its power by virtue of paragraph (a), (b), (d) or (e) of section 64(2) above to require the provision of a separate service pipe to any premises.

(4) The occupier of any premises where any relevant undertaker installs or has installed a meter shall in all cases bear so much of the expenses referred to in subsection (1) above as is attributable to compliance with a request made by him in accordance with any regulations under section 149 below for the positioning, in a place other than that reasonably proposed by the undertaker, either of the meter or of any pipe or apparatus installed for the purpose of facilitating the use of the meter.

^{F1228}[(4A) Subsection (4) above is subject to any regulations made by virtue of section 149(2) (aa) below.]

(5) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

(a) as to whether the undertaker or that other person should bear any expenses under this section; or

(b) as to the amount of any expenses to be borne by any person under this section, shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Director.

Textual Amendments

F1223 Words in s. 148(1) substituted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3**, Pt. I para. 1; S.I. 1999/3440, **art. 3**

F1224 S. 148(1A) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992** (c. 43), **s. 53(2)**;
Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F1225 S. 148(2)(c)(e) substituted (1.4.2000) by 1999 c. 9, **s. 9**; S.I. 1999/3440, **art. 3**

F1226 S. 148(2)(cc) inserted (1.12.2005) by **Water Act 2003** (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 33**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F1227 Words in s. 148(2)(cc) inserted (1.4.2017) by **Water Act 2014** (c. 21), s. 94(3), **Sch. 7 para. 100**; S.I. 2017/462, art. 3(k)(xv)

F1228 S. 148(4A) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992** (c. 43), **s. 53(3)**;
Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

149 Further provision relating to charging by volume.

(1) The Secretary of State may by regulations make such provision, supplementing—

(a) the provisions of this Chapter; and

(b) so far as they relate to works for purposes connected with the fixing of charges in relation to any premises by reference to volume, the provisions of Part VI of this Act,

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as he considers appropriate with respect to the installation of meters, with respect to the connection, disconnection, use, maintenance, authentication and testing of meters and with respect to any related matters.

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may—

(a) regulate the positioning, whether inside or outside the building or other premises [^{F1229}to which the meter relates], of any meter or of any pipes or apparatus appearing to any relevant undertaker to be required for the purpose of facilitating the use of any meter;

^{F1230}[(aa) require a relevant undertaker who, for the purpose of meeting the needs of a disabled person—

- (i) alters the position of any meter;
- (ii) installs an additional meter; or
- (iii) does any other work in connection with any meter,

to bear any expenses incurred by the undertaker in doing so;]

- (b) make any other provision which appears to the Secretary of State to be appropriate with respect to any such pipes or apparatus;
- (c) provide for a reading from a meter to be proved in such manner as may be prescribed and for a reading from a meter to be such evidence as may be prescribed of the volume of water supplied to, or of effluent discharged from, any premises;
- (d) fix the method of determining the amount of the charges to be paid where it appears that a meter has given, or may have given, an incorrect reading;
- (e) require a person who is not a relevant undertaker to pay the expenses incurred by such an undertaker in doing anything under the regulations or to pay contributions towards those expenses;
- (f) provide for the payment of compensation in respect of anything done by a relevant undertaker under the regulations;
- (g) require disputes arising under the regulations to be referred to arbitration;
- (h) repeal or amend any local statutory provision.

Textual Amendments

F1229 Words in s. 149(2)(a) substituted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. I para. 2**; S.I. 1999/3440, **art. 3**

F1230 S. 149(2)(aa) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43), s. 53(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

Modifications etc. (not altering text)

C279 S. 149 applied (with modifications) (01.12.1991) by **Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), Sch. 2 Pt. I para. 11(2)**.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Charging for services provided with the help of an undertaker

150 Fixing maximum charges for services provided with the help of undertakers' services.

(1) The Director may from time to time by order fix maximum charges which a person who is not a relevant undertaker may recover from another such person in respect of water supplies or sewerage services provided to that other person with the help of services provided by a relevant undertaker.

[^{F1231}(1A) This section does not apply to—

- (a) water supplies provided by a water supply licensee, or
- (b) sewerage services provided by a sewerage licensee,

to premises of customers in accordance with Chapter 1A of Part 2.]

(2) For the purposes of this section water supplies or sewerage services are provided to a person with the help of services provided by a relevant undertaker if—

- (a) a facility for that person to have access to a supply of water provided by a water undertaker in pipes, or to make use of sewerage services provided by a sewerage undertaker, is made available to that person otherwise than by the undertaker;
- (b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by a water undertaker; or
- (c) that person is provided with sewerage services by a person who, for the purpose of providing those services, makes use of sewerage services provided, directly or indirectly, by a sewerage undertaker.

[^{F1232}(2A) An order under this section may require the person providing the supplies or services to furnish the person who is provided with them with such information as may be specified or described in the order.

(2B) An order containing such a requirement may also provide that, in the event of the failure of the person providing the supplies or services to furnish that information, the maximum charges he is entitled to recover from the person provided with them in respect of those supplies or services shall be such as may be fixed by the order.]

(3) It shall be the duty of the Director to publish any order under this section in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(4) An order under this section may make different provision for different cases, including different provision in relation to different persons, circumstances or localities, and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.

(5) Where a person pays a charge in respect of anything to which an order under this section relates and

- [^{F1233}(a) the amount of the excess; and
- (b) if the order so provides, interest on that amount at a rate specified or described in the order,

shall be recoverable by that person from the person to whom he paid the charge.]

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Textual Amendments

- F1231**S. 150(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 101**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(r)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1232**S. 150(2A)(2B) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 59(2)**, 105(3); S.I. 2004/2528, **art. 2(i)**
- F1233**S. 150(5)(a)(b) substituted (1.10.2004) for words by [Water Act 2003 \(c. 37\)](#), **ss. 59(3)**, 105(3); S.I. 2004/2528, **art. 2(i)**

PROSPECTIVE

[150A ^{F1234} **Billing disputes.**

- (1) The Secretary of State may by regulations make provision for billing disputes to be referred to the Director for determination in accordance with the regulations.
- (2) In this section “billing dispute” means a dispute between a relevant undertaker and a customer concerning the amount of the charge which the undertaker is entitled to recover from the customer in connection with—
 - (a) the supply of water for domestic purposes, in the case of a water undertaker; and
 - (b) the provision of sewerage services other than by the carrying out of trade effluent functions, in the case of a sewerage undertaker.
- (3) Regulations under this section may only be made after consulting—
 - (a) the Director; and
 - (b) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations.
- (4) Regulations under this section may provide that, where a billing dispute is referred to the Director, he may either—
 - (a) determine the dispute, or
 - (b) appoint an arbitrator to determine it.
- (5) Any person determining any billing dispute in accordance with regulations under this section shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.
- (6) Regulations under this section may provide—
 - (a) that disputes may be referred to the Director under this section only by prescribed persons; and
 - (b) for any determination to be final and enforceable as if it were a judgment of [^{F1235}the county court] .
- (7) Except in such circumstances (if any) as may be prescribed—
 - (a) the Director or an arbitrator appointed by him shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court; and
 - (b) neither party to any billing dispute which has been referred to the Director for determination in accordance with regulations under this section shall

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commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations.

- (8) No relevant undertaker may commence proceedings before any court in respect of any charge in connection with the supply of water for domestic purposes or (as the case may be) the provision of sewerage services other than by the carrying out of trade effluent functions unless, not less than 28 days before doing so, the customer concerned was informed by it, in such form and manner as may be prescribed, of—
- (a) its intention to commence proceedings;
 - (b) the customer’s rights by virtue of this section; and
 - (c) such other matters (if any) as may be prescribed.
- (9) Where a dispute is referred to the Director in accordance with regulations made under this section, it shall be the duty of the undertaker concerned to give him such information as he may reasonably require for the purpose of assisting him in determining the dispute.
- (10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.
- (11) For the purposes of this section—
- “charge” means any charge fixed by a scheme made under section 143 above;
 - “customer” means any person to whom the relevant undertaker provides services;
- and references to a sewerage undertaker’s trade effluent functions are references to its functions under Chapter III of Part IV of this Act.]

Textual Amendments

F1234S. 150A inserted (prosp.) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [ss.36, 56\(2\)](#)

F1235Words in s. 150A(6) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954](#), [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), [arts. 3-11](#))

^{F1236} Interpretation of Chapter I

Textual Amendments

F1236S. 150B and crossheading preceding it inserted (1.4.2000) by [1999 c. 9](#), s. 15(1), [Sch. 3 Pt. I para. 3](#); [S.I. 1999/3440](#), [art. 3](#)

^{F1237}**150B**Meaning of “consumer” in Chapter I.

In this Chapter “consumer”—

- (a) in relation to the supply of water by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall, and

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- (b) in relation to the provision of sewerage services in respect of any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of those services would fall.]

Textual Amendments

F1237S. 150B and crossheading preceding it inserted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. 1 para. 3**; S.I. 1999/3440, **art. 3**

Modifications etc. (not altering text)

C280 S. 150B applied (with modifications) (28.6.2013) by **The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013** (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 11(5)** (with reg. 1(1)(c))

CHAPTER II

FINANCIAL ASSISTANCE FOR UNDERTAKERS

F1238 151

Textual Amendments

F1238S. 151 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 116**, **Sch. 24** (with ss. 7(6), 115, 117, **Sch. 23 para. 19**); S.I. 1996/186, **art. 3**

152 Grants for national security purposes.

- (1) The Secretary of State may, out of money provided by Parliament, make grants to relevant undertakers [^{F1239}, water supply licensees and sewerage licensees] for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with directions given under section 208 below in the interests of national security.
- (2) The approval of the Treasury shall be required for the making of grants under this section.

Textual Amendments

F1239 Words in s. 152(1) substituted (1.4.2016) by **Water Act 2014 (c. 21)**, s. 94(3), **Sch. 7 para. 102**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(r)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

Modifications etc. (not altering text)

C281 S. 152: certain functions exercisable concurrently with the Secretary of State (1.7.1999) by S.I. 1999/672, **art. 2**, **Sch. 1**

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

153 Government financial assistance where special administration orders made.

- (1) Where a special administration order is for the time being in force in relation to a company, the Secretary of State, may, with the consent of the Treasury—
- (a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;
 - ^[F1240](b) offer indemnities in respect of liabilities or loss incurred or sustained in the course of functions under the order.]
- ^[F1241](1A) An indemnity under subsection (1)(b) may be offered to—
- (a) the special administrator,
 - (b) an employee of the special administrator,
 - (c) a member or employee of a firm of which the special administrator is or was a member or employee (or a successor of that firm),
 - (d) a body corporate of which the special administrator is or was an employee, or
 - (e) an officer, employee or member of a body corporate within paragraph (d).]
- (2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company in relation to which a special administration order is in force at the time when the guarantee is given.
- (3) Without prejudice to any provision applied in relation to the company ^[F1242]by or under section 23] —
- (a) the terms and conditions on which a grant is made to any company under this section may require the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and
 - (b) any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest on the loans shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.
- ^[F1243](3A) Arrangements for a grant, loan or indemnity which are made while a special administration order is in force may continue to have effect after the order ceases to have effect.]
- (4) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.
- (5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

Textual Amendments

F1240S. 153(1)(b) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(2)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)

F1241S. 153(1A) inserted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(3)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F1242** Words in s. 153(3) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(4)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)
- F1243** S. 153(3A) inserted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(5)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)

154 Guarantees under section 153.

- (1) This section applies in relation to any guarantee given by the Secretary of State under section 153 above.
- (2) [^{F1244}As soon as is reasonably practicable] after a guarantee to which this section applies is given, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.
- (3) Where any sum is paid out for fulfilling a guarantee to which this section applies, the Secretary of State shall, as soon as [^{F1245}is reasonably practicable] after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is finally discharged), lay before each House of Parliament a statement relating to that sum.
- (4) Any sums required by the Secretary of State for fulfilling a guarantee to which this section applies shall be paid out of money provided by Parliament.
- (5) Without prejudice to any provision applied in relation to the relevant company [^{F1246}by or under section 23], if any sums are paid out in fulfilment of a guarantee to which this section applies, the relevant company shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—
 - (a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and
 - (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out;
 and the consent of the Treasury shall be required for the giving of a direction under this subsection.
- (6) Any sums received by the Secretary of State under subsection (5) above shall be paid into the Consolidated Fund.
- (7) In subsection (5) above “the relevant company” in relation to a guarantee, means the company which borrowed the sums in respect of which the guarantee was given.

Textual Amendments

- F1244** Words in s. 154(2) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(6)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)
- F1245** Words in s. 154(3) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(7)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)
- F1246** Words in s. 154(5) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 4(8)** (with s. 49(1)(6), Sch. 5 para. 4(9)); S.I. 2011/694, art. 3(j)

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^{F1247}154 Financial assistance to reduce charges

- (1) If the Secretary of State considers it desirable to do so, the Secretary of State may give financial assistance for the purpose in subsection (2) to—
 - (a) an English undertaker,^{F1248} ...
 - (b) a [^{F1249}water supply licensee] that supplies water to premises in accordance with [^{F1250}the licensee's] retail authorisation using the supply system of an English undertaker^{F1251}, or
 - (c) a sewerage licensee that serves premises in accordance with the licensee's retail authorisation using the sewerage system of an English undertaker.]
- (2) The purpose is that of securing the reduction of charges payable by customers in an English undertaker's area for the supply of water or the provision of sewerage services.
- (3) The power in subsection (1) may be exercised in relation to all customers in an English undertaker's area or customers of a particular description.
- (4) Financial assistance under subsection (1) may be given in any form and in particular may be given by way of—
 - (a) grant,
 - (b) loan, or
 - (c) guarantee.
- (5) Financial assistance under subsection (1) may be given on such terms and conditions as the Secretary of State considers appropriate.
- (6) Financial assistance under subsection (1) may be given in any manner and in particular may be given—
 - (a) to an English undertaker by means of an arrangement made by the Secretary of State with another English undertaker,^{F1252} ...
 - (b) to a [^{F1253}water supply licensee] by means of an arrangement made by the Secretary of State with an English undertaker that is a water undertaker^{F1254}, or
 - (c) to a sewerage licensee by means of an arrangement made by the Secretary of State with an English undertaker that is a sewerage undertaker.]
- (7) A reference in this section to a customer in an English undertaker's area is a reference to—
 - (a) a person liable to pay charges to the undertaker in respect of the supply of water or the provision of sewerage services, other than [^{F1255}a water supply licensee or a sewerage licensee],^{F1256} ...
 - (b) a person whose premises are supplied with water by a [^{F1257}water supply licensee] in accordance with [^{F1258}the licensee's] retail authorisation using the undertaker's supply system^{F1259}, or
 - (c) a person whose premises are served by a sewerage licensee in accordance with the licensee's retail authorisation using the undertaker's sewerage system.]
- (8) In this section a reference to the retail authorisation [^{F1260}of a water supply licensee or of a sewerage licensee] is to be construed in accordance with [^{F1261}Schedule 2A or Schedule 2B, as the case may be].
- (9) In this section “English undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in England.]

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Textual Amendments

- F1247**S. 154A inserted (1.7.2012) by [Water Industry \(Financial Assistance\) Act 2012 \(c. 8\)](#), [ss. 1, 3\(2\)](#)
- F1248**Word in s. 154A(1) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(2\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1249**Words in s. 154A(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(2\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1250**Words in s. 154A(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(2\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1251**S. 154A(1)(c) and word inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(2\)\(d\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1252**Word in s. 154A(6)(a) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(3\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1253**Words in s. 154A(6)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(3\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1254**S. 154A(6)(c) and word inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(3\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1255**Words in s. 154A(7)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(4\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1256**Word in s. 154A(7)(a) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(4\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1257**Words in s. 154A(7)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(4\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1258**Words in s. 154A(7)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(4\)\(d\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1259**S. 154A(7)(c) and word inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(4\)\(e\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1260**Words in s. 154A(8) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(5\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F1261**Words in s. 154A(8) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 103\(5\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(r\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

[^{F1262}154] Financial assistance for major works

- (1) If the Secretary of State considers it desirable to do so, the Secretary of State may give financial assistance in connection with—
- (a) the construction of water or sewerage infrastructure, or

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- (b) the carrying out of works in respect of existing water or sewerage infrastructure.
- (2) Financial assistance may be given under subsection (1) only if constructing the infrastructure in question or carrying out the works in question, or doing a combination of those things, involves exceptionally large or complex works.
- (3) Financial assistance may be given under subsection (1) only if the use or intended use of the infrastructure includes use by an English undertaker in carrying out a duty under section 37 or 94.
- (4) The power under subsection (1) includes power to give financial assistance or further financial assistance for the purposes described in subsection (1) after completion of the infrastructure or the works in question.
- (5) Financial assistance under subsection (1) may be given in any form and in particular may be given by way of—
- (a) grant,
 - (b) loan,
 - (c) guarantee or indemnity,
 - (d) the provision of insurance, or
 - (e) the acquisition of shares in or securities of a body corporate.
- (6) Financial assistance under subsection (1) may be given on such terms and conditions as the Secretary of State considers appropriate.
- (7) In this section—
- “English undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in England;
- “sewerage infrastructure” means infrastructure relating to the provision of a system of sewers or the provision of means for emptying, or dealing effectually with the contents of, sewers;
- “water infrastructure” means infrastructure relating to the provision of a system of water supply or the securing of supplies of water.]

Textual Amendments

F1262S. 154B inserted (1.7.2012) by [Water Industry \(Financial Assistance\) Act 2012 \(c. 8\)](#), **ss. 2, 3(2)**

PART VI

UNDERTAKERS' POWERS AND WORKS

Modifications etc. (not altering text)

C282 Part VI: power to apply conferred (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 78(2)(b), 225(2)**

C283 Part VI: saved (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), **ss. 1(4)(5), 17(2)**

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CHAPTER I

UNDERTAKERS' POWERS

Powers in relation to land

155 **Compulsory purchase.**

- (1) A relevant undertaker may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales which is required by the undertaker for the purposes of, or in connection with, the carrying out of its functions.
- (2) The power of the Secretary of State under subsection (1) above shall include power—
 - (a) to authorise the acquisition of interests in and rights over land by the creation of new interests and rights; and
 - (b) by authorising the acquisition by a relevant undertaker of any rights over land which is to be or has been acquired by that undertaker, to provide for the extinguishment of those rights.
- (3) Without prejudice to the generality of subsection (1) above, the land which a relevant undertaker may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the ^{M48}Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.
- (4) Subject to section 188 below, the ^{M49}Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by a relevant undertaker; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.
- (5) Schedule 9 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the ^{M50}Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.
- (6) The provisions of Part I of the ^{M51}Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred (whether by virtue of the [^{F1263}articles] of the company for the time being carrying out the functions of the undertaker or any enactment or otherwise) on a relevant undertaker, as if—
 - (a) any reference in those provisions to the acquiring authority were a reference to that undertaker; and
 - (b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

Textual Amendments

F1263 Word in s. 155(6) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order (S.I. 2009/1941), art. 2(1), {Sch. 1 para. 126(2)} (with art. 10)

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Modifications etc. (not altering text)

C284 S. 155: functions for certain purposes exercisable concurrently with the Secretary of State (W.) (1.7.1999) by [S.I. 1999/672](#), art. 2, [Sch. 1](#)

C285 S. 155(3)-(6) applied (11.8.2022) by [The Sizewell C \(Nuclear Generating Station\) Order 2022 \(S.I. 2022/853\)](#), art. 1, [Sch. 18 para. 7\(3\)](#) (with arts. 62, 76, 87)

Marginal Citations

M48 1981 c. 67.

M49 1981 c. 67.

M50 1965 c. 56.

M51 1965 c. 56.

156 Restriction on disposals of land.

- (1) A company holding an appointment under Chapter I of Part II of this Act shall not dispose of any of its protected land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, the Secretary of State.
- (2) A consent or authorisation for the purposes of this section—
 - (a) shall be set out in a notice served by the Secretary of State on the company which is or may be authorised, by virtue of the provision contained in the notice, to dispose of land or of interests or rights in or over land or, as the case may be, on every such company; and
 - (b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 157 of the ^{M52}Water Resources Act 1991.
- (3) A consent or authorisation for the purposes of this section may be given on such conditions as the Secretary of State considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above and subject to subsection (5) below, the conditions of a consent or authorisation for the purposes of this section may include—
 - (a) a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available, in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation, to such person as may be so specified or determined;
 - (b) a requirement that the company making the disposal has complied with such of the conditions of its appointment under Chapter I of Part II of this Act as relate to the disposal of its protected land or of any interest or right in or over that land;
 - (c) a requirement that the company, before making a disposal in a case in which the land in question is situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, should do one or both of the following, that is to say—
 - (i) [^{F1264}consult with Natural England (as respects land in England) or [^{F1265}the NRBW] (as respects land in Wales); and
 - (ii) enter into such management agreements or such covenants under subsection (6) below as the Secretary of State may determine;]

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- (d) provision requiring determinations under or for the purposes of the consent or authorisation to be made, in such cases as are mentioned in paragraph (c) above, either by [^{F1266}Natural England] or [^{F1265}the NRBW] or only after consultation with [^{F1267}Natural England or [^{F1265}the NRBW]] .
- (5) A consent or authorisation shall not be given on any such condition as is mentioned in subsection (4)(a) above except where the Secretary of State is satisfied that the condition will have effect in relation only to—
- (a) land which, or any interest in or right over which, was acquired by the relevant undertaker in question, or any predecessor of that undertaker, either compulsorily or at a time when the undertaker or that predecessor was authorised to acquire it compulsorily; or
 - (b) land situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest.
- (6) Where a company holding an appointment under Chapter I of Part II of this Act is proposing, in such a case as is mentioned in subsection (4)(c) above, to dispose of, or of any interest or right in or over, any of its protected land, it may enter into a covenant with the Secretary of State by virtue of which it accepts obligations with respect to—
- (a) the freedom of access to the land that is to be afforded to members of the public or to persons of any description; or
 - (b) the use or management of the land;
- and a covenant under this subsection shall bind all persons deriving title from or under that company and shall be enforceable by the Secretary of State accordingly.
- (7) Section 3 above shall have effect for the purposes of this section as if every proposal which—
- (a) is made by a company holding an appointment as a relevant undertaker with respect to land in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, or with respect to any interest or right in or over any such land; and
 - (b) is a proposal for which the Secretary of State's consent or authorisation is required under this section,
- were a proposal relating to the functions of such an undertaker.
- (8) In this section—
- “area of outstanding natural beauty or special scientific interest” means an area which—
- (a) is for the time being designated as an area of outstanding natural beauty [^{F1268}under section 82 of the Countryside and Rights of Way Act 2000 of the ^{M53}Countryside and Rights of Way Act 2000]; or
 - [^{F1269}(b) is a site of special scientific interest within the meaning of the ^{M54}Wildlife and Countryside Act 1981;]
- and the reference in subsection (4)(c) above to an area of special scientific interest shall, accordingly, be construed as a reference to an area such as is mentioned in paragraph (b) of this definition,^{F1270} . . .
- “the Broads” has the same meaning as in the ^{M55}Norfolk and Suffolk Broads Act 1988.
- [^{F1271}“management agreement” means—

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- (a) in relation to land in England, an agreement under section 39 of the Wildlife and Countryside Act 1981 or section 7 of the Natural Environment and Rural Communities Act 2006;
- (b) in relation to land in Wales, an agreement under section 39 of the Wildlife and Countryside Act 1981 [^{F1272} or section 16 of the Environment (Wales) Act 2016].]

Textual Amendments

- F1264S.** 156(4)(c)(i)(ii) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 131(2)**; S.I. 2006/2541, **art. 2**
- F1265** Words in s. 156(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 249** (with Sch. 7)
- F1266** Words in s. 156(4)(d) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 131(3)(a)**; S.I. 2006/2541, **art. 2**
- F1267** Words in s. 156(4)(d) substituted (1.10.2006) by virtue of Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 131(3)(b)**; S.I. 2006/2541, **art. 2**
- F1268S.** 156(8): words in definition of “area of outstanding natural beauty or special scientific interest” in para. (a) substituted (1.4.2001 for E. and 1.5.2001 for W.) by 2000 c. 37, s. 93, **Sch. 15 Pt. I para. 12**; S.I. 2001/114, **art. 2(2)(e)**; S.I. 2001/1410, **art. 2(g)**
- F1269S.** 156(8): para. (b) in definition of “area of outstanding natural beauty or special scientific interest” substituted (30.1.2001) by 2000 c. 37, ss. 76(1), 103(2), **Sch. 10 Pt. II para. 9**
- F1270** Word in s. 156(8) repealed (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1)(2), 107, **Sch. 11 para. 131(4)**, **Sch. 12**; S.I. 2006/2541, **art. 2**
- F1271S.** 156(8): definition inserted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), ss. 105(1), 107, **Sch. 11 para. 131(4)**; S.I. 2006/2541, **art. 2**
- F1272** Words in s. 156(8) inserted (21.5.2016) by Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 5**

Marginal Citations

- M52** 1991 c. 57.
- M53** 2000 c. 37.
- M54** 1981 c. 69.
- M55** 1988 c. 4.

157 Byelaws with respect to undertakers’ waterways and land.

- (1) Every relevant undertaker shall have power to make such byelaws as are mentioned in subsection (2) below with respect to any waterway owned or managed by that body and with respect to any land held or managed with the waterway.
- (2) The byelaws referred to in subsection (1) above in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—
 - (a) the preservation of order on or in any such waterway or land;
 - (b) the prevention of damage to anything on or in any such waterway or land or to any such land;
 - (c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) Without prejudice to the generality of any of the paragraphs of subsection (2) above, the byelaws mentioned in that subsection include byelaws—
- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
 - (b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the undertaker making the byelaws;
 - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution;
 - (d) providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws; and
 - (e) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (4) Schedule 10 to this Act shall have effect with respect to byelaws under this section.
- (5) Byelaws made under this section shall cease to have effect at the end of the period of ten years beginning with the day on which they were made; but the Secretary of State may by order made by statutory instrument make provision in relation to any particular byelaws for those byelaws to continue to have effect for such period after the time when they would otherwise cease to have effect as may be specified in the order.
- (6) In this section—
- “boat” includes a vessel of any description, and “boating” shall be construed accordingly;
- “waterway” has the same meaning as in the National Parks and Access to the ^{M56}Countryside Act 1949.

Marginal Citations

M56 1949 c. 97.

Pipe-laying

158 Powers to lay pipes in streets.

- (1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—
- (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;
 - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
 - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) Without prejudice to the generality of subsection (1)(c) above, every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.
- (3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.
- (4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the highway authority concerned before determining in accordance with this subsection where to fit a stopcock in a highway.
- (5) Where a water undertaker exercises its powers under this section for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.
- (6) Until the coming into force of its repeal by the ^{M57}New Roads and Street Works Act 1991 section 20 of the ^{M58}Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any relevant pipe which is conferred by this section.
- (7) Subject to section 161(7) below, in this section references to a relevant pipe shall be construed—
 - (a) in relation to a water undertaker, as references to a water main (including a trunk main ^{F1273}but not including a pipe laid in pursuance of section 66B(3) (a)(ii) above which is used for the purpose of supplying water other than for domestic or food production purposes or laid in pursuance of section 66B(3) (a)(iii) above), resource main, discharge pipe or service pipe; and
 - ^{F1274}(b) in relation to a sewerage undertaker, as references to—
 - (i) any sewer or disposal main; ^{F1275}...
 - (ii) in relation to the exercise of a power to lay a pipe under paragraph (a) of subsection (1) above or a power related to that power under paragraph (c) of that subsection, any lateral drain which the undertaker is to lay by virtue of section 98 or 101B ^{F1276}or any lateral drain which the undertaker is required to lay by virtue of section 117A(2) for the purpose of enabling the use of its sewerage system to provide sewerage services to premises in a retail exit area] above; ^{F1277}...
 - (iii) in relation to the exercise of any other power under subsection (1) above, any lateral drain which belongs to or is vested for the time being in the undertaker ^{F1278}or
 - (iv) any pipe forming part of, or required in connection with, a drainage system constructed under section 114A.]]
- ^{F1279}^{F1280}(8) Subsections (9) and (11) below apply where—
 - (a) an appointment or variation has been made under section 7 above replacing a company as a relevant undertaker,

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- (b) the appointment or variation relates only to parts of the area to which the company's appointment as relevant undertaker related, and
- (c) the conditions mentioned in subsection (5) of that section were required to be satisfied in relation to each of the premises in those parts served by that company.

[Where the company which has replaced the relevant undertaker has done so as water
^{F1280}(9) undertaker, in the application of this section and section 159 below in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in subsection (8)(c) above with a supply of water which exceeds, or is likely to exceed, in any period of twelve months—

- (a) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;
- (b) in all other cases, [^{F1281}50 megalitres] ,

shall, for the purposes of subsection (7) above, be deemed to be a water main.]]

(10) Where the Secretary of State makes regulations under section 7(6) above amending section 7(5)(a) above he shall by regulations make the corresponding amendment in subsection (9) above.

(11) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this section and section 159 below in relation to that company any pipe draining, or intended to drain, any of those premises shall, for the purposes of subsection (7) above, be deemed to be a sewer.

Textual Amendments

F1273 Words in s. 158(7)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 36](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))

F1274 S. 158(7)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 97\(4\)](#), 105(3); [S.I. 2004/641](#), [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

F1275 Word in s. 158(7)(b)(i) omitted (14.7.2014) by virtue of [Water Act 2014 \(c. 21\)](#), [ss. 21\(2\)\(a\)](#), 94(2)(d)

F1276 Words in s. 158(7)(b)(ii) inserted (E.) (31.10.2021) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), [2\(8\)](#)

F1277 Word in s. 158(7)(b)(ii) omitted (14.7.2014) by virtue of [Water Act 2014 \(c. 21\)](#), [ss. 21\(2\)\(a\)](#), 94(2)(d)

F1278 S. 158(7)(b)(iv) and word inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 21\(2\)\(b\)](#), 94(2)(d)

F1279 S. 158(8)-(11) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s. 40\(6\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, [Sch. Pt. I](#)

F1280 S. 158(9) substituted (17.8.2000) by [S.I. 2000/1842](#), [reg. 2](#)

F1281 Words in s. 158(9)(b) substituted (1.4.2005) by [The Water and Sewerage Undertakers \(Inset Appointments\) Regulations 2005 \(S.I. 2005/268\)](#), [art. 2\(3\)](#)

Modifications etc. (not altering text)

C286 S. 158 applied (with modifications) (21.7.1994) by [1994 c. xi](#), [s. 11\(2\)](#)

S. 158 restricted (1.4.1996) by [1980 c. 66](#), [s. 100\(6B\)\(b\)](#) (as inserted (1.4.1996) by [1994 c. 19](#), s. 22(1), [Sch. 7 Pt. 1 para. 9](#) (with [ss. 54\(5\)\(7\)](#), [55\(5\)](#)); [S.I. 1996/396](#), art. 3, [Sch. 1](#))

C287 S. 158 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 12\(1\)](#) (with [reg. 1\(1\)\(c\)](#))

Status: This version of this Act contains provisions that are prospective.

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Marginal Citations

M57 1991 c. 22.

M58 1980 c. 66.

159 Power to lay pipes in other land.

- (1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—
 - (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
 - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
 - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.
- (2) Nothing in subsection (1) above shall authorise a water undertaker to lay a service pipe in, on or over any land except where—
 - (a) there is already a service pipe where that pipe is to be laid; ^{F1282}...
 - (b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of subsections (3) to (5) of section 46 above; [^{F1283}or]
 - ^{F1284}(c) the undertaker is required to lay the pipe in, on or over that land by virtue of section 66A(3) for the purpose of enabling the use of its supply system to supply premises in a retail exit area.]
- (3) The power conferred by virtue of paragraph (b) of subsection (1) above, and the power conferred in relation to that paragraph by virtue of paragraph (c) of that subsection shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.
- (4) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.
- (5) Subject to subsection (6) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (4) above shall be deemed—
 - (a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and
 - (b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.
- (6) Subsection (5) above shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—
 - (a) laying or altering a service pipe; or
 - (b) complying with a duty imposed under section 41 or 98 above.

Status: This version of this Act contains provisions that are prospective.

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- (7) Subject to subsection (2) above, in this section “relevant pipe” has the same meaning as in section 158 above [^{F1285}(reading references there to subsection (1) as references to subsection (1) of this section).]

Textual Amendments

- F1282** Word in s. 159(2)(a) omitted (E.) (31.10.2021) by virtue of [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), **2(9)(a)**
- F1283** Word in s. 159(2)(b) inserted (E.) (31.10.2021) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), **2(9)(b)**
- F1284** S. 159(2)(c) inserted (E.) (31.10.2021) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) \(Consequential Provision\) Regulations 2021 \(S.I. 2021/1208\)](#), regs. 1(2), **2(9)(c)**
- F1285** Words in s. 159(7) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(5)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

Modifications etc. (not altering text)

- C288** S. 159 applied (with modifications) (21.7.1994) by [1994 c. xi, s. 11\(2\)](#)
 S. 159 restricted (1.4.1996) by [1980 c. 66, s. 100\(6B\)\(b\)](#) (as inserted (1.4.1996) by [1994 c. 19, s. 22\(1\), Sch. 7 Pt. I para. 9](#) (with [ss. 54\(5\)\(7\), 55\(5\)](#)); S.I. 1996/396, art. 3, **Sch. 1**)
- C289** S. 159 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 12(2)** (with reg. 1(1)(c))

Other works powers

160 Power to carry out works for sewerage purposes.

- (1) A sewerage undertaker may, by agreement with the owner or occupier of any premises, carry out at that person’s expense—
- (a) any work in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or
 - (b) any work which the undertaker has required that person to carry out under Part IV of this Act;
- and for that purpose the undertaker shall have all such rights as that person would have.
- (2) Sections 291, 293 and 294 of the ^{M59}Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

Marginal Citations

M59 1936 c. 49.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

161 Power to deal with foul water and pollution.

(1) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—
 - (i) breaking up or opening a street;
 - (ii) tunnelling or boring under a street;
 - (iii) breaking up or opening a sewer, drain or tunnel;
 - (iv) moving or removing earth and other materials;

and the provisions of section 158 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(2) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(3) Without prejudice to the powers conferred by subsections (1) and (2) above but subject to the provisions of Chapter III of this Part, every water undertaker shall have power, on any land which belongs to that undertaker or over or in which that undertaker has acquired the necessary easements or rights, to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose—

- (a) of intercepting, treating or disposing of any foul water arising or flowing upon that land; or
- (b) of otherwise preventing the pollution—
 - (i) of any waters, whether on the surface or underground, which belong to ^{F1286}the Environment Agency^{F1287} or the NRBW] or any water undertaker or from which ^{F1286}the Environment Agency^{F1287} or the NRBW] or any water undertaker is authorised to take water;
 - (ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by ^{F1286}the Environment Agency^{F1287} or the NRBW] or any water undertaker or which ^{F1286}the Environment Agency^{F1287} or the NRBW] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or
 - (iii) of any underground strata from which ^{F1286}the Environment Agency^{F1287} or the NRBW] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the ^{M60}Water Resources Act 1991.

Status: This version of this Act contains provisions that are prospective.

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- (4) Where any water undertaker is proposing to carry out any such works as are mentioned in subsection (3) above and the proposed works will affect any watercourse, the undertaker shall consult [^{F1286}the Environment Agency]^{F1288}, where the proposed works will affect any watercourse in England, and the NRBW, where the proposed works will affect any watercourse in Wales,] before carrying out the works.
- (5) Without prejudice to the protective provisions of Chapter III of this Part, nothing in subsection (3) above shall authorise any water undertaker, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.
- (6) Any dispute as to whether any consent for the purposes of subsection (5) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) In section 158 above the references to the laying of a relevant pipe shall include references-
- (a) to the laying of any drain or sewer for any of the purposes mentioned in subsection (3)(a) and (b) above; and
 - (b) to the construction of a watercourse for any of those purposes.
- (8) In this section—
- “the protective provisions of Chapter III of this Part” means the provisions of sections 183 to 191 below;
- “relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and
- “waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

Textual Amendments

F1286 Words in s. 161(3)(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 117** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F1287 Words in s. 161(3)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 250(2)** (with Sch. 7)

F1288 Words in s. 161(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 250(3)** (with Sch. 7)

Modifications etc. (not altering text)

C290 S. 161 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), **reg. 1(1)(b)**, **Sch. 1 para. 12(3)** (with **reg. 1(1)(c)**)

Marginal Citations

M60 1991 c. 57.

162 Works in connection with metering.

- (1) Subject to the following provisions of this section, to section 148 above and to the provisions of Chapter III of this Part, where—

Status: This version of this Act contains provisions that are prospective.

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- [^{F1289}(a) subsection (1A) below applies to a relevant undertaker in respect of any premises; and]
- (b) there is either—
- (i) a service pipe which is connected with a water undertaker's water main and by which a supply of water is or could be provided to those premises or to any building in which those premises are contained; or
 - (ii) a drain or private sewer which connects those premises with a public sewer,

the undertaker shall have power, in accordance with section 172 below or otherwise, to carry out any works specified in subsection (3) below.

- [^{F1290}(1A) This subsection applies to a relevant undertaker in respect of any premises if—
- (a) the undertaker has fixed any charges in relation to any premises by reference to volume, [^{F1291}or]
 - (b) the undertaker is entitled so to fix any charges because the person who is the consumer in relation to the premises for the purposes of Chapter I of Part V of this Act has exercised his right to give—
 - (i) a measured charges notice under section 144A above, or
 - (ii) any consent for the purposes of section 144B(2)(a)(ii) above,and has not revoked the measured charges notice or consent under section 144A, or
 - (c) the undertaker has given notice of its intention of so fixing any charges—
 - (i) within the period specified in the notice, or
 - (ii) in a case where it is not for the time being entitled so to fix the charges, if and when it becomes entitled to do so [^{F1292}or
 - (d) a [^{F1293}water supply licensee] supplies water to those premises using the undertaker's supply system[^{F1294}, or
 - (e) a sewerage licensee provides sewerage services in respect of those premises using the undertaker's sewerage system.]]

[^{F1295}(1B) In subsection (1A)(d) above, the reference to the supply system of a water undertaker shall be construed in accordance with [^{F1296}section 17B] above.]

[^{F1297}(1C) In subsection (1A)(e) above, the reference to the sewerage system of a sewerage undertaker shall be construed in accordance with section 17BA.]

- (2) The power under subsection (1) above to carry out works specified in subsection (3) below shall include power to carry out any such works in a street; and the power conferred by virtue of subsection (1)(c) of section 158 above and subsection (6) of that section shall apply in relation to the power conferred by this subsection as they apply in relation to the powers conferred by that section.
- (3) The works mentioned in subsections (1) and (2) above are, in relation to any premises—
- (a) works consisting in the installation and connection of any meter for use in determining the amount of any charges which have been or may be fixed in relation to the premises;
 - (b) where the premises comprise a house which is one of two or more houses to which the supply of water is wholly or partly by the same service pipe, works consisting in the installation and connection, for any purpose connected with

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- the installation or connection of such a meter, of a separate service pipe for that house;
- (c) works for the purpose of maintaining, repairing, disconnecting or removing—
- (i) any meter which has been installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises; or
 - (ii) any pipes or apparatus installed in the course of any works specified in this section;
- and
- (d) any other works appearing to the undertaker to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c) above, including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.
- (4) A notice given for the purposes of subsection (1)(a) above may relate to particular premises or to any description of premises and shall be given—
- (a) by publishing the notice in the locality in which the premises to which it relates are situated in such a manner as the undertaker considers appropriate for bringing it to the attention of the persons likely to be affected by it; and
 - (b) by serving a copy of the notice on the Secretary of State.
- (5) Subject to subsection (6) below, any works carried out by a water undertaker by virtue of the provisions of this section shall be necessary works for the purposes of Chapter II of Part III of this Act.
- (6) Nothing in this section shall prevent the exercise by a water undertaker of its power by virtue of subsection (3)(b) of section 64 above to impose a condition by virtue of subsection (2)(c) or (d) of section 47 above in a case where it has, under the said section 64, required the provision of a separate service pipe to any premises.
- (7) Part II of Schedule 6 to this Act shall apply to the powers conferred by this section.
- (8) Any dispute between a relevant undertaker and any other person (including another such undertaker) as to the exercise of any power under this section to carry out any works on any premises shall be referred to the arbitration of a single arbitrator appointed—
- (a) by agreement between the undertaker and that person; or
 - (b) in default of agreement, by the Director.
- (9) Without prejudice to subsection (2) above, nothing in section 158, 159 or 161 above shall authorise the installation of any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises where that apparatus is to be used for the purpose only of determining the amount of any charges fixed, or to be fixed, in relation to those premises wholly or partly by reference to the volume of that water or effluent.

Textual Amendments

F1289S. 162(1)(a) substituted (1.4.2000) by 1999 c. 9, s. 10(1)(2); S.I. 1999/3440, art. 3

F1290S. 162(1A) inserted (1.4.2000) by 1999 c. 9, s.10(1)(3); S.I. 1999/3440, art. 3

F1291 Word in s. 162(1A)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 37(2); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

Status: This version of this Act contains provisions that are prospective.

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- F1292S.** 162(1A)(d) and preceding word inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 37\(3\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F1293** Words in s. 162(1A)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 105\(2\)\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(s\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1294S.** 162(1A)(e) and word inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 105\(2\)\(b\)](#); S.I. 2017/462, [art. 3\(k\)\(xvi\)](#)
- F1295S.** 162(1B) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 37\(4\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F1296** Words in s. 162(1B) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 105\(3\)](#); S.I. 2017/462, [art. 3\(k\)\(xvi\)](#)
- F1297S.** 162(1C) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 105\(4\)](#); S.I. 2017/462, [art. 3\(k\)\(xvi\)](#)

163 Power to fit stopcocks.

- (1) Subject to subsection (2) below and without prejudice to section 159 above, a water undertaker shall have power, at its own expense, to fit a stopcock to any service pipe by which a supply of water is or is to be provided to any premises by the undertaker [^{F1298}or [^{F1299}a water supply licensee]], whether that pipe belongs to the undertaker or to any other person.
- (2) A stopcock fitted in private premises by a water undertaker to any service pipe shall be situated as near as practicable to any street from which that pipe enters those premises.

Textual Amendments

- F1298** Words in s. 163(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 38](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F1299** Words in s. 163(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 106](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(t\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

Modifications etc. (not altering text)

- C291** S. 163 restricted (1.4.1996) by [1980 c. 66, s. 100\(6B\)\(b\)](#) (as inserted (1.4.1996) by [1994 c. 19, s. 22\(1\)](#), [Sch. 7 Pt. I para. 9](#) (with ss. 54(5)(7), 55(5)); S.I. 1996/396, [art. 3](#), [Sch. 1](#))

164 Agreements for works with respect to water sources.

- (1) A water undertaker may enter into agreements under this section with the owners and occupiers of any land, or with a local authority, with respect to the carrying out and maintenance by any party to the agreement of such works as the undertaker considers necessary—
- (a) for the purpose of draining that land; or
 - (b) for more effectually collecting, conveying or preserving the purity of any water which the undertaker is for the time being authorised to take.
- (2) Before entering into an agreement under this section with respect to the carrying out of works the carrying out of which would result in the discharge of any water into a watercourse otherwise than through public sewers, a water undertaker shall consult ^{F1300}—

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- (a) the Environment Agency, if the proposed works will affect any watercourse in England,
 - (b) the NRBW, if the proposed works will affect any watercourse in Wales, and
 - (c) if the watercourse] is subject to the jurisdiction of a navigation authority, that authority.
- (3) An agreement under this section with the owner of any land which is expressed to be binding on and enforceable against the owner's successors in title to that land—
- (a) may be registered under section 2 of the ^{M61}Land Charges Act 1972 as an obligation affecting land falling within Class D; and
 - (b) shall be so binding and enforceable unless it is void by reason of a failure so to register it.
- (4) In this section the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under this section shall be defrayed as part of their general expenses.

Textual Amendments

F1300 Words in s. 164(2) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(t), [Sch. 7 para. 107](#)

Marginal Citations

M61 1972 c. 61.

Powers to discharge water

165 Discharges for works purposes.

- (1) Subject to the following provisions of this section and to section 166 below, where any water undertaker—
- (a) is exercising or about to exercise any power conferred by section 158, 159, 161 or 163 above (other than the power conferred by section 161(3) above); or
 - (b) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole, or other work belonging to or used by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions,
- the undertaker may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.
- (2) Nothing in this section shall authorise any discharge which—
- (a) damages or injuriously affects the works or property of any railway undertakers or navigation authority; or
 - (b) floods or damages any highway.
- (3) If any water undertaker fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—
- (a) mud and silt;
 - (b) solid, polluting, offensive or injurious substances; and

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- (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,
the undertaker shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In this section “relevant pipe” means any water main (including a trunk main), resource main, discharge pipe or service pipe.

Modifications etc. (not altering text)

C292 S. 165 restricted (1.4.1996) by 1980 c. 66, s. 100(6B)(b) (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), Sch. 7 Pt. I para. 9 (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, Sch. 1)

166 Consents for certain discharges under section 165.

- (1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 165 above except with the consent of [^{F1301}the appropriate agency] and of any navigation authority which carries out functions in relation to—
- (a) the part of the watercourse where the discharge is made; or
- (b) any part of that watercourse which is less than three miles downstream from the place of the discharge.
- (2) Where a water undertaker makes an application to any authority for a consent for the purposes of this section—
- (a) that application shall be accompanied or supplemented by all such information as that authority may reasonably require; and
- (b) the undertaker shall serve a copy of the application, and of any consent given on that application, on every person who—
- (i) is registered with the undertaker in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and
- (ii) has not agreed in writing that he need not be served with such a copy;
- but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—
- (a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and
- (b) in any other case, before the end of the period of three months beginning with that day;
- and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

- (4) Where—

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- (a) an undertaker which has made an application to any authority for a consent for the purposes of this section has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that authority; and
 - (b) that requirement was made by that authority at such a time before the end of the period within which that authority is required to determine the application as gave the undertaker a reasonable opportunity to provide the required information within that period,
- that authority may delay his determination of the application until a reasonable time after the required information is provided.
- (5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.
- (6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) Where any discharge under section 165 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the undertaker which made the discharge shall, as soon as practicable after making the discharge, serve a notice which—
- (a) states that the discharge has been made; and
 - (b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,
- on every person on whom that undertaker would have been required to serve the application for that consent or any copy of that application.
- (8) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the ^{M62}Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.
- [^{F1302}(10) In this section “the appropriate agency” means—
- (a) the Environment Agency, in relation to discharges of water in England;
 - (b) the NRBW, in relation to discharges of water in Wales.]

Textual Amendments

F1301 Words in s. 166(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 251(2)** (with Sch. 7)

F1302 S. 166(10) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 251(3)** (with Sch. 7)

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Modifications etc. (not altering text)

C293 S. 166 modified (30.11.2017) by [The Conservation of Habitats and Species Regulations 2017 \(S.I. 2017/1012\)](#), regs. 1(2), **102(4)**

Marginal Citations

M62 1945 c. 42.

Compulsory works orders

167 Compulsory works orders.

- (1) Where a water undertaker^{F1303} ... is proposing, for the purposes of, or in connection with, the carrying out of any of its functions^{F1303} ... —
- (a) to carry out any engineering or building operations; or
 - (b) to discharge water into any inland waters or underground strata,
- the undertaker may apply to the Secretary of State for an order under this section (“a compulsory works order”).
- (2) Subject to the following provisions of this section, the Secretary of State may, on an application under subsection (1) above, by order made by statutory instrument—
- (a) confer such compulsory powers; and
 - (b) grant such authority,
- as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.
- [^{F1304}(2A) The Secretary of State may not exercise the power under subsection (2) in respect of anything to be done in England.]
- (3) Schedule 11 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.
- (4) Subject to the provisions of Schedule 11 to this Act, a compulsory works order may—
- (a) without prejudice to section 155 above, confer power to acquire compulsorily any land, including—
 - (i) power to acquire interests in and rights over land by the creation of new rights and interests; and
 - (ii) power, by the compulsory acquisition by any water undertaker of any rights over land which is to be or has been acquired by that undertaker, to extinguish any such rights;
 - (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part of this Act which do not apply for those purposes apart from by virtue of this paragraph;
 - (c) make any authority granted by the order subject to such conditions as may be specified in the order;
 - (d) amend or repeal any local statutory provision;
 - (e) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

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- (5) Without prejudice to any duty imposed by virtue of section 191 below, where—
- (a) the Secretary of State makes a compulsory works order authorising a water undertaker to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on such an undertaker; and
 - (b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,
- he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.
- (6) Nothing in any compulsory works order shall exempt any water undertaker from any restriction imposed by Chapter II of Part II of the ^{M63}Water Resources Act 1991 (abstraction and impounding of water).
- (7) It is hereby declared that a compulsory works order may grant authority for discharges of water by a water undertaker where the undertaker has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.
- (8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 172 and 173, the provisions of Chapter II and any provision of this Part which is one of the relevant sewerage provisions.

Textual Amendments

F1303 Words in s. 167(1) inserted by 2008 c. 29 Sch. 2 para. 50, which amendment ceases to have effect (1.10.2010) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 41(1), 49(3)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.

F1304 S. 167(2A) inserted (1.10.2010) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 41(2), 49(3)** (with **ss. 41(3), 49(1)(6)**); S.I. 2010/2169, art. 4, Sch.

Modifications etc. (not altering text)

C294 S. 167: functions for certain purposes exercised concurrently with the Secretary of State (W.) (1.7.1999) by [S.I. 1999/672](#), art. 2, **Sch. 1**

Marginal Citations

M63 1991 c. 57.

Entry to land etc. by water undertakers

168 Entry for works purposes.

- (1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
 - (a) the carrying out of any survey or tests for the purpose of determining—

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- (i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or
 - (ii) how any such power should be exercised;
 - or
 - (b) the exercise of any such power.
- (3) The power, by virtue of subsection (1) above, of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—
- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and
 - (b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—
 - (i) considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above; and
 - (ii) has authorised that person to take away and analyse.
- (4) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.
- (5) In this section “relevant works power” means any power conferred by any of the provisions of sections 158, 159, 161, 163 and 165 above, other than section 161(3).

Modifications etc. (not altering text)

C295 S. 168 restricted (1.4.1996) by 1980 c. 66, s. 100(6B)(b) (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), Sch. 7 Pt. 1 para. 9 (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, Sch. 1)

169 Power to carry out surveys and to search for water.

- (1) Without prejudice to the rights and powers conferred by section 168 above, any person designated in writing under this section by a water undertaker may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—
- ^{F1305}(a)
 - (b) whether it would be appropriate for the undertaker to apply for a compulsory works order under section 167 above and what compulsory powers it would be appropriate to apply for under that section.
- (3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—
- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
 - (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and

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- (c) to take away and analyse such samples of water or of any land or articles as the undertaker considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.
- (4) ^{F1306}The powers conferred by this section or section 172 of the Housing and Planning Act 2016 shall not be exercised on behalf of a water undertaker in any case for purposes connected with the determination of—
- (a) whether, where or how a reservoir should be constructed; or
 - (b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,
- unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.
- (5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—
- (a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and
 - (b) he has considered any representations or objections with respect to the proposed exercise of the powers under this section which—
 - (i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and
 - (ii) have not been withdrawn.
- (6) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.

Textual Amendments

F1305S. 169(2)(a) and word omitted (13.7.2016) by virtue of [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 14 para. 22(2)**; S.I. 2016/733, reg. 3(h) (with reg. 6)

F1306 Words in s. 169(4) substituted (13.7.2016) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 14 para. 22(3)**; S.I. 2016/733, reg. 3(h) (with reg. 6)

Modifications etc. (not altering text)

C296 S. 169(4)(5): functions for certain purposes exercisable concurrently with the Secretary of State (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

170 Entry etc. for other purposes.

- (1) Any person designated in writing for the purpose by a water undertaker may enter any premises for any of the following purposes, that is to say—
- (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the undertaker to exercise any power under any provision of Part III of this Act to disconnect any pipe or cut off any supply of water to any premises or to carry out any works which it is authorised to carry out under section 64(4), 66(3) or 75 above; or
 - (ii) how any such power should be exercised;
 - (b) the exercise of any such power;

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- (c) the monitoring and recording of—
 - (i) whether water supplied to any premises for domestic or food production purposes is wholesome at the time of supply; or
 - (ii) the quality of the water from any source, or combination of sources, which is or is to be used for supplying water to any premises for those purposes,and the carrying out of any tests for that purpose.
- (2) Any person designated for the purpose—
 - (a) by any water undertaker within whose area any waterworks are situated; or
 - (b) by any water undertaker which takes water from any waterworks,shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of section 72 above in relation to those waterworks.
- (3) Any person designated in writing for the purpose by a water undertaker may—
 - (a) enter any premises for the purpose of—
 - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being, or has been, contravened;
 - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under section 74 above should be exercised or performed; or
 - (iii) exercising any such power or performing any such duty;
 - or
 - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.
- (4) During any period when a prohibition or restriction under section 76 above is in force, any person designated for the purpose by the water undertaker which imposed the prohibition or restriction shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises to which the prohibition or restriction applies for the purpose of ascertaining whether there is, or has been, any contravention of the prohibition or restriction.
- (5) The power by virtue of subsection (1) above of a person designated by a water undertaker to enter any premises for the purpose of carrying out any survey or tests shall include power to take away such samples of water or effluent or of any land or articles as the undertaker—
 - (a) considers necessary for the purpose of determining any of the matters mentioned in paragraph (a) or (c) of that subsection; and
 - (b) has authorised that person to carry out or take away.
- (6) Expressions used in this section and in any provision of Part III of this Act in relation to which this section has effect shall have the same meaning in this section as in that provision; and, without prejudice to the generality of this provision, subsections (2) and (3) of section 68 above and the definitions of “food production purposes” and “wholesome” in section 93(1) above shall apply for the purposes of any power

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conferred by virtue of subsection (1)(c)(i) above as they apply for the purposes of that section.

- (7) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsections (2) and (4) of this section; and Part II of that Schedule shall apply to the rights and powers conferred by the other provisions of this section.
- (8) The provisions of this section shall be without prejudice to the other rights and powers conferred by this Part.

171 Entry for sewerage purposes.

- (1) Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours-
- (a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;
 - (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;
 - (c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker;
 - (d) generally for the purpose of carrying out the undertaker's functions under the relevant sewerage provisions.
- (2) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above.
- (3) Any person designated by a sewerage undertaker under subsection (1) above for the purpose of exercising any power under this section for the purposes of Chapter III of Part IV of this Act may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent which is passing (either directly or through [^{F1307}a drain or private sewer]) from those premises into any of the undertaker's public sewers.

^{F1308}(4)

^{F1308}(5)

- (6) In this section "trade effluent" and "trade premises" have the same meanings as in Chapter III of Part IV of this Act; and, accordingly, section 139 above shall have effect for the purposes of this section as it has effect for the purposes of that Chapter.

Textual Amendments

F1307 Words in s. 171(3) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(6)**, 105(3); [S.I. 2004/641](#), **art. 4(b)** (with [Sch. 3 para. 7](#))

F1308 S. 171(4)(5) repealed (1.4.1996) by [1995 c. 25](#), s. 111(1)(c), 120(3), **Sch. 24** (with [ss. 7\(6\)](#), 115, 117); [S.I. 1996/186](#), **art. 3**

Status: This version of this Act contains provisions that are prospective.

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172 Entry for metering purposes.

- (1) Where the conditions set out in section 162(1) above are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those premises, for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
 - (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether the carrying out of any works by virtue of paragraph (a) or (b) of subsection (3) of section 162 above is practicable;
 - (ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out; or
 - (iii) how any works specified in that subsection should be carried out;
 - (b) the carrying out of any works so specified;
 - (c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;
 - (d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.
- (3) Part II of Schedule 6 to this Act shall apply in relation to the rights and powers conferred by the preceding provisions of this section.
- (4) Where any meter or other recording apparatus is provided in any premises in pursuance of Chapter III of Part IV of this Act for the purpose of assessing any charge, a sewerage undertaker may (instead of exercising its powers under this section) for the purpose of reading that meter or apparatus exercise the power conferred by section 171 above as if that purpose were included in the purposes mentioned in subsection (1) of that section.

173 Impersonation of persons entitled to entry.

- (1) A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant undertaker.

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CHAPTER II

PROTECTION OF UNDERTAKERS' WORKS, APPARATUS ETC.

Protection of apparatus in general

174 Offences of interference with works etc.

Subject to subsection (2) below, if any person without the consent of the water undertaker—

- (1) (a) intentionally or recklessly interferes with any resource main, water main or other pipe vested in any water undertaker or with any structure, installation or apparatus belonging to any water undertaker; or
- (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

[^{F1309}(1A) Subject to subsection (2) below, if any person without the consent of [^{F1310}the water supply licensee]—

- (a) intentionally or recklessly interferes with any pipe or any structure, installation or apparatus which—
 - (i) is vested in [^{F1311}any water supply licensee] (in the case of a pipe) or belongs to [^{F1312}any such licensee] (in any other case); and
 - (ii) is used in connection with the carrying on by [^{F1313}the licensee] of the activities authorised by [^{F1314}the licensee's licence]; or
- (b) by any act or omission negligently interferes with any such pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.]

- (2) A person shall not be guilty of an offence under subsection (1) [^{F1315}or (1A)] above—
 - (a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or
 - (b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker [^{F1316}or [^{F1317}water supply licensee]] if—
 - (i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
 - (ii) in the case of opening a stopcock, [^{F1318}subsection (2A) below applies].

[^{F1319}(2A) This subsection applies—

- (a) in the case of a stopcock belonging to a water undertaker, if the stopcock was closed otherwise than by the undertaker;
- (b) in the case of a stopcock belonging to [^{F1320}a water supply licensee]—
 - (i) if the stopcock was closed otherwise than by [^{F1321}the licensee]; or

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- (ii) if the stopcock was closed by [F1322the licensee] and the person in question for the purposes of subsection (2) above is the water undertaker whose supply system is used for the purpose of the supply made by [F1322the licensee],

and in this subsection the reference to the supply system of a water undertaker shall be construed in accordance with [F1323section 17B] above.]

- (3) Any person who, without the consent of the water undertaker—

- (a) attaches any pipe or apparatus—
- (i) to any resource main, water main or other pipe vested in a water undertaker; or
- (ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;
- (b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
- (c) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this [F1324subsection],

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- [F1325(3A) Any person who, without the consent of [F1326the water supply licensee]—

- (a) attaches any pipe or apparatus to any pipe which is—
- (i) vested in [F1327a water supply licensee]; and
- (ii) used in connection with the carrying on by [F1328the licensee] of the activities authorised by [F1329the licensee's licence];
- (b) attaches any pipe or apparatus to any service pipe which does not belong to such [F1330a licensee] or a water undertaker but which is a pipe by means of which water is supplied by such [F1330a licensee] to any premises;
- (c) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
- (d) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this subsection,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.]

- (4) In proceedings against any person for an offence by virtue of paragraph (c) of subsection (3) above [F1331or paragraph (d) of subsection (3A) above] it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in [F1332subsection (3) or (3A) above (as the case may require)].

- (5) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to a water undertaker, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

- [F1333(5A) If any person wilfully or negligently injures or suffers to be injured any water fitting which—

- (a) belongs to [F1334a water supply licensee]; and
- (b) is used in connection with the carrying on by [F1335the licensee] of the activities authorised by [F1336the licensee's licence],

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he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.]

- (6) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the water undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.
- (7) The amount recoverable by virtue of subsection (6) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.
- (8) A water undertaker may—
- (a) do all such work as is necessary for repairing any injury done in contravention of subsection (5) above; and
 - (b) recover the expenses reasonably incurred by the undertaker in doing so from the offender summarily as a civil debt.

[^{F1337}(8A) In this section “consumer”—

- (a) in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;
- (b) in relation to a supply of water provided by [^{F1338}a water supply licensee] to any premises, means a person who is for the time being the person on whom liability to pay charges to [^{F1339}the licensee] in respect of that supply of water would fall.]

- (9) In this section [^{F1340}“water fitting” has the same meaning] as in Part III of this Act; and in subsection (1) above the references to apparatus belonging to a water undertaker do not include references to any meter which belongs to such an undertaker and is used by it for the purpose of determining the amount of any charges which have been fixed by the undertaker by reference to volume.

Textual Amendments

- F1309**S. 174(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 39\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F1310**Words in s. 174(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 108\(2\)\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(u\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1311**Words in s. 174(1A)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 108\(2\)\(b\)\(i\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(u\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1312**Words in s. 174(1A)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 108\(2\)\(b\)\(ii\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(u\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1313**Words in s. 174(1A)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 108\(2\)\(c\)\(i\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(u\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1314**Words in s. 174(1A)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 108\(2\)\(c\)\(ii\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(u\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

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- F1315** Words in s. 174(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(3)(a)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1316** Words in s. 174(2)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(3)(b)(i)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1317** Words in s. 174(2)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(3)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1318** Words in s. 174(2)(b)(ii) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(3)(b)(ii)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1319** S. 174(2A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(4)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1320** Words in s. 174(2A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(4)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1321** Words in s. 174(2A)(b)(i) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(4)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1322** Words in s. 174(2A)(b)(ii) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(4)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1323** Words in s. 174(2A) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(4)(d)**; S.I. 2017/462, art. 3(k)(xvii)
- F1324** Words in s. 174(3)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(5)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1325** S. 174(3A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(6)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1326** Words in s. 174(3A) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(5)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1327** Words in s. 174(3A)(a)(i) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(5)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1328** Words in s. 174(3A)(a)(ii) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(5)(c)(i)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1329** Words in s. 174(3A)(a)(ii) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(5)(c)(ii)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1330** Words in s. 174(3A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(5)(d)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1331** Words in s. 174(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(7)(a)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1332** Words in s. 174(4) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(7)(b)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1333** S. 174(5A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(8)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1334** Words in s. 174(5A)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(6)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1335** Words in s. 174(5A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 108(6)(b)(i)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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- F1336** Words in s. 174(5A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 108\(6\)\(b\)\(ii\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1337** S. 174(8A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 39\(9\)](#); S.I. 2005/2714, art. 3(b) (with Sch. para. 8)
- F1338** Words in s. 174(8A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 108\(7\)\(a\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1339** Words in s. 174(8A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 108\(7\)\(b\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(u)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1340** Words in s. 174(9) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 39\(10\)](#); S.I. 2005/2714, art. 3(b) (with Sch. para. 8)

Protection of meters

175 Offence of tampering with meter.

(1) If any person—

- (a) so interferes with a meter used by any relevant undertaker [^{F1341}, water supply licensee or sewerage licensee] in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing, the volume of water supplied to, or of effluent discharged from, those premises; or
- (b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) A person shall not be guilty of an offence under this section in respect of anything done by him with the [^{F1342}appropriate consent] .

[^{F1343}(3) In subsection (2) above, the “appropriate consent” means—

- (a) if the meter is used by one relevant undertaker, the consent of that undertaker;
- [^{F1344}(b) if the meter is used by one water supply licensee, the consent of that licensee;
- (ba) if the meter is used by one sewerage licensee, the consent of that licensee;]
- (c) if the meter is used by two or more of the following persons—
 - (i) a relevant undertaker;
 - [^{F1345}(ii) a water supply licensee;
 - (iii) a sewerage licensee,]

the consent of each of those persons.

(4) In subsection (3) above, references to the consent of a relevant undertaker are references to consent under section 176 below.]

Textual Amendments

- F1341** Words in s. 175(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 109\(2\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(v) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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F1342 Words in s. 175(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 40(3)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F1343 S. 175(3)(4) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 40(4)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F1344 S. 175(3)(b)(ba) substituted for s. 175(3)(b) (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 109(3)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(v) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

F1345 S. 175(3)(c)(ii)(iii) substituted for s. 175(3)(c)(ii) (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 109(3)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(v) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

176 Consent for the purposes of section 175.

- (1) Where an application is made to any relevant undertaker for a consent for the purposes of section 175 above, the undertaker—
 - (a) shall give notice of its decision with respect to the application as soon as reasonably practicable after receiving it; and
 - (b) subject to subsection (2) below, may make it a condition of giving any consent that the undertaker itself should carry out so much of any works to which the application relates as is specified in the notice of its decision.
- (2) On such an application a relevant undertaker shall not refuse its consent, or impose any such condition as is mentioned in subsection (1)(b) above, unless it is reasonable to do so.
- (3) Where any relevant undertaker has given a notice to any person imposing any such condition as is mentioned in subsection (1)(b) above, the undertaker—
 - (a) shall carry out those works as soon as reasonably practicable after giving the notice; and
 - (b) may recover from that person any expenses reasonably incurred by it in doing so.
- (4) Any dispute between a relevant undertaker and any other person (including another such undertaker)—
 - (a) as to whether the undertaker or that other person should bear any expenses under subsection (3) above; or
 - (b) as to the amount of any expenses to be borne by any person under that subsection,
 shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Director.
- (5) Subsection (3) above shall not apply where the person who was given the notice notifies the undertaker that the carrying out of the works to which the condition relates is no longer required.

177 Financial obligations with respect to any interference with a meter.

- (1) A relevant undertaker which carries out any works made necessary by the commission of an offence under section 175 above shall be entitled to recover any expenses reasonably incurred in carrying out those works from the person who committed the offence.

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- (2) Any person who sustains any loss or damage in consequence of any failure by any relevant undertaker—
- (a) to comply with any obligation imposed on it by section 176 above; or
 - (b) to exercise reasonable care in the performance of the duty imposed by subsection (3)(a) of that section,
- shall be entitled to recover compensation from the undertaker.
- (3) Any dispute between a relevant undertaker and any other person (including another such undertaker)—
- (a) as to whether the undertaker or that other person should bear any expenses under this section;
 - (b) as to whether the undertaker should pay any compensation under this section; or
 - (c) as to the amount of any expenses to be borne by any person under this section or as to the amount of any such compensation,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Director.

Obstruction of sewerage works etc.

178 Obstruction of sewerage works etc.

- (1) A person who wilfully obstructs any person acting in the execution of any of the relevant sewerage provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.
- (2) If on a complaint made by the owner of any premises, it appears to a magistrates' court that the occupier of those premises is preventing the owner of those premises from carrying out any work which he is required to carry out by or under any of the relevant sewerage provisions, the court may order the occupier to permit the carrying out of the work.
- (3) Sections 300 to 302 of the Public Health Act 1936 (which relate to the determination of questions by courts of summary jurisdiction and to appeals against such determinations) shall apply for the purposes of and in relation to the determination under subsection (2) above of any matter by a magistrates' court—
 - (a) as they apply for the purposes of or in relation to a determination by such a court under that Act; and
 - (b) in the case of section 302, as if the reference to a decision of a local authority included a reference to a decision of a sewerage undertaker.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

CHAPTER III

SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

Vesting of works in undertaker

179 Vesting of works in undertaker.

- (1) [^{F1346}Subject to subsections (1A) and (3) below]—
- (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
 - (b) every sewage disposal works constructed by a sewerage undertaker,
- shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

[^{F1347}(1A) Subsection (1) above is subject to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested; ^{F1348} ...]

- (2) In addition to the sewers and works which vest in a sewerage undertaker by virtue of subsection (1) above, the following shall also vest in such an undertaker, that is to say—
- (a) every sewer [^{F1349}, lateral drain] or sewage disposal works with respect to which a declaration of vesting made by that undertaker under Chapter II of Part IV of this Act takes effect; and
 - (b) every sewer which is laid in the area of that undertaker under Part XI of the ^{M64}Highways Act 1980 (making up private streets) and is not a sewer belonging to a road maintained by a highway authority.

[^{F1350}(2A) In addition to the water mains and service pipes which vest in a water undertaker by virtue of subsection (1) above, every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter 2 of Part 3 of this Act takes effect shall also vest in that undertaker.]

- (3) Subsection (1) above shall not apply to a service pipe laid in a street other than the street in which the water main with which it connects is situated and shall not apply to a service pipe laid otherwise than in a street where that pipe is laid—
- (a) in pursuance of the duty imposed by virtue of section 46(4) above; or
 - (b) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.
- (4) If any water fittings let for hire by a water undertaker are suitably marked, they—
- (a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and
 - (b) shall not be subject to distress ^{F1351}... or be liable [^{F1352}to be taken control of under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, or] to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;

but nothing in this subsection shall affect the valuation for rating of any rateable hereditament.

Status: This version of this Act contains provisions that are prospective.

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- (5) It is hereby declared that anything which, in pursuance of any arrangements under section 97 above, is done on behalf of a sewerage undertaker by a relevant authority within the meaning of that section is, subject to any provision to the contrary contained in any such arrangements, to be treated for the purposes of this section as done by the undertaker.
- (6) The preceding provisions of this section are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of any scheme under Schedule 2 to this Act or of the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.
- (7) In this section—
- “relevant pipe”—
- (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
- (b) in relation to a sewerage undertaker, means any sewer [^{F1353}, lateral drain] or disposal main;

and

“water fittings” has the same meaning as in Part III of this Act;

and water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this section if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

Textual Amendments

- F1346** Words in s. 179(1) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 41(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1347** S. 179(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 41(3)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)
- F1348** Words in s. 179(1A) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 110**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(v)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1349** Words in s. 179(2)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(7)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F1350** S. 179(2A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 92(4)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with Sch. 3 para. 7)
- F1351** Words in s. 179 repealed (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, **Sch. 14 para. 46**, **Sch. 23 Pt. 4** (with s. 89); S.I. 2014/768, art. 2(1)(b)
- F1352** Words in s. 179(4)(b) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, **Sch. 13 para. 98** (with s. 89); S.I. 2014/768, art. 2(1)(b)
- F1353** S. 179(7)(b): words in definition inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(7)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Modifications etc. (not altering text)

- C297** S. 179 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 13(1)** (with reg. 1(1)(c))

Marginal Citations

- M64** 1980 c. 66.

Status: This version of this Act contains provisions that are prospective.

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Damage etc. caused by works

180 Compensation for damage caused by works etc.

Schedule 12 to this Act shall have effect for making provision for imposing obligations for the purpose of minimising the damage caused in the exercise of certain powers conferred on undertakers and for imposing obligations as to the payment of compensation.

Modifications etc. (not altering text)

C298 S. 180 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 13\(2\)](#) (with reg. 1(1)(c))

181 Complaints with respect to the exercise of works powers on private land.

- (1) Subject to subsection (2) below, it shall be the duty of the Director to investigate any complaint made or referred to him with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or by virtue of section 159 or 161(2) above.
- (2) The Director shall not be required to investigate any such complaint as is mentioned in subsection (1) above if—
 - (a) the complaint appears to the Director to be vexatious or frivolous;
 - (b) the Director is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it; or
 - (c) the complaint was first made to the Director or [^{F1354}the Council] more than twelve months, or such longer period as the Director may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant.
- (3) Where the Director, in pursuance of his duty under this section, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—
 - (a) it shall be the duty of that undertaker to provide the Director with all such information and assistance as he may reasonably require for the purposes of his investigation; and
 - (b) it shall be the duty of the Director, before giving any direction under subsection (4) below, to consider any representations made to him by the complainant or by that undertaker with respect to the subject-matter of the complaint.
- (4) If on a complaint under subsection (1) above with respect to the exercise of any powers by a relevant undertaker, the Director is satisfied that that undertaker—
 - (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
 - (b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,

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the Director may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

- (5) The Director shall not under subsection (4) above direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment except in so far as it appears to him appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.
- (6) The duties of a relevant undertaker by virtue of subsection (3)(a) above shall be enforceable under section 18 above by the Director.
- (7) A person to whom any amount is required, in pursuance of a direction under subsection (4) above, to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this section.
- (8) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (4) above.

Textual Amendments

F1354 Words in s. 181(2)(c) substituted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 7 para. 27\(4\)](#); [S.I. 2005/2714](#), [art. 2\(1\)\(v\)\(aa\)](#) (with [Sch. para. 8](#))

Modifications etc. (not altering text)

C299 [S. 181](#) applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 13\(4\)](#) (with reg. 1(1)(c))

182 Codes of practice with respect to work on private land.

- (1) For the purposes of section 181 above it shall be the duty of every company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker—
 - (a) as soon as reasonably practicable after its appointment takes effect, to submit to the Secretary of State for his approval a code of practice with respect to its exercise of any powers conferred by or by virtue of section 159 or 161(2) above; and
 - (b) if required to do so by the Secretary of State at any subsequent time, to submit proposed modifications of that code to the Secretary of State for his approval.
- (2) The Secretary of State, if he considers it appropriate to do so for the purpose of promoting what appear to him to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker, of any powers conferred by or by virtue of section 159 or 161(2) above, may at any time by order made by statutory instrument, in relation to that company—
 - (a) approve any code of practice with respect to the exercise of those powers which has been submitted to him (whether or not under subsection (1) above) by that company for his approval;
 - (b) approve any modifications of such a code which have been so submitted; or
 - (c) withdraw his approval for any such code or modification.

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- (3) A contravention of a code of practice as for the time being approved under this section in relation to a company shall not—
- (a) affect the powers conferred on that company as a relevant undertaker by this Part;
 - (b) of itself entitle any person to be paid any amount under subsection (4) of section 181 above; or
 - (c) give rise to any criminal or civil liability;
- but the Director shall take into account whether there has been any such contravention in determining whether to give a direction under that subsection to that company and in determining the amount to which any such direction relates.
- (4) The Secretary of State shall not make an order under subsection (2) above unless he has first consulted all such persons as he considers it appropriate to consult.
- (5) The duties of a relevant undertaker under subsection (1) above shall be enforceable under section 18 above by the Secretary of State.

Modifications etc. (not altering text)

C300 S. 182 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 13(5)** (with reg. 1(1)(c))

Protective provisions

183 Protection for particular undertakings.

Schedule 13 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

Modifications etc. (not altering text)

C301 S. 183 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 13(6)** (with reg. 1(1)(c))

184 Power of certain undertakers to alter public sewers etc.

- (1) The [^{F1355}Environment Agency][^{F1356}or the NRBW] or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers [^{F1357}, airport operator or licence holder] may, after giving reasonable notice to the sewerage undertaker concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—
- (a) are vested in the undertaker; and
 - (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
 - (i) any watercourse or other works vested in or under the control of the [^{F1355}Environment Agency][^{F1356}or the NRBW] or that internal drainage board;

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- (ii) any property of the Civil Aviation Authority;
 - (iii) any river, canal towing path or works forming part of the undertaking of those dock undertakers;
 - (iv) the railway of the railway undertakers; ^{F1358} . . .
 - (v) the airport in question. [^{F1359}; or
 - (vi) any property of a licence holder which is used by the licence holder for the purpose of carrying out activities authorised by the licence.]
- (2) In subsection (1) above “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question.
- (3) Any difference of opinion which arises under this section between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of that undertaker—
- (a) are or will be equally effectual; or
 - (b) entail or will entail additional expense for the sewerage undertaker,
- may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) In this section—
- “airport operator” means the person who is the airport operator for the purposes of Part V of the ^{M65}Airports Act 1986 in relation to an airport to which that Part of that Act applies; ^{F1360} . . .
- “dock undertakers” has the same meaning as in Chapter II of Part IV of this Act. [^{F1361}; and
- “licence holder” means a person who holds a licence under Chapter I of Part I of the Transport Act 2000 and “licence” shall be construed accordingly.]

Textual Amendments

F1355 Words in s. 184(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 119** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F1356 Words in s. 184(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 252** (with Sch. 7)

F1357 Words in s. 184(1) substituted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(a)**

F1358 Word in s. 184(1)(b)(iv) omitted (21.12.2001) by virtue of S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(b)(i)**

F1359 S. 184(1)(b)(vi) and word “or” immediately preceding inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(b)(ii)**

F1360 Word in s. 184(4) omitted (21.12.2001) by virtue of S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(c)(i)**

F1361 S. 184(4): definition of “licence holder” and word “and” immediately preceding inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(c)(ii)**

Marginal Citations

M65 1986 c. 31.

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185 Duty to move pipes etc. in certain cases.

- (1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.
- (3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.
- (4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security [^{F1362}as charging rules allow and the undertaker requires] has been provided for the discharge of any obligation of that person under subsection (5) below.
- (5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, [^{F1363}the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules].

^{F1364}(6)

^{F1364}(7)

(8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by the Director.

(9) In this section—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in section 158 above.

Textual Amendments

F1362 Words in s. 185(4) substituted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **6(5)(a)** (with art. 34)

F1363 Words in s. 185(5) substituted (1.4.2018) by [Water Act 2014 \(c. 21\)](#), **ss. 20, 94(3)**; S.I. 2017/462, art. 5(c) (with art. 14)

F1364 S. 185(6)(7) omitted (31.3.2017) by virtue of [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **6(5)(b)** (with art. 34)

186 Protective provisions in respect of flood defence works and watercourses etc.

(1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—

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- (a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or
 - (b) with any such works used by any person for irrigating any land.
- (2) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.
- (3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—
 - (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or
 - (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,
 without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.
- (4) Nothing in the relevant sewerage provisions, except sections 113 and 116 above, shall be taken to affect any right of drainage acquired by any person by prescription or otherwise before 1st October 1937.
- (5) Where a relevant undertaker proposes, otherwise than in exercise of any compulsory powers, to construct or alter any relevant inland waters in any internal drainage district or to construct or alter any works on or in any such inland waters, the undertaker shall consult the drainage board for that district before doing so.
- (6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (7) Any dispute—
 - (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;
 - (b) as to whether any consent for the purposes of this section is being unreasonably withheld;
 - (c) as to whether any condition subject to which any such consent has been given was reasonable; or
 - (d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,
 shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (8) In this section “relevant inland waters” means any inland waters other than any which form part of a main river for the purposes of Part IV of the ^{M66}Water Resources Act 1991.
- (9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.

Status: This version of this Act contains provisions that are prospective.

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Modifications etc. (not altering text)

C302 S. 186 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 13(8)** (with reg. 1(1)(c))

Marginal Citations

M66 1991 c. 57.

187 Works in tidal lands etc.

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.
- (2) An approval for the purposes of subsection (1) above shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.
- (3) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of sections 158, 159, 161, 163 and 165 above, except the power conferred by section 161(3).

Modifications etc. (not altering text)

C303 S. 187 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 13(9)** (with reg. 1(1)(c))

188 Mineral rights.

Schedule 14 to this Act (which makes provision with respect to the acquisition of mineral rights by relevant undertakers and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the ^{M67}Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

Marginal Citations

M67 1981 c. 67.

189 Power to sell minerals deriving from sewerage works.

- (1) A sewerage undertaker may sell any materials which—
 - (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions; and

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- (b) are not before the end of three days from the date of their removal claimed by the owner and taken away by him.
- (2) Where a sewerage undertaker sells any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him.
- (3) This section is subject to any rights conferred by virtue of paragraph 1 of Schedule 14 to this Act, does not apply to refuse removed by a sewerage undertaker and is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this section do not apply.

190 Saving for planning controls.

Without prejudice to the operation of section 90 of the ^{M68}Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the ^{M69}Water Act 1989 relates to the functions of a relevant undertaker, nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.

Modifications etc. (not altering text)

C304 S. 190 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 13(10)** (with reg. 1(1)(c))

Marginal Citations

M68 1990 c. 8.

M69 1989 c. 15.

191 Duties to make recreational facilities available when building reservoirs in Wales.

- (1) Where a water undertaker carries out any works for or in connection with the construction or operation of a reservoir in Wales which—
 - (a) permanently affect one or more communities; and
 - (b) are not primarily intended by that undertaker to benefit the inhabitants of that or those communities,
 it shall be the duty of that undertaker to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.
- (2) It shall be the duty of every water undertaker, in performing its duty under subsection (1) above, to consult—
 - (a) the community councils of the communities affected, in the case of communities having such councils; and
 - (b) in any case, the council of any [^{F1365}county or county borough] in which any community affected is situated.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

Textual Amendments

F1365 Words in s. 191(2)(b) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 2(1)** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**

Interpretation of Part VI

192 Interpretation of Part VI.

- (1) In this Part “discharge pipe” means a pipe from which discharges are or are to be made under section 165 above.
- (2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of section 158 above) as the pipe replaced.
- (3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker’s area.
- ^{F1366}[(3A) A relevant undertaker proposing to exercise any of its powers under section 158 or 159 above outside its own area shall, if subsection (3B) below applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that subsection applies, shall not carry out its proposal—
- (a) without the consent of that other undertaker; or
 - (b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of the Director.
- (3B) This subsection applies where the proposal is to lay—
- (a) a water main which is not intended to be—
 - (i) a trunk main; or
 - (ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or
 - (b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.]

(4) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—

 - (a) to maintain a pipe or a connection with it; or
 - (b) to alter a pipe only where certain conditions are satisfied, as are imposed on the undertaker by or under any enactment.

(5) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.

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Textual Amendments

F1366S. 192(3A)-(3B) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.47](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

Modifications etc. (not altering text)

C305 S. 192 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 13\(11\)](#) (with [reg. 1\(1\)\(c\)](#))

PART VII

INFORMATION PROVISIONS

Reports

[^{F1367}192] Forward work programmes

- (1) The Authority and the Council shall, before each financial year, each publish a document (the “forward work programme”) containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.
- (2) That description must include the objectives of each project.
- (3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority or the Council expects to incur during the year in the exercise of its functions.

[The forward work programme for any year must also include an explanation of how
^{F1368}(3A) the projects described in it reflect any strategic priorities or objectives published under section 2A or 2B.]

- (4) Before publishing the forward work programme for any year, the Authority or the Council shall give notice—
 - (a) containing a draft of the forward work programme; and
 - (b) specifying the time within which representations or objections to the proposals contained in it may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The notice under subsection (4) above must be published by the Authority or the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.
- (6) The Authority must send a copy of any notice given by it under subsection (4) above to the Council, the Secretary of State and the Assembly.
- (7) The Council must send a copy of any notice given by it under subsection (4) above to the Authority, the Secretary of State and the Assembly.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1367Ss. 192A, 192B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 38(1)**, 105(3); S.I. 2004/2528, **art. 2(d)** (with savings in [art. 4](#))

F1368S. 192A(3A) inserted (6.4.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 24(3)**, 94(3); S.I. 2015/773, **art. 2(1)(c)** (with [art. 4](#))

192B Annual and other reports

- (1) The Authority shall, as soon as practicable after the end of each financial year, make to the Secretary of State [^{F1369}and the Welsh Ministers] a report (the “annual report” for that year) on—
 - (a) its activities during that year; and
 - (b) the activities of the [^{F1370}CMA] during that year in respect of any references made [^{F1371}by the Authority].
- (2) The annual report for each year shall include—
 - (a) a general survey of developments in respect of matters falling within the scope of the Authority’s functions;
 - (b) a report on the progress of the projects described in the forward work programme for that year;
 - (c) a summary of final and provisional orders made and penalties imposed by the Authority during the year;
 - (d) a report on such matters relating to any relevant undertaker whose area is wholly or mainly in Wales as the Assembly may from time to time require; and
 - (e) a report on such other matters as the Secretary of State may from time to time require.
- (3) The annual report for each year shall set out any general directions given by the Secretary of State under section 27(3) above.
- (4) The Secretary of State or (as the case may be) the Assembly shall consult the Authority before exercising the power under subsection (2)(d) or (e) above in relation to any matter.
- (5) The Secretary of State shall—
 - (a) lay a copy of each annual report before each House of Parliament; and
 - (b) arrange for the report to be published in such manner as he considers appropriate.
- [The Welsh Ministers shall—
- ^{F1372}(5A)
 - (a) lay a copy of each annual report before the Assembly; and
 - (b) arrange for the report to be published in such manner as they consider appropriate.]
- (6) The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate.
- (7) The Authority shall send a copy of each annual or other report under this section to ^{F1373}... the Council and the Chief Inspector of Drinking Water.

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- (8) In making or preparing any report under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.]

Textual Amendments

- F1367**Ss. 192A, 192B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 38(1)**, 105(3); S.I. 2004/2528, **art. 2(d)** (with savings in [art. 4](#))
- F1369**Words in [s. 192B\(1\)](#) inserted (31.3.2017) by [Wales Act 2017 \(c. 4\)](#), **ss. 48(2)(a)**, 71(2)(f) (with [Sch. 7 paras. 1, 6, 7](#))
- F1370**Word in [s. 192B\(1\)\(b\)](#) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), [art. 1\(1\)](#), **Sch. 1 para. 89(a)** (with [art. 3](#))
- F1371**Words in [s. 192B\(1\)\(b\)](#) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), [art. 1\(1\)](#), **Sch. 1 para. 89(b)** (with [art. 3](#))
- F1372**S. 192B(5A) inserted (31.3.2017) by [Wales Act 2017 \(c. 4\)](#), **ss. 48(2)(b)**, 71(2)(f) (with [Sch. 7 paras. 1, 6, 7](#))
- F1373**Words in [s. 192B\(7\)](#) omitted (31.3.2017) by virtue of [Wales Act 2017 \(c. 4\)](#), **ss. 48(2)(c)**, 71(2)(f) (with [Sch. 7 paras. 1, 6, 7](#))

Modifications etc. (not altering text)

- C306** S. 192B(8) applied (with modifications) (29.9.2005) by [The Water Act 2003 \(Commencement No. 5, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/2714\)](#), [art. 5](#), **Sch. para. 2(3)**

193 Reports by Director.

F1374

Textual Amendments

- F1374**S. 193 repealed (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 38(2)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(u)(ii)** (with [art. 4](#), [Sch.](#))

194 Reports by customer service committees.

F1375

Textual Amendments

- F1375**S. 194 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 38(2)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/2714, **art. 2(m)(i)** (with [Sch. paras. 1, 10](#))

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Registers, maps etc.

195 The Director’s register.

- (1) The Director shall, at such premises and in such form as he may determine, maintain a register ^{F1376} ...
- (2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of—
 - (a) every appointment under Chapter I of Part II of this Act, every termination or transfer of any such appointment, every variation of the area for which any company holds any such appointment and every modification of the conditions of any such appointment;
 - ^{F1377}(aa) every licence under Chapter 1A of Part 2 of this Act, every variation or revocation of any such licence and every modification of the conditions of any such licence;]
 - (b) every direction, consent or determination given or made under any such appointment by the Secretary of State, the ^{F1378}CMA] or the Director himself;
 - ^{F1379}(bb) every direction, consent or determination given or made under any such licence by the Secretary of State, the Authority, the Assembly ^{F1380}, the Environment Agency or the NRBW] ;
 - (bc) every determination made by the Authority under section 17E or ^{F1381}66CA(1)] above ^{F1382}or regulation 19 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744)];]
 - (c) every final enforcement order made under section 18 above, every provisional enforcement order made or confirmed under that section and every revocation of such a final or provisional enforcement order;
 - (d) every undertaking given to and accepted by the Secretary of State or the Director for the purposes of subsection (1)(b) of section 19 above and every notice under subsection (3) of that section, ^{F1383} . . .
 - (e) every special administration order and every discharge of such an order.
 - ^{F1384}(f) every penalty imposed under section 22A(1) or (2) above and every notice under section 22A(6) above;]] ^{F1385}and
 - (g) every designation made by the Authority under section 66G ^{F1386}, 66H, 117N or 117O].]
- (3) If it appears to the Secretary of State that the entry of any provision ^{F1387}or, in the case of information that falls to be entered under subsection (3B), any information] in the register would be against the public interest, he may direct the Director not to enter that provision ^{F1388}or that information] in the register; and the Director shall comply with any such direction.
- ^{F1389}(3AA) Before giving a direction under subsection (3) above which relates to a ^{F1390}water supply licensee], the Secretary of State shall consult the Assembly.]
- ^{F1391}(3A)
- ^{F1392}(3B) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register such information about an agreement falling within section 142(2)(b) as the Authority thinks fit.

Status: This version of this Act contains provisions that are prospective.

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(3C) Subsection (3B) has effect in relation to agreements made after the coming into force of section 33 of the Water Act 2014.]

[^{F1393}(4) The Authority must publish a notice setting out—

- (a) the times at which the contents of the register are for the time being available for inspection by the public;
- (b) the fees that must be paid for, or in connection with, an inspection of the contents of the register;
- (c) the fees that must be paid for, or in connection with, the supply by the Authority of—
 - (i) a copy of the contents of the register, certified by the Authority as being a true copy, or
 - (ii) an extract from the contents of the register, certified by the Authority as being a true extract.

[^{F1394}(3D) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register the provisions of—

- (a) a notice under section 40F(3) (reduction in charges payable under a bulk supply agreement);
- (b) a notice under section 66EA(3) (reduction in charges payable under a section 66D agreement);
- (c) a notice under section 110G(3) (reduction in charges payable under a main connection agreement);
- (d) a notice under section 117J(3) (reduction in charges payable under a section 117E agreement).]

(4A) The Authority must publish the notice in such manner as the Authority thinks appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected by it.

(4B) The Authority must make the contents of the register available for inspection by the public—

- (a) during such hours, and
- (b) on payment of such fees,

as are set out in the notice under subsection (4) that is for the time being in force.]

(7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

Textual Amendments

F1376 Words in s. 195(1) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 34(2)**, 94(2)(i)

F1377 S. 195(2)(aa) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 42(2)**; [S.I. 2005/2714](#), **art. 3(c)** (with [Sch. para. 8](#))

F1378 Word in s. 195(2)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 90** (with [art. 3](#))

F1379 S. 195(2)(bb)(bc) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 42(3)**; [S.I. 2005/2714](#), **art. 3(c)** (with [Sch. para. 8](#))

F1380 Words in s. 195(2)(bb) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 253** (with [Sch. 7](#))

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- F1381** Word in s. 195(2)(bc) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 111(2)(a)**; S.I. 2017/462, art. 3(k)(xviii)
- F1382** Words in s. 195(2)(bc) expressed to be inserted (3.10.2016) after the words "the Water Supply Licence (New Customer Exception) Regulations 2005" by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), reg. 1(2), **Sch. 2 para. 9**
- F1383** Word in s. 195(2)(d) repealed (1.4.2005) by Water Act 2003 (c. 37), ss. 48(2), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(i)(n)(i)** (with art. 4, Schs. 1, 2)
- F1384** S. 195(2)(f) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 48(2)**, 105(3); S.I. 2005/968, **art. 2(i)** (with art. 4, Schs. 1, 2)
- F1385** S. 195(2)(g) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 42(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1386** Words in s. 195(2)(g) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 111(2)(b)**; S.I. 2017/462, art. 3(k)(xviii)
- F1387** Words in s. 195(3) inserted (14.7.2014) by Water Act 2014 (c. 21), **ss. 33(3)(a)**, 94(2)(h)
- F1388** Words in s. 195(3) inserted (14.7.2014) by Water Act 2014 (c. 21), **ss. 33(3)(b)**, 94(2)(h)
- F1389** S. 195(3AA) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 42(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1390** Words in s. 195(3AA) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 111(3)**; S.I. 2017/462, art. 3(k)(xviii)
- F1391** S. 195(3A) repealed (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 111(4)**; S.I. 2017/462, art. 3(k)(xviii)
- F1392** S. 195(3B)(3C) inserted (14.7.2014) by Water Act 2014 (c. 21), **ss. 33(3)(c)**, 94(2)(h)
- F1393** S. 195(4)-(4B) substituted for s. 195(4)-(6) (14.7.2014) by Water Act 2014 (c. 21), **ss. 35**, 94(2)(j)
- F1394** S. 195(3D) inserted (1.9.2016 for the insertion of s. 195(3D)(b)-(d)) by Water Act 2014 (c. 21), **ss. 34(3)**, 94(3); S.I. 2016/465, art. 3(c)(i) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C307** S. 195 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 14(1)** (with reg. 1(1)(c))
- C308** S. 195(2)(bc) modified (1.12.2005) by The Water Supply Licence (New Customer Exception) Regulations 2005 (S.I. 2005/3076), **reg. 5(2)** (as amended (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), reg. 1(2), **Sch. 2 para. 9**)

^{F1395}195 Reasons for decisions

- (1) This section applies to the following decisions of the Authority, the Secretary of State or the Assembly, namely—
- (a) the modification of the conditions of an appointment under Chapter 1 of Part 2 of this Act or the variation of the area to which an appointment relates;
 - (b) the modification of the conditions of a licence under Chapter 1A of that Part;
 - (c) the termination of such an appointment or the revocation of such a licence;
 - (d) the giving of any directions or consent in pursuance of a condition included in such an appointment by virtue of section 12(1) above or in such a licence by virtue of section 17G(3)(a) or (b) above;
 - (e) the determination of a question referred in pursuance of a condition included in such an appointment by virtue of section 12(2) above or in such a licence by virtue of section 17G(3)(c) above;
 - (f) the making of a determination under section 17E or ^{F1396}66CA(1)] above; and

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- (g) the making of a final enforcement order, the making or confirmation of a provisional enforcement order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority, the Secretary of State or the Assembly shall publish a notice stating the reasons for the decision in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) A person publishing a notice under subsection (2) above shall serve a copy on the company holding the appointment or [^{F1397}the person holding the] licence to which the decision relates.
- (4) A person preparing a notice under subsection (2) above shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (5) This section does not apply in relation to a decision of the Authority resulting in any provision which the Authority was directed under section 195(3) above not to enter in the register required to be kept under that section.]

Textual Amendments

- F1395**S. 195A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 51**, 105(3); S.I. 2005/968, **art. 2(j)** (with [Sch. 2 para. 1](#))
- F1396**Word in s. 195A(1)(f) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 112(2)**; S.I. 2017/462, art. 3(k)(xix)
- F1397**Words in s. 195A(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 112(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(w\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C309** S. 195A applied (1.12.2005) by [The Water Supply Licence \(New Customer Exception\) Regulations 2005 \(S.I. 2005/3076\)](#), **reg. 5(3)**
- C310** S. 195A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 14(2)** (with reg. 1(1)(c))
- C311** S. 195A applied (with modifications) (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **11(6)**
- C312** S. 195A applied (with modifications) (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **19(5)**
- C313** S. 195A applied (with modifications) (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **28(5)**
- C314** S. 195A applied (with modifications) (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **25(5)**

196 Trade effluent registers.

- (1) It shall be the duty of every sewerage undertaker to secure that copies of—
- (a) every consent given or having effect as if given by the undertaker under Chapter III of Part IV of this Act;

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- (b) every direction given or having effect as if given by the undertaker under that Chapter;
 - (c) every agreement entered into or having effect as if entered into by the undertaker under section 129 above; and
 - (e) every notice served on the undertaker under section 132 above,
- are kept available, at all reasonable times, for inspection by the public free of charge at the offices of the undertaker.
- (2) It shall be the duty of every sewerage undertaker, on the payment of such sum as may be reasonable, to furnish a person who requests it with a copy of, or of an extract from, anything kept available for inspection under this section.
 - (3) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Director.

197 Register for the purposes of works discharges.

- (1) Every water undertaker shall keep a register of persons and premises for the purposes of section 166 above.
- (2) A water undertaker shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—
 - (a) the owner or occupier of those premises; or
 - (b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.
- (3) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

198 Maps of waterworks.

- (1) Subject to subsections (4) and (5) below, it shall be the duty of every water undertaker to keep records of the location of—
 - (a) every resource main, water main or discharge pipe which is for the time being vested in that undertaker; and
 - (b) any other underground works, other than a service pipe, which are for the time being vested in that undertaker.
- ^{F1398}(1A) Subject to subsection (4) below, it shall also be the duty of every water undertaker to keep records of the location and (in the case of a water main) other relevant particulars of—
 - (a) every water main in relation to which a declaration of vesting has been made by the undertaker under Chapter 2 of Part 3 of this Act but has not taken effect; and
 - (b) every water main which is the subject of any agreement to make such a declaration which has been entered into by (or on behalf of) the undertaker.
- (1B) For the purposes of this section the other relevant particulars of a water main are (in addition to its location) particulars of whether it is a water main in relation to which a declaration has been made under Chapter 2 of Part 3 of this Act or a water main which is the subject of an agreement to make such a declaration.]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) It shall be the duty of every water undertaker to secure that the contents of any records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.
- (3) Any information which is required under this section to be made available by a water undertaker for inspection by the public shall be so made available in the form of a map.
- (4) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) [^{F1399} or (1A)] above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.
- (5) Nothing in this section shall require a water undertaker, at any time before 1st September 1999, to keep records of—
 - (a) any pipe which was laid before 1st September 1989; or
 - (b) any underground works which were completed before 1st September 1989, unless those particulars were shown on 31st August 1989 on a map kept by a water authority or statutory water company under section 12 of Schedule 3 to the ^{M70}Water Act 1945 (maps of underground works).
- (6) The reference in subsection (5) above to section 12 of Schedule 3 to the ^{M71}Water Act 1945 shall have effect, without prejudice to section 20(2) of the ^{M72}Interpretation Act 1978 (references to enactments to include references to enactments as amended, extended or applied), as including a reference to that section as applied, with or without modifications, by any local statutory provision.
- (7) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.
- (8) In this section “discharge pipe” has the same meaning as in Part VI of this Act.

Textual Amendments

F1398S. 198(1A)(1B) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 92(5)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [Sch. 3 para. 7](#))

F1399 Words in s. 198(4) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 92(5)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [Sch. 3 para. 7](#))

Marginal Citations

M70 1945 c. 42.

M71 1945 c. 42.

M72 1978 c. 30.

199 Sewer maps.

- (1) Subject to subsections (6) to (8) below, it shall be the duty of every sewerage undertaker to keep records of the location and other relevant particulars—
 - (a) of every public sewer [^{F1400}, lateral drain] or disposal main which is vested in the undertaker;

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- (b) of every sewer [^{F1401}or lateral drain] in relation to which a declaration of vesting has been made by the undertaker under Chapter II of Part IV of this Act but has not taken effect; and
 - (c) of every drain or sewer which is the subject of any agreement to make such a declaration which has been entered into by the undertaker under section 104 above.
- (2) For the purposes of this section the relevant particulars of a drain, sewer or disposal main are (in addition to its location) particulars—
- (a) of whether it is a drain, sewer or disposal main and of the descriptions of effluent for the conveyance of which it is or is to be used; and
 - (b) of whether it is vested in the undertaker or, if it is not, of whether it is a sewer in relation to which a declaration has been made under Chapter II of Part IV of this Act or a drain or sewer which is the subject of an agreement under section 104 above.
- (3) The records kept by a sewerage undertaker under this section shall be kept separately in relation to the area of each local authority within whose area there is any drain, sewer or disposal main of which that undertaker is required to keep records and to whom the undertaker is required under section 200 below to provide copies of the contents of those records.
- (4) It shall be the duty of every sewerage undertaker to secure that the contents of all the records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.
- (5) Any information which is required under this section to be made available by a sewerage undertaker for inspection by the public shall be so made available in the form of a map.
- (6) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.
- (7) Nothing in this section shall require a sewerage undertaker to keep records of any particulars of a drain, sewer or disposal main laid before 1st September 1989 if—
- (a) the undertaker does not know of, or have reasonable grounds for suspecting, the existence of the drain, sewer or disposal main; or
 - (b) it is not reasonably practicable for the undertaker to discover the course of the drain, sewer or disposal main and it has not done so.
- (8) Nothing in this section shall require a sewerage undertaker, at any time before 1st September 1999, to keep records of any particulars of any such drain, sewer or disposal main laid before 1st September 1989 as would not be excluded from its records by virtue of subsection (7) above unless—
- (a) those particulars were shown on 31st August 1989 on a map kept by a local authority under section 32 of the ^{M73}Public Health Act 1936 (sewer maps); or
 - (b) it is a drain or sewer in relation to which a declaration of vesting, or an agreement to make such a declaration, has been made since 31st August 1989.

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- (9) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

Textual Amendments

F1400 Words in s. 199(1)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(8)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

F1401 Words in s. 199(1)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(8)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

Modifications etc. (not altering text)

C315 [S. 199](#) applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), [reg. 1\(1\)\(b\)](#), **Sch. 1 para. 14(3)** (with [reg. 1\(1\)\(c\)](#))

Marginal Citations

M73 [1936 c. 49](#).

200 Provision of sewer maps to local authorities.

- (1) It shall be the duty of every sewerage undertaker so to provide local authorities, free of charge, with—
- (a) copies of the contents of records kept under section 199 above; and
 - (b) copies of any modifications of those records,
- as to ensure that every local authority to whose area any of those records relate are at all times informed of the contents for the time being of the records relating to their area.
- (2) A local authority shall secure that so much of any information provided to them by virtue of this section as consists in the contents for the time being of records kept by a sewerage undertaker under section 199 above is available, at all reasonable times, for inspection by the public free of charge at an office of the authority.
- (3) Any information which is required under this section to be provided to a local authority or to be made available by a local authority for inspection by the public shall be so provided or made available in the form of a map.
- (4) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Secretary of State.
- (5) In this section and, accordingly, in section 199(3) above “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

Modifications etc. (not altering text)

C316 [S. 200](#) applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), [reg. 1\(1\)\(b\)](#), **Sch. 1 para. 14(4)** (with [reg. 1\(1\)\(c\)](#))

Status: This version of this Act contains provisions that are prospective.

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Publication of certain information and advice

201 Publication of certain information and advice.

- (1) The Secretary of State may arrange for the publication, in such form and in such manner as he considers appropriate, of such information
 - ^{F1402}(a) relating to any matter which is connected with the carrying out by a company holding an appointment under Chapter 1 of Part 2 of this Act of the functions of a relevant undertaker; or
 - (b) relating to any matter which is connected with the carrying on by a ^{F1403}person] holding a licence under Chapter 1A of that Part of the activities authorised by the licence,
 as it may] appear to him to be in the public interest to publish.
- (2) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him to be expedient to give to any customer or potential customer of a company holding an appointment under Chapter I of Part II of this Act or ^{F1404}a person holding]]^{F1405} a licence under Chapter 1A of that Part].
- (3) In arranging for the publication of any such information or advice the Secretary of State or the Director shall have regard to the need for excluding, so far as that is practicable—
 - (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) the Director, seriously and prejudicially affect the interests of that body.
- ^{F1406}(4) The ^{F1407}CMA] shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under subsection (2) of this section.]

Textual Amendments

- F1402** Words in s. 201(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 43(2)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with art. 6, Sch. 3)
- F1403** Word in s. 201(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 113(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1404** Words in s. 201(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 113(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1405** Words in s. 201(2) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 43(3)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with art. 6, Sch. 3)
- F1406** S. 201(4) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 25(9)**; S.I. 2003/1397, **art. 2(1)**, **Sch.**
- F1407** Word in s. 201(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 91** (with art. 3)

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Modifications etc. (not altering text)

C317 S. 201 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), [Sch. 1 para. 14\(5\)](#) (with reg. 1(1)(c))

Powers to acquire and duties to provide information

202 Duties of undertakers to furnish the Secretary of State with information.

- (1) It shall be the duty of a company holding an appointment as a relevant undertaker to furnish the Secretary of State with all such information relating to any matter which—
 - (a) is connected with, or with any proposals relating to, the carrying out by that company of the functions of a relevant undertaker; or
 - (b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the ^{M74}Water Act 1989, as the Secretary of State may reasonably require.
- ^{F1408}(1A) It shall be the duty of a ^{F1409}person] holding a licence under Chapter 1A of Part 2 of this Act to furnish the Secretary of State with all such information relating to any matter which—
 - (a) is connected with, or with any proposals relating to, the carrying on by that ^{F1409}person] of the activities authorised by the licence; or
 - (b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the Water Act 1989, as the Secretary of State may reasonably require.]
- (2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State may reasonably require.
- (3) The information which a ^{F1410}person] may be required to furnish to the Secretary of State under this section shall include information which, although it is not in the possession of that ^{F1410}person] or would not otherwise come into the possession of that ^{F1410}person], is information which it is reasonable to require that ^{F1410}person] to obtain.
- (4) A requirement for the purposes of this section shall be contained in a direction which—
 - (a) may describe the information to be furnished in such manner as the Secretary of State considers appropriate;
 - (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time; and
 - (c) may be given to a particular company ^{F1411}or person], to companies ^{F1412}or persons] of a particular ^{F1413}description,] to all the companies holding appointments under Chapter I of Part II of this Act ^{F1414}or ^{F1415}to all the persons holding] licences under Chapter 1A of that Part].
- (5) The obligations of a relevant undertaker ^{F1416}, water supply licensee or sewerage licensee] under this section shall be enforceable under section 18 above by the Secretary of State.

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- (6) In this section “the other consolidation Acts” means the ^{M75}Water Resources Act 1991, ^{F1417}... so much of the ^{M76}Land Drainage Act 1991 as confers functions on the Secretary of State with respect to [^{F1418}the Environment Agency]^{F1419} or on the Welsh Ministers with respect to the NRBW] and the ^{M77}Water Consolidation (Consequential Provisions) Act 1991.

Textual Amendments

- F1408**S. 202(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 44(2)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with art. 6, Sch. 3)
- F1409**Word in s. 202(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1410**Word in s. 202(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1411**Words in s. 202(4)(c) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(4)(a)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1412**Words in s. 202(4)(c) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(4)(b)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1413**Word in s. 202(4)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(4)(c)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1414**Words in s. 202(4)(c) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 44(3)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with art. 6, Sch. 3)
- F1415**Words in s. 202(4)(c) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(4)(d)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1416**Words in s. 202(5) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 114(5)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(x)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1417**Words in s. 202(6) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(c)**
- F1418**Words in s. 202(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 120** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F1419**Words in s. 202(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 254** (with Sch. 7)

Modifications etc. (not altering text)

- C318** S. 202 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 14(6)** (with reg. 1(1)(c))

Marginal Citations

- M74** 1989 c. 15.
M75 1991 c. 57.
M76 1991 c. 59.
M77 1991 c. 60.

203 Power to acquire information for enforcement purposes.

^{F1420}(1) The Minister or the Authority may serve a notice under subsection (2) in respect of—

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- (a) a company that holds an appointment as a relevant undertaker, if of the opinion that Condition 1 is satisfied, or
- (b) a person who holds a licence under Chapter 1A of Part 2, if of the opinion that Condition 2 is satisfied.

(1A) Condition 1 is that the company—

- (a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (b) may be causing or contributing to, or may have caused or contributed to, a contravention by another company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by a person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
- (d) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or
- (e) has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.

(1B) Condition 2 is that the person—

- (a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18,
- (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by another person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
- (d) has not met the standards prescribed under section 38ZA(2) in connection with the provision of water supplies, or
- (e) has not met the standards prescribed under section 95ZA(2) in connection with the provision of sewerage services.

(1C) The notice may be served—

- (a) on any person;
- (b) for any purpose connected with powers under Chapter 2 of Part 2.]

(2) A notice under this subsection is a notice signed by the [^{F1421}Minister] or the Director and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to—
 - (i) the [^{F1421}Minister] or the Director; or
 - (ii) any person appointed by the [^{F1421}Minister] or the Director for the purpose,

any documents which are specified or described in the notice and are in that person's custody or under his control; or

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- (b) requiring that person, if he is carrying on a business, to furnish, at the time and place and in the form and manner specified in the notice, the [^{F1421}Minister] or the Director with such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who, without reasonable excuse, fails to do anything required of him by a notice under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce 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) If a person makes default in complying with a notice under subsection (2) above, the High Court may, on the application of the [^{F1422}Minister] or the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) Nothing in this section shall be construed as restricting any power of the Secretary of State or the Director under section 202 above or the conditions of an appointment under Chapter I of Part II of this Act [^{F1423} or of a licence under Chapter 1A of that Part] to require a company holding such an appointment [^{F1424} or a person holding such a licence] to produce any document to him or to furnish him with any information.
- [^{F1425}(8) The Minister” means—
- (a) the Secretary of State, in respect of—
 - (i) any relevant undertaker whose area is wholly or mainly in England;
 - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker;
 - (b) the Welsh Ministers, in respect of—
 - (i) any relevant undertaker whose area is wholly or mainly in Wales;
 - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker.
- (9) In this section—
- (a) references to the supply system of a water undertaker are to be construed in accordance with section 17B;
 - (b) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7).]

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Textual Amendments

- F1420** S. 203(1)-(1C) substituted for s. 203(1) (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 36(2)**, 94(2)(j)
- F1421** Word in s. 203(2) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 36(3)**, 94(2)(j)
- F1422** Word in s. 203(6) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 36(3)**, 94(2)(j)
- F1423** Words in s. 203(7) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 45(3)(a)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)
- F1424** Words in s. 203(7) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 36(4)**, 94(2)(j)
- F1425** S. 203(8)(9) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 36(5)**, 94(2)(j)

Modifications etc. (not altering text)

- C319** S. 203 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 14(7)** (with reg. 1(1)(c))

204 Provision of information to sewerage undertakers with respect to trade effluent discharges.

- (1) The owner or occupier of any land on or under which is situated any sewer, drain, pipe, channel or outlet used or intended to be used for discharging any trade effluent into a sewer of a sewerage undertaker shall, when requested to do so by the undertaker—
 - (a) produce to the undertaker all such plans of the sewer, drain, pipe, channel or outlet as the owner or, as the case may be, occupier possesses or is able without expense to obtain;
 - (b) allow copies of the plans so produced by him to be made by, or under the directions of, the undertaker; and
 - (c) furnish to the undertaker all such information as the owner or, as the case may be, occupier can reasonably be expected to supply with respect to the sewer, drain, pipe, channel or outlet.
- (2) A request by a sewerage undertaker for the purposes of this section shall be made in writing.
- (3) Every person who fails to comply with this section shall be guilty of an offence and liable, on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Expressions used in this section and in Chapter III of Part IV of this Act have the same meanings in this section as in that Chapter; and, accordingly, section 139 above shall have effect for the purposes of this section as it has effect for the purposes of that Chapter.

205 Exchange of metering information between undertakers.

- (1) Where—
 - (a) different services are provided in relation to the same premises by different [^{F1426}service providers] ;
 - (b) one of those [^{F1427}providers] has obtained a reading from a meter used in determining the amount of any charges fixed in relation to those premises;
 - (c) the charges in relation to those premises of another of those [^{F1427}providers] are fixed by reference to any matter to which the reading is relevant; and

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- (d) that other [F1428 provider] has agreed to bear a reasonable proportion of the expenses of obtaining the reading together with the reasonable expenses of the disclosure of the reading to it,
it shall be the duty of the [F1429 provider] who obtained the reading to disclose the reading to the other [F1429 provider] .
- (2) Any dispute between a [F1430 service provider] and any other person (including another [F1431 such provider])—
- (a) as to the terms to be contained in any agreement for the purposes of subsection (1)(d) above; or
- (b) as to the amount of any expenses to be borne by any person under any such agreement,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between [F1432 the provider] and that person or, in default of agreement, by the Director.
- [F1433 (3) The duties of a service provider under this section shall be enforceable under section 18 above by the Authority.
- (4) For the purposes of this section, the following are service providers—
- (a) any relevant undertaker; F1434 ...
- (b) any [F1435 water supply licensee].]
- [F1436 (c) any sewerage licensee.]

Textual Amendments

- F1426** Words in s. 205(1)(a) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(2\)\(a\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F1427** Word in s. 205(1)(b)(c) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(2\)\(b\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F1428** Word in s. 205(1)(d) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(2\)\(c\)](#); S.I. 2005/2714, [art. 3\(c\)](#), (with Sch. para. 8)
- F1429** Words in s. 205(1) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(2\)\(d\)](#); S.I. 2005/2714, [art. 3\(c\)](#), (with Sch. para. 8)
- F1430** Words in s. 205(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(3\)\(a\)](#); S.I. 2005/2714, [art. 3\(c\)](#), (with Sch. para. 8)
- F1431** Words in s. 205(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(3\)\(b\)](#); S.I. 2005/2714, [art. 3\(c\)](#), (with Sch. para. 8)
- F1432** Words in s. 205(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(3\)\(c\)](#); S.I. 2005/2714, [art. 3\(c\)](#), (with Sch. para. 8)
- F1433** S. 205(3)(4) substituted (1.12.2005) for s. 205(3) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 46\(4\)](#); S.I. 2005/2714, [art. 3\(c\)](#), (with Sch. para. 8)
- F1434** Word in s. 205(4)(a) repealed (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 115\(a\)](#); S.I. 2017/462, [art. 3\(k\)\(xx\)](#)
- F1435** Words in s. 205(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 115\(b\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(y\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1436** S. 205(4)(c) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 115\(c\)](#); S.I. 2017/462, [art. 3\(k\)\(xx\)](#)

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Modifications etc. (not altering text)

C320 S. 205 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), [Sch. 1 para. 14\(8\)](#) (with reg. 1(1)(c))

Restriction on disclosure of information

206 Restriction on disclosure of information.

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
 - (a) has been obtained by virtue of any of the provisions of this Act; and
 - (b) relates to the affairs of any individual or to any particular business,
 shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) No person shall disclose any information furnished to him under section ^{F1437} . . . 204 above or under Chapter III of Part IV of this Act except—
 - (a) with the consent of the person by whom the information was furnished;
 - (b) in connection with the execution of that Chapter;
 - (c) for the purposes of any proceedings arising under that Chapter (including any appeal, application to the Secretary of State or the Director or an arbitration);
 - (d) for the purposes of any criminal proceedings (whether or not so arising); or
 - (e) for the purposes of any report of any proceedings falling within paragraph (c) or (d) above.
- (3) Subsection (1) above does not apply to any disclosure of information which is made—
 - (a) for the purpose of facilitating the carrying out by the Secretary of State, the Minister, [^{F1438}the Environment Agency, [^{F1439}the NRBW,] the Scottish Environment Protection Agency], the Director [^{F1440}, the Council] , the [^{F1441}CMA] or a county council or local authority of any of his, its or, as the case may be, their functions by virtue of this Act, any of the other consolidation Acts [^{F1442}, ^{M78}the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990 [^{F1443}, the ^{M79}Environment Act 1995][^{F1444}, regulations under section 2 of the Pollution Prevention and Control Act 1999, [^{F1445}the Water Act 2003 [^{F1446}, the Water Act 2014] or the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)]];
 - (b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Act, any of the other consolidation Acts [^{F1447}, the Water Act 1989 [^{F1448}, the Water Act 2003 or ^{F1449} . . . the Water Act 2014]] [^{F1450} or by [^{F1451}a water supply licensee or sewerage licensee of any of the duties imposed on the licensee] by or under this Act[^{F1452}, the Water Act 2003 or the Water Act 2014];
 - (c) in pursuance [^{F1453}of any duty imposed by section 27H above or] section 197(1)(a) or (2) or [^{F1454}203(1), (1A), (2) or (2A)] of the ^{M80}Water Resources Act 1991 (information about water flow and pollution);
 - [^{F1455}(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;]

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- (d) for the purpose of facilitating the carrying out by any person mentioned in Part I of Schedule 15 to this Act of any of his functions under any of the enactments or instruments specified in Part II of that Schedule;
 - [^{F1456}(e) for the purpose of enabling or assisting the Secretary of State, the Treasury]^{F1457}, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England] to exercise any powers conferred by or under the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency;
 - (ea) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;]
 - (f) for the purpose of enabling an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the ^{M81}Insolvency Act 1986 to carry out its functions as such;
 - (g) for the purpose of facilitating the carrying out by ^{F1458} . . . the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the ^{M82}Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;
 - [^{F1459}(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;]
 - (h) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;
 - (i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (j) for the purposes of any civil proceedings brought under or by virtue of this Act, any of the other consolidation Acts, [^{F1460}, the Water Act 2003][^{F1461}, the Water Act 2014] or any of the enactments or instruments specified in Part II of Schedule 15 to this Act, or of any arbitration under this Act, any of the other consolidation Acts [^{F1462}, the Water Act 1989 [^{F1463}, the Water Act 2003 or the Water Act 2014]]; or
 - (k) in pursuance of [^{F1464}[^{F1465}an assimilated] obligation].
- (4) Nothing in subsection (1) above shall be construed—
- (a) as limiting the matters which may be published under section [^{F1466}38A, 95A or] 201 above or may be included in, or made public as part of, a report of [^{F1467}the Environment Agency, [^{F1468}the NRBW,] the Scottish Environment Protection Agency], the Director, [^{F1469}the Council (or any regional committee)] or the [^{F1470}CMA] under any provision of this Act [^{F1471}, Part I or IIA of ^{M83}the Environmental Protection Act 1990, the ^{M84}Water Resources Act 1991][^{F1443}, the ^{M85}Environment Act 1995 [^{F1472}, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003]]; or
 - (b) as applying to any information which has been so published or has been made public as part of such a report or to any information exclusively of a statistical nature.
- (5) Subject to subsection (6) below, nothing in subsection (1) above shall preclude the disclosure of information—
- (a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a relevant undertaker[^{F1473}, or with the carrying

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- on by [^{F1474}a water supply licensee or sewerage licensee of activities under the licence held by the licensee],] and is made by one Minister of the Crown or government department to another; or
- (b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (6) The power 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 where such an order designates an authority for the purposes of paragraph (b) of that subsection, the order may—
- (a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and
- (b) otherwise restrict the circumstances in which disclosure is so permitted.
- (7) Any person who discloses any information in contravention of the preceding provisions of this section shall be guilty of an offence.
- (8) A person who is guilty of an offence under this section by virtue of subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (9) A person who is guilty of an offence under this section by virtue of subsection (2) above shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both .
- ^{F1475}[(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the [^{F1476}CMA] under Part I of the Competition Act 1998 is subject to [^{F1477}Part 9 of the Enterprise Act 2002 (Information)] and not to subsections (1) to (9) of this section.]
- (10) In this section “the other consolidation Acts” means the ^{M86}Water Resources Act 1991, ^{F1478}... the ^{M87}Land Drainage Act 1991 and the ^{M88}Water Consolidation (Consequential Provisions) Act 1991.
- ^{F1479}(11) In this section the reference to the Bank of England does not include the Bank acting in its capacity as the Prudential Regulation Authority.]

Textual Amendments

F1437 Words in s. 206(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 121(1), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

F1438 Words in s. 206(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 121(2)(a) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

F1439 Words in s. 206(3)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 255(2)(a) (with Sch. 7)

F1440 Words in s. 206(3)(a) inserted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 7 para. 27(5)(a)(i); S.I. 2005/2714, art. 2(I)(v)(bb) (with Sch. 2 para. 8)

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- F1441** Word in s. 206(3)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 92(2)** (with art. 3)
- F1442** Words in s. 206(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F1443** Words in s. 206(3)(a)(4)(a) substituted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 7**; S.I. 2000/800, **art. 2**
- F1444** Words in s. 206(3)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F1445** Words in s. 206(3)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 255(2)(b)** (with Sch. 7)
- F1446** Words in s. 206(3)(a) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **6(6)(a)**
- F1447** Words in s. 206(3)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(iii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F1448** Words in s. 206(3)(b) substituted (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), reg. 1(2), **Sch. 2 para. 10**
- F1449** Words in s. 206(3)(b) omitted (31.3.2017) by virtue of The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **6(6)(b)(i)**
- F1450** Words in s. 206(3)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 47(2)**; S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)
- F1451** Words in s. 206(3)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 116(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1452** Words in s. 206(3)(b) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **6(6)(b)(ii)**
- F1453** Words in s. 206(3)(c) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(iv)**; S.I. 2005/2714, **art. 2(l)(v)(bb)** (with Sch. 2 para. 8)
- F1454** Words in s. 206(3)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 47(3)**; S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)
- F1455** S. 206(3)(ca) inserted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 50** (with s. 49(1)(6)); S.I. 2011/694, art. 3(h)
- F1456** S. 206(3)(e)(ea) substituted (1.12.2001) for s. 206(3)(e) by S.I. 2001/3649, **arts. 1, 328**
- F1457** Words in s. 206(3)(e) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 72** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F1458** Words in s. 206(3)(g) omitted (1.4.2008) by virtue of The Legislative Reform (Health and Safety Executive) Order (S.I. 2008/960), art. 22, {Sch. 3} (with Sch. 2)
- F1459** S. 206(3)(ga) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 64**; S.I. 2014/251, art. 4
- F1460** Words in s. 206(3)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(v)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F1461** Words in s. 206(3)(j) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **6(6)(c)(i)**
- F1462** Words in s. 206(3)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(v)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F1463** Words in s. 206(3)(j) substituted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **6(6)(c)(ii)**
- F1464** Words in s. 206(3)(k) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **3(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F1465** Words in s. 206(3)(k) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 30(3)**

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- F1466** Words in s. 206(4)(a) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), Sch. 1 para. 27**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F1467** Words in s. 206(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F1468** Words in s. 206(4)(a) inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 255(3)** (with Sch. 7)
- F1469** Words in s. 206(4)(a) substituted (1.10.2005) by **Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 7 para. 27(5)(b)(i)**; S.I. 2005/2714, **art. 2(l)(v)(bb)** (with Sch. 2 para. 8)
- F1470** Word in s. 206(4)(a) substituted (1.4.2014) by **The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 92(2)** (with art. 3)
- F1471** Words in s. 206(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F1472** Words in s. 206(4)(a) substituted (1.4.2004) by **Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 7 para. 27(5)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F1473** Words in s. 206(5)(a) inserted (1.4.2004) by **Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 47(4)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F1474** Words in s. 206(5)(a) substituted (1.4.2016) by **Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 116(3)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1475** S. 206(9A) inserted (1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 13(9)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**
- F1476** Word in s. 206(9A) substituted (1.4.2014) by **The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 92(3)** (with art. 3)
- F1477** Words in s. 206(9A) substituted (20.6.2003) by **Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 25(10)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F1478** Words in s. 206(10) omitted (26.5.2015) by virtue of **Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 28(4)(d)**
- F1479** S. 206(11) inserted (1.3.2017) by **The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, Sch. para. 5**

Modifications etc. (not altering text)

- C321** S. 206 restricted (31.10.2003) by **Railways and Transport Safety Act 2003 (c. 20), ss. 115, 120**; S.I. 2003/2681, **art. 2**
- C322** S. 206 extended (1.12.1991) by **Statutory Water Companies Act 1991 (c. 58, SIF 130), ss. 16, 17(2)**.
- C323** S. 206(3): disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127(2)(a), **Sch. 4 Pt. I para. 31**

Marginal Citations

- M78** 1989 c. 15.
M79 1995 c. 25.
M80 1991 c. 57.
M81 1986 c. 45.
M82 1974 c. 37.
M83 1990 c. 43.
M84 1991 c. 57.
M85 1995 c. 25.
M86 1991 c. 57.
M87 1991 c. 59.
M88 1991 c. 60.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Provision of false information

207 Provision of false information.

- (1) If any person, in furnishing any information or making any application under or for the purposes of any provision of this Act, 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, he 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.
- (2) Proceedings for an offence under subsection (1) above shall not be instituted except by or with the consent of the Secretary of State ^{F1480} . . . or the Director of Public Prosecutions.

Textual Amendments

F1480 Words in s. 207(2) repealed (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(2), **Sch. 2** (with art. 6)

Modifications etc. (not altering text)

C324 S. 207 extended (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), **ss.16, 17(2)**.
S. 207: functions exercised concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672](#), art. 2, **Sch. 1**

[^{F1481}PART 7A

FURTHER PROVISION ABOUT REGULATION

Textual Amendments

F1481 Pt. 7A inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 37(2), 94(3)**; [S.I. 2016/465](#), art. 2(g) (with **Sch. 2**) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

Appeals relating to revisions of codes

207A Appeals to the CMA

- (1) The Secretary of State may by regulations provide for an appeal to lie to the CMA from—
 - (a) a decision by the Authority to make a revision to a designated code;
 - (b) a decision by the Authority, following consultation under this Act about a proposed revision to a designated code, not to make the proposed revision.
- (2) For the purposes of this section a designated code is a code, or a part of a code, issued by the Authority under or by virtue of this Act that is designated for the purposes of this section by regulations under this section.
- (3) The regulations may specify descriptions of revisions by reference to which an appeal under the regulations may not be brought.

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- (4) Regulations made under subsection (3) may provide—
- (a) for the exclusion of certain descriptions of revisions to operate only in such cases as may be determined in accordance with the regulations;
 - (b) for a determination in accordance with the regulations to be made—
 - (i) by such persons,
 - (ii) in accordance with such procedures, and
 - (iii) by reference to such matters and the opinions of such persons (including the Authority),
 as may be provided for in the regulations.
- (5) The regulations may—
- (a) specify the persons or descriptions of persons eligible to bring an appeal;
 - (b) specify conditions to be satisfied by a person wishing to bring an appeal.
- (6) Regulations made under subsection (5) may—
- (a) make different provision in relation to different codes or different parts of a code;
 - (b) provide for a representative body or association to bring an appeal.
- (7) The regulations must—
- (a) provide for appeals to be brought only where the CMA grants permission for an appeal;
 - (b) provide for the grounds on which the CMA may refuse permission.
- (8) Before making regulations under this section the Secretary of State must consult—
- (a) the Welsh Ministers;
 - (b) the Authority;
 - (c) such other persons as the Secretary of State considers appropriate.

207B Procedure on appeals

- (1) Except where otherwise provided, the functions of the CMA with respect to appeals under section 207A are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (2) Schedule 16 (provision as to procedure on appeals) has effect.

207C Determination of appeals

- (1) The Secretary of State may by regulations provide for the determination by the CMA of an appeal under section 207A.
- (2) The regulations must require the CMA in determining the appeal to have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard in exercising or performing the powers and duties mentioned in section 2(1).
- (3) The regulations must provide that the CMA in determining the appeal—
 - (a) may have regard to any matter to which the Authority was not able to have regard in the case of the decision appealed against, but

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- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The regulations may specify the grounds on which an appeal may be allowed.
- (5) The grounds specified by the regulations may include the following—
 - (a) that the Authority failed properly to have regard to the matters mentioned in subsection (2);
 - (b) that the Authority failed properly to have regard to the purposes for which the code in question is issued;
 - (c) that the Authority failed to give the appropriate weight to one or more of those matters or purposes.
- (6) The regulations may make provision for the steps that the CMA is to take—
 - (a) if it allows the appeal;
 - (b) if it does not allow the appeal.
- (7) Provision under subsection (6)(a) may include remitting a matter to the Authority for reconsideration and redetermination in accordance with directions given by the CMA.
- (8) The regulations may make provision as to the decision of the CMA on the appeal, including in particular provision for the decision—
 - (a) to be contained in an order made by the CMA;
 - (b) to set out the reasons for the decision;
 - (c) to take effect—
 - (i) at the time specified in the order, or
 - (ii) at the time determined in accordance with provision set out in the order;
 - (d) to be notified to the persons who were parties to the appeal (see paragraph 2 of Schedule 16); and
 - (e) to be published.
- (9) Provision under subsection (8)(e) may allow the CMA to exclude from publication any information which it is satisfied is—
 - (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.]

PART VIII

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

208 Directions in the interests of national security.

- (1) The Secretary of State may, after consultation with a relevant undertaker^[F1482], water supply licensee or sewerage licensee], give to that undertaker^[F1483]^[F1484] or licensee] (as the case may be)] such directions of a general character as appear to the Secretary of

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- State to be requisite or expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency which may occur.
- (2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with a relevant undertaker [^{F1485}, water supply licensee or sewerage licensee], give to that undertaker [^{F1483} [^{F1486} or licensee] (as the case may be)] a direction [^{F1487} requiring that undertaker or licensee] to do, or not to do, a particular thing specified in the direction.
- (3) It shall be the duty of a relevant undertaker [^{F1488}, water supply licensee or sewerage licensee], notwithstanding any other duty imposed [^{F1489} on that undertaker or licensee] (whether or not by or under this Act), to comply with any direction given [^{F1490} to that undertaker or licensee] by the Secretary of State under this section; and the duty of a relevant undertaker [^{F1488}, water supply licensee or sewerage licensee] to comply with any such direction shall be enforceable under section 18 above by the Secretary of State.
- [^{F1491}(3A) The Secretary of State may, after consultation with the Council, give to the Council such directions of a general character as appear to the Secretary of State to be requisite or expedient—
- (a) in the interests of national security; or
 - (b) in connection with any civil emergency which may occur.
- (3B) If it appears to the Secretary of State to be requisite or expedient to do so—
- (a) in the interests of national security; or
 - (b) in connection with any civil emergency which has occurred or may occur,
- he may, after consultation with the Council, give to the Council a direction requiring it to do, or not to do, a particular thing specified in the direction.
- (3C) The Council shall comply with any direction given to it by the Secretary of State under this section.]
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.
- (5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.
- (6) Any person who discloses any matter in contravention of subsection (5) above shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Any reference in this section to a civil emergency is a reference to any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely, in relation to any area—
- (a) so to disrupt water supplies or sewerage services; or
 - (b) to involve such destruction of or damage to life or property in that area,
- as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.

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Textual Amendments

- F1482** Words in s. 208(1) substituted (1.4.2016) by [Explanatory Note 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(2)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1483** Words in s. 208(1)(2) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 48(2)(b)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F1484** Words in s. 208(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(2)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1485** Words in s. 208(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(3)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1486** Words in s. 208(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(3)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1487** Words in s. 208(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(3)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1488** Words in s. 208(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(4)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1489** Words in s. 208(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(4)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1490** Words in s. 208(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 117(4)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(z) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1491** S. 208(3A)-(3C) inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 7 para. 27(6)**; S.I. 2005/2714, art. 2(l)(v) (with Sch. para. 8)

Modifications etc. (not altering text)

- C325** S. 208: certain functions exercisable concurrently with the Secretary of State (W.) (1.7.1999) by S.I.O. 1999/672, art. 2, Sch. 1
- C326** S. 208 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 15** (with reg. 1(1)(c))

209 Civil liability of undertakers for escapes of water etc.

- (1) Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable, except as otherwise provided in this section, for the loss or damage.
- (2) A water undertaker shall not incur any liability under subsection (1) above if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.
- (3) A water undertaker shall not incur any liability under subsection (1) above in respect of any loss or damage for which the undertaker would not be liable apart from that subsection and which is sustained—

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- (a) by [^{F1492}the Environment Agency], [^{F1493}the NRBW,] a relevant undertaker or any statutory undertakers, within the meaning of section 336(1) of the ^{M89}Town and Country Planning Act 1990;
 - (b) by any public gas supplier within the meaning of Part I of the ^{M90}Gas Act 1986 or the holder of a licence under section 6(1) of the ^{M91}Electricity Act 1989;
 - (c) by any highway authority; or
 - (d) by any person on whom a right to compensation is conferred by section 82 of the ^{M92}New Roads and Street Works Act 1991.
- (4) The ^{M93}Law Reform (Contributory Negligence) Act 1945, the ^{M94}Fatal Accidents Act 1976 and the ^{M95}Limitation Act 1980 shall apply in relation to any loss or damage for which a water undertaker is liable under this section, but which is not due to the undertaker's fault, as if it were due to its fault.
- (5) Nothing in subsection (1) above affects any entitlement which a water undertaker may have to recover contribution under the ^{M96}Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which a water undertaker is liable under that subsection shall be treated as if it were damage.
- (6) Where a water undertaker is liable under any enactment or agreement passed or made before 1st April 1982 to make any payment in respect of any loss or damage the undertaker shall not incur liability under subsection (1) above in respect of the same loss or damage.
- (7) In this section “fault” has the same meaning as in the ^{M97}Law Reform (Contributory Negligence) Act 1945.
- (8) Until the coming into force of section 82 of the New Roads and Street Works Act 1991, subsection (3) above shall have effect as if for paragraph (d) there were substituted the following paragraphs—
- “(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the Public Utilities Street Works Act 1950; or
 - (e) by any person on whom a right to compensation under section 26 of that Act of 1950 is conferred.”; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing section 82 of that Act into force on different days for different purposes (including the purposes of this section).

Textual Amendments

F1492 Words in s. 209(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 122** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F1493 Words in s. 209(3)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 256** (with Sch. 7)

Modifications etc. (not altering text)

C327 S. 209(3)(b) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(m)**; S.I. 1996/218, **art. 2**

Marginal Citations

M89 1990 c. 8.

M90 1986 c. 44.

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M91 1989 c. 29.
M92 1991 c. 22.
M93 1945 c. 28.
M94 1976 c. 30.
M95 1980 c. 58.
M96 1978 c. 47.
M97 1945 c. 28.

[^{F1494}209] **Rights of tenants in relation to metering.**

- (1) Subject to subsection (3) below, no express or implied term of any tenancy is to be regarded—
 - (a) as excluding or restricting the exercise by the tenant of any right to give—
 - (i) a measured charges notice under section 144A above, or
 - (ii) any consent for the purposes of section 144B(2)(a)(ii) above,
 - (b) as preventing the installation or connection, in pursuance of such a notice or consent given by the tenant, of a meter for use in determining the charges which may be fixed in relation to water supplied to the premises comprised in the tenancy, or
 - (c) as requiring any consent to be obtained in relation to such installation or connection.
- (2) In subsection (1) above “tenancy” includes a licence which is treated as a tenancy by virtue of section 79(3) of ^{M98}the Housing Act 1985; and references to a “tenant” are to be construed accordingly.
- (3) Subsection (1) above does not apply where the tenancy is a fixed term tenancy for a term of less than six months; and for this purpose “fixed term tenancy” means any tenancy other than a periodic tenancy.]

Textual Amendments

F1494S. 209A inserted (1.4.2000) by 1999 c. 11, s. 11; S.I. 1999/3440, art. 3

Marginal Citations

M98 1985 c.68.

Offences

210 Offences by bodies corporate.

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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211 Limitation on right to prosecute in respect of sewerage offences.

Proceedings in respect of an offence created by or under any of the relevant sewerage provisions shall not, without the written consent of the Attorney-General, be taken by any person other than—

- (a) a party aggrieved;
- (b) a sewerage undertaker;
- [^{F1495}(ba) a sewerage licensee;] or
- (c) a body whose function it is to enforce the provisions in question.

Textual Amendments

F1495S. 211(ba) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 118](#); S.I. 2017/462, art. 3(k)(xxi)

Judicial disqualification

212 Judicial disqualification.

No judge of any court or justice of the peace shall be disqualified from acting in relation to any proceedings to which a relevant undertaker is a party by reason only that he is or may become liable to pay a charge to that undertaker in respect of any service that is not the subject-matter of the proceedings.

Modifications etc. (not altering text)

C328 S. 212 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 16\(1\)](#) (with reg. 1(1)(c))

Powers to make regulations

213 Powers to make regulations.

- (1) The powers of the Secretary of State to make regulations under this Act shall be exercisable by statutory instrument subject (except in the case of regulations under section 8(1) or (2) [^{F1496}, 17D(8), 36A][^{F1497}, 87(6A)][^{F1498}96K, 96N,][^{F1499}[^{F1500} or 105A]][^{F1499}105A, 141DA or 141DB] above) to annulment in pursuance of a resolution of either House of Parliament.

[^{F1501}(1A) But on the occasion of the first exercise by the Secretary of State of the power to make regulations under]^{F1502}—

- (a) each of sections 89 and 90, and
- (b) each of sections 207A and 207C and Schedule 16;

the instrument] containing the regulations shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

- (1B) The power of the Assembly to make regulations under section 89 above shall be exercisable by statutory instrument.]

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- (2) Subject to subsection (3) below, the provisions of any regulations made by the Secretary of State under this Act may include-
- (a) provision for any duty or other requirement imposed by the regulations on a water undertaker [^{F1503}, sewerage undertaker, water supply licensee or sewerage licensee] to be enforceable under section 18 above by the Secretary of State, by the Director or by either of them;
 - (b) provision, where such a duty or requirement is so enforceable by either of them, for enforcement by the Director to be subject to such consent or authorisation as may be prescribed;
 - (c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to section 207 above;
 - (d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
 - [^{F1504}(dd) as to awarding costs or expenses of proceedings in any determination under the regulations, including the amount of the costs or expenses and the enforcement of the awards;]
 - (e) different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (f) such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- [^{F1505}(2A) Such regulations may include provision—
- (a) for the determination of questions of fact or of law which may arise in giving effect to the regulations;
 - (b) for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions;
 - (c) as to the mode of proof of any matter;
 - (d) as to parties and their representation; and
 - (e) for the right to appear before and be heard by the Secretary of State, the Director and other authorities.
- (2B) Any such regulations which prescribe a period within which things are to be done may provide for extending the period so prescribed.]
- (3) Except to the extent that they would do so apart from this section, the power to make regulations under section 113, 125 or 126 above or under section 214 below or Schedule 8 to this Act—
- (a) shall not include the powers conferred by virtue of paragraphs (a) to (d) of subsection (2) above; and
 - (b) in the case of the power to make regulations under section 214 below, shall also not include the powers conferred by virtue of paragraphs (e) and (f) of that subsection.

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Textual Amendments

- F1496** Words in s. 213(1) substituted (1.10.2010 for E.) by [Flood and Water Management Act 2010 \(c. 29\)](#), [ss. 35\(2\)](#), [49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2010/2169, [art. 4](#), [Sch.](#)
- F1497** Word in s. 213(1) inserted (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(7\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)
- F1498** Words in s. 213(1) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), [ss. 168\(2\)](#), [255\(6\)](#) (with [s. 247](#))
- F1499** Words in s. 213(1) substituted (3.11.2023 for specified purposes) by [Environment Act 2021 \(c. 30\)](#), [ss. 82\(2\)](#), [147\(3\)](#) (with [s. 144](#)); S.I. 2023/1170, [reg. 2\(a\)\(ii\)](#)
- F1500** Words in s. 213(1) inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), [s. 101\(1\)](#), [105\(3\)](#), [Sch. 7 para. 39\(3\)](#); S.I. 2007/1021, [art. 2\(d\)](#)
- F1501** S. 213(1A)(1B) inserted (18.2.2005 for E. for specified purposes, 25.2.2009 for E. in so far as not already in force, 1.2.2017 for W.) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(8\)](#), [105\(3\)](#); S.I. 2005/344, [art. 2](#); S.I. 2009/359, [art. 2\(c\)](#) (with saving in [art. 3](#), [Sch.](#)); S.I. 2017/88, [art. 2](#)
- F1502** Words in s. 213(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [ss. 37\(3\)](#), [94\(3\)](#); S.I. 2016/465, [art. 2\(g\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F1503** Words in s. 213(2)(a) substituted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 119\(4\)](#); S.I. 2016/1007, [art. 2\(h\)\(v\)](#)
- F1504** S. 213(2)(dd) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s. 56\(6\)](#), [Sch. 1 para.28](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), [art. 3](#), [Sch. Pt.I](#)
- F1505** S. 213(2A)(2B) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s. 52](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), [art. 3](#), [Sch. Pt.I](#)

Modifications etc. (not altering text)

- C329** S. 213 extended (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), [ss. 9\(2\)](#), [17\(2\)](#).
- C330** S. 213(1A) modified (1.11.2022 for E.) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(9\)](#), [186\(6\)](#); S.I. 2022/1003, [reg. 3\(a\)](#)

214 Power to prescribe forms.

- (1) The Secretary of State may by regulations prescribe the form of any notice or other document to be used for any of the purposes of the relevant sewerage provisions.
- (2) If forms are prescribed under this section, those forms or forms to the like effect may be used in all cases to which those forms are applicable.

Local inquiries

215 Local inquiries.

- (1) The Secretary of State may cause a local inquiry to be held in any case where he is authorised by any of the relevant sewerage provisions to determine any difference, to make any order, to give any consent or otherwise to act under any of those provisions.
- (2) Subject to subsection (3) below, subsections (2) to (5) of section 250 of the ^{M99}Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to local inquiries under subsection (1) above or any of the other provisions of this Act as they apply to inquiries under that section.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) Subsection (4) of the said section 250 shall apply in accordance with subsection (2) above in relation to such local inquiries under this Act as are held with respect to any matter affecting the carrying out of any function of [^{F1506}the Environment Agency][^{F1507}or the NRBW] as if the reference to a local authority in that subsection included a reference to [^{F1506}the Environment Agency][^{F1508}or, as the case may be, the NRBW] .

Textual Amendments

F1506 Words in s. 215(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 123** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F1507 Words in s. 215(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 257(a)** (with Sch. 7)

F1508 Words in s. 215(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 257(b)** (with Sch. 7)

Marginal Citations

M99 1972 c. 70.

Construction of Act

216 Provisions relating to the service of documents.

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
 - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
 - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control of management of the partnership business.
- (2) For the purposes of this section and section 7 of the ^{M100}Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;
 - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;
- and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document,

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that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.

(4) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—

- (a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or
- (b) in the case of service on the occupier, if the premises appear to be or are unoccupied,

that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

[^{F1509}(4A) Any document required or authorised by virtue of this Act to be served on any person may be served by electronic means.

(4B) But a document may be served by electronic means on a person who is a consumer only if—

- (a) the person has consented in writing to the receipt of documents by electronic means (and has not withdrawn that consent), and
- (b) the document is sent to the number or address most recently specified by the person for that purpose.

(4C) For the purposes of subsection (4B) “consumer” means a person who is liable to pay charges in respect of—

- (a) the supply of water to any premises, or
- (b) the provision of sewerage services to any premises,

but does not include a water undertaker, a water supply licensee, a sewerage undertaker, a sewerage licensee, or the Authority.]

(5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

Textual Amendments

F1509S. 216(4A)-(4C) inserted (10.5.2022 for specified purposes) by [Environment Act 2021 \(c. 30\)](#), **ss. 87**, **147(3)(4)** (with s. 144); [S.I. 2022/518](#), regs. 1(2), 2(f)

Modifications etc. (not altering text)

C331 S. 216 extended (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), **ss. 15(4)**, **17(2)**.

Marginal Citations

M100 [1978 c. 30](#).

217 Construction of provision conferring powers by reference to undertakers' functions.

(1) The purposes to which this section applies shall be the construction of any enactment which, by reference to the functions of a relevant undertaker, confers any power on or in relation to that undertaker.

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- (2) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include joining with or acting on behalf of—
- (a) the [^{F1510}Environment Agency][^{F1511}or the NRBW];
 - (b) one or more other relevant undertakers; or
 - (c) the [^{F1510}Environment Agency][^{F1511}or the NRBW] and one or more other such undertakers,
- for the purpose of carrying out any works or acquiring any land which at least one of the bodies with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of that body's functions under any enactment or of any function which is taken to be a function of that body for the purposes to which this section or section 3 of the ^{M101}Water Resources Act 1991 (functions of [^{F1510}Environment Agency] for certain purposes) applies.
- (3) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the protection against pollution—
- (a) of any waters, whether on the surface or underground, which belong to the [^{F1510}Environment Agency][^{F1512}or the NRBW] or any water undertaker or from which the [^{F1510}Environment Agency][^{F1512}or the NRBW] or any water undertaker is authorised to take water;
 - (b) without prejudice to paragraph (a) above, of any reservoir which belongs to or is operated by the [^{F1510}Environment Agency][^{F1512}or the NRBW] or any water undertaker or which the [^{F1510}Environment Agency][^{F1512}or the NRBW] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and
 - (c) of any underground strata from which the [^{F1510}Environment Agency][^{F1512}or the NRBW] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the ^{M102}Water Resources Act 1991.
- (4) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the furtherance of research into matters in respect of which functions are conferred by or under this Act, the other consolidation Acts or the ^{M103}Water Act 1989 on the [^{F1510}Environment Agency], [^{F1513}on the NRBW,] on water undertakers or on sewerage undertakers.
- (5) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the provision of houses and other buildings for the use of persons employed by that undertaker and the provision of recreation grounds for persons so employed.
- (6) For the purposes to which this section applies the functions of every water undertaker shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of that undertaker.
- (7) For the purposes to which this section applies the functions of every water undertaker shall be taken to include the doing of anything in pursuance of any arrangements under section 20 of the Water Resources Act 1991 between that undertaker and the [^{F1510}Environment Agency][^{F1514}or the NRBW].
- (8) In this section “the other consolidation Acts” has the same meaning as in section 206 above.

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Textual Amendments

- F1510** Words in s. 217(2)(3)(4)(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 124** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F1511** Words in s. 217(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 258(2)** (with Sch. 7)
- F1512** Words in s. 217(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 258(3)** (with Sch. 7)
- F1513** Words in s. 217(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 258(4)** (with Sch. 7)
- F1514** Words in s. 217(7) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 258(5)** (with Sch. 7)

Marginal Citations

- M101** 1991 c. 57.
M102 1991 c. 57.
M103 1989 c. 15.

218 Meaning of “domestic purposes” in relation to water supply.

- (1) Subject to the following provisions of this section, in this Act references to domestic purposes, in relation to a supply of water to any premises or in relation to any cognate expression, are references to the drinking, washing, cooking, central heating and sanitary purposes for which water supplied to those premises may be used.
- (2) Where the whole or any part of the premises are or are to be occupied as a house, those purposes shall be taken to include—
 - (a) the purposes of a profession carried on in that house or, where—
 - (i) that house and another part of the premises are occupied together; and
 - (ii) the house comprises the greater part of what is so occupied,
 in that other part; and
 - (b) such purposes outside the house (including the washing of vehicles and the watering of gardens) as are connected with the occupation of the house and may be satisfied by a supply of water drawn from a tap inside the house and without the use of a hosepipe or similar apparatus.
- (3) No such reference to domestic purposes shall be taken to include a reference—
 - (a) to the use of a bath having a capacity, measured to the centre line of overflow or in such other manner as may be prescribed, of more than two hundred and thirty litres;
 - (b) to the purposes of the business of a laundry; or
 - (c) to any purpose of a business of preparing food or drink for consumption otherwise than on the premises.

219 General interpretation.

- (1) In this Act, except in so far as the context otherwise requires—

“accessories”, in relation to a water main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe,

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or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any ^{F1515}electronic communications apparatus] unless it—

- (a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and
- (b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

^{F1516}“the Assembly” means the National Assembly for Wales;]

^{F1517}“the Authority” means the Water Services Regulation Authority;]

^{F1518}“the CMA ” means the Competition and Markets Authority]

^{F1519}“ charging rules ” means rules issued under section 144ZA;]

“conservancy authority” means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water, and is not a harbour authority or navigation authority;

“contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;

^{F1520}“the Council” means the Consumer Council for Water;]

“customer or potential customer”, in relation to a company holding an appointment under Chapter I of Part II of this Act, means—

- (a) any person for or to whom that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker ^{F1521}(other than a ^{F1522}water supply licensee or sewerage licensee)]; or
- (b) any person who might become such a person on making an application for the purpose to the company;

“damage”, in relation to individuals, includes death and any personal injury, including any disease or impairment of physical or mental condition;

^{F1523}

.....
“disposal”—

- (a) in relation to land or any interest or right in or over land, includes the creation of such an interest or right and a disposal effected by means of the surrender or other termination of any such interest or right; and
- (b) in relation to sewage, includes treatment;

and cognate expressions shall be construed accordingly;

“disposal main” means (subject to subsection (2) below) any outfall pipe or other pipe which—

- (a) is a pipe for the conveyance of effluent to or from any sewage disposal works, whether of a sewerage undertaker or of any other person; and
- (b) is not a public sewer;

“domestic purposes”, except in relation to sewers, shall be construed in accordance with section 218 above;

“drain” means (subject to subsection (2) below) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

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“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“enactment” includes an enactment contained in this Act or in any Act passed after this Act;

“engineering or building operations”, without prejudice to the generality of that expression, includes—

- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
- (b) the installation, modification or removal of any machinery or apparatus;

“financial year” means the twelve months ending with 31st March;

“functions”, in relation to a relevant undertaker, means the functions of the undertaker under or by virtue of any enactment and shall be construed subject to section 217 above;

“harbour authority” means a person who is a harbour authority within the meaning of [F1524Chapter II of Part VI of the Merchant Shipping Act 1995] and is not a navigation authority;

“highway” and “highway authority” have the same meanings as in the M104Highways Act 1980;

“house” means any building or part of a building which is occupied as a dwelling-house, whether or not a private dwelling-house, or which, if unoccupied, is likely to be so occupied;

“information” includes anything contained in any records, accounts, estimates or returns;

“inland waters”, has the same meaning as in the M105Water Resources Act 1991;

[F1525“lateral drain” means—

- (a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or
- (b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under section 102 above or in an agreement made under section 104 above;]

F1526
...

[F1527“limited company” means a company (as defined in section 1(1) of the Companies Act 2006) that—

- (a) is registered in England and Wales or Scotland, and
- (b) is limited by shares.]

“local authority” means the council of a district or of a London borough or the Common Council of the City of London [F1528but, in relation to Wales, means the council of a county or county borough];

“local statutory provision” means—

- (a) a provision of a local Act (including an Act confirming a provisional order);
- (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
- (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or

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(d) a provision of any other instrument which is in the nature of a local enactment;

“meter” means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises;

“micro-organism” includes any microscopic biological entity which is capable of replication;

“modifications” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

F1529

...

F1530

...

[^{F1531}“the NRBW” means the Natural Resources Body for Wales;]

“navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

[^{F1532}“new towns residuary body” means—

(a) in relation to a new town in England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) or (b) of the Housing and Regeneration Act 2008 [^{F1533}or the Greater London Authority so far as exercising its new towns and urban development functions] (and references to the “English new towns residuary body” are to be read accordingly); and

(b) in relation to a new town in Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) or (ii) of the New Towns Act 1981 (and references to the “Welsh new towns residuary body” are to be read accordingly);]

“notice” means notice in writing;

F1534

...

“owner”, in relation to any premises, means the person who—

(a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or

(b) would receive the rack-rent if the premises were let at a rack-rent,

and cognate expressions shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Secretary of State;

“protected land”, in relation to a company holding an appointment under Chapter I of Part II of this Act, means any land which, or any interest or right in or over which—

(a) was transferred to that company in accordance with a scheme under Schedule 2 to the ^{M106}Water Act 1989 or, where that company is a statutory water company, was held by that company at any time during the financial year ending with 31st March 1990;

(b) is or has at any time on or after 1st September 1989 been held by that company for purposes connected with the carrying out of its functions as a water undertaker or sewerage undertaker (including any functions which for the purposes for which [^{F1535}section 217] above has effect are taken to be such functions by virtue of subsection (6) or (7) of that section); or

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(c) has been transferred to that company in accordance with a scheme under Schedule 2 to this Act from another company in relation to which that land was protected land when the other company held an appointment under that Chapter;

“public authority” means any Minister of the Crown or government department, [^{F1536}the Environment Agency], [^{F1537}the NRBW,] any local authority or county council or any person certified by the Secretary of State to be a public authority for the purposes of this Act;

“public sewer” means [^{F1538}(subject to section 106(1A) above)] a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the ^{M107}Water Act 1989 or Schedule 2 to this Act or under section 179 above or otherwise, and “private sewer” shall be construed accordingly;

“railway undertakers” means the British Railways Board, [^{F1539}Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any railway;

“records” includes computer records and any other records kept otherwise than in a document;

[^{F1540}“regional committee” means a regional committee of the Council established under section 27A above;]

“the relevant sewerage provisions” means the following provisions of this Act, that is to say—

- (a) Chapters II and III of Part IV (except sections 98 to 101 and 110 and so much of Chapter III of that Part as provides for regulations under section 138 or has effect by virtue of any such regulations);
- (b) sections 160, 171, 172(4), 178, 184, 189, 196 and 204 and paragraph 4 of Schedule 12; and
- (c) the other provisions of this Act so far as they have effect for the purposes of any provision falling within paragraph (a) or (b) of this definition;

“relevant undertaker” means a water undertaker or sewerage undertaker;

“resource main” means (subject to subsection (2) below) any pipe, not being a trunk main, which is or is to be used for the purpose of—

- (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
- (b) giving or taking a supply of water in bulk;

[^{F1541}“ retail exit area ” has the meaning given by section 42 of the Water Act 2014;]

“service pipe” means (subject to subsection (2) below [^{F1542}and to section 51E(3) above]) so much of a pipe which is, or is to be, connected with a water main for supplying water from that main to any premises as—

- (a) is or is to be subject to water pressure from that main; or
- (b) would be so subject but for the closing of some valve,

and includes part of any service pipe;

“services” includes facilities;

“sewer” includes (without prejudice to subsection (2) below) all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings;

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[^{F1519}“ sewerage licensee ” is to be construed in accordance with section 17BA(6);]

“sewerage services” [^{F1543}—

(a) in the case of a sewerage undertaker, includes] the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions; [^{F1544}or

(b) in the case of a sewerage licensee, means the services provided by that person in that person's capacity as a sewerage licensee;]

“special administration order” has the meaning given by section 23 above;

“statutory water company” means any company which was a statutory water company for the purposes of the ^{M108}Water Act 1973 immediately before 1st September 1989;

“stopcock” includes any box or pit in which a stopcock is enclosed and the cover to any such box or pit;

“street” has, subject to subsection (5) below, the same meaning as in Part III of the ^{M109}New Roads and Street Works 1991;

“subordinate legislation” has the same meaning as in the ^{M110}Interpretation Act 1978;

“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;

“supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply;

“surface water” includes water from roofs;

“trunk main” means a water main which is or is to be used by a water undertaker for the purpose of—

(a) conveying water from a source of supply to a filter or reservoir or from one filter or reservoir to another filter or reservoir; or

(b) conveying water in bulk, whether in the course of taking a supply of water in bulk or otherwise, between different places outside the area of the undertaker, from such a place to any part of that area or from one part of that area to another part of that area;

“underground strata” means strata subjacent to the surface of any land;

“vessel” includes a hovercraft within the meaning of the ^{M111}Hovercraft Act 1968;

“water main” means (subject to subsection (2) below) any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker [^{F1545}or [^{F1546}water supply licensee]] for the purpose of making a general supply of water available to customers or potential customers of the undertaker [^{F1547}or licensee], as distinct from for the purpose of providing a supply to particular customers;

“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 [^{F1536}the Environment Agency][^{F1548}, the NRBW] or a water undertaker or are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises.

[^{F1519}“ water supply licensee ” is to be construed in accordance with section 17A(7);]

(2) In this Act—

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- (a) references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and
 - (b) references to any sewage disposal works shall include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes;
- and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.
- (3) Nothing in Part III or IV of this Act by virtue of which a relevant undertaker owes a duty to any particular person to lay any water main, resource main or service pipe or any sewer, [^{F1549}lateral drain,] disposal main or discharge pipe shall be construed—
- (a) as conferring any power in addition to the powers conferred apart from those Parts; or
 - (b) as requiring the undertaker to carry out any works which it has no power to carry out.
- (4) References in this Act to the fixing of charges in relation to any premises by reference to volume are references to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors or to one or both of those factors taken together with other factors.
- [^{F1550}(4A) In this Act, unless otherwise stated, references to the supply system of a water undertaker are to the water mains and other pipes which it is the undertaker's duty to develop and maintain by virtue of section 37 above.]
- (5) Until the coming into force of Part III of the ^{M112}New Roads and Street Works Act 1991, the definition of "street" in subsection (1) above shall have effect as if the reference to that Part were a reference to the ^{M113}Public Utilities Street Works Act 1950; but nothing in this section shall be taken—
- (a) to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this section); or
 - (b) in the period before the coming into force of that Part, to prevent references in this Act to a street, where the street is a highway which passes over a bridge or through a tunnel, from including that bridge or tunnel.
- (6) For the purposes of any provision of this Act by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.
- (7) References in this Act to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.
- (8) Where by virtue of any provision of this Act any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.
- (9) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the ^{M114}Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of

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that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act or the ^{M115}Water Resources Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.

[^{F1551}(10) If the Assembly designates a person as Chief Inspector of Drinking Water for Wales under section 86(1B) above, references in this Act to the Chief Inspector of Drinking Water, as respects anything to be done in relation to him, shall be taken as references to the person designated as the Chief Inspector of Drinking Water by the Secretary of State and also the person designated by the Assembly as the Chief Inspector of Drinking Water for Wales.]

[^{F1552}(11) Subsection (10) does not apply to references to the Chief Inspector of Drinking Water in sections 8, 17AA, 51CA, 51CB, 66DB, 66P and 86ZA.]

Textual Amendments

F1515S. 219(1): words in definition of "accessories" substituted (25.7.2003) by [Communications Act 2003 \(c. 21\), ss. 406, 411\(2\)\(3\), Sch. 17 para. 110](#); S.I. 2003/1900, [art. 2\(1\)](#), Sch. 1

F1516S. 219(1): definition of "the Assembly" inserted (1.4.2004) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(7\)\(a\)](#); S.I. 2004/641, [art. 3\(y\)](#), Sch. 2

F1517S. 219(1): definition of "the Authority" inserted (1.4.2004) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(7\)\(a\)](#); S.I. 2004/641, [art. 3\(y\)](#), Sch. 2

F1518Words in s. 219(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 68\(a\)](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)

F1519Words in s. 219(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 120\(2\)\(f\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(aa\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

F1520S. 219(1): definition of "the Council" inserted (1.8.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(7\)\(b\)](#); S.I. 2005/968, [art. 3](#) (with [art. 4](#), [Schs. 1, 2](#))

F1521S. 219(1): words in definition of "customer or potential customer" inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 50\(2\)\(a\)](#); S.I. 2004/641, [art. 3\(y\)](#), Sch. 2 (with [art. 6](#), [Sch. 3](#)); S.I. 2004/2528, [art. 2\(t\)](#) (with [art. 4](#)); S.I. 2005/2714, [art. 3](#) (with [Sch. 2 para. 8](#))

F1522Words in s. 219(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 120\(2\)\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(aa\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

F1523S. 219(1): definition of "the Director" repealed (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 101\(1\)\(2\), 105\(3\), Sch. 7 para. 27\(7\)\(c\), Sch. 9 Pt. 3](#); S.I. 2005/2714, [art. 4\(f\)\(g\)\(i\)](#) (with [Sch. para. 8](#))

F1524Words in the definition of "harbour authority" in s. 219(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), [Sch. 13 para. 89\(b\)](#)

F1525S. 219(1): definition of "lateral drain" inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 97\(9\)\(a\), 105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [art. 6](#), [Sch. 3](#))

F1526Words in s. 219(1) repealed (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 120\(2\)\(g\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(aa\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

F1527S. 219(1): definition of "limited company" substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order (S.I. 2009/1941), [art. 2\(1\)](#), {[Sch. 1 para. 126\(3\)](#)} (with [art. 10](#))

F1528Words in the definition of "local authority" in s. 219(1) inserted (1.4.1996) by 1994 c. 19, s. 22(5), [Sch. 11 Pt. I para. 2\(2\)](#) (with ss. 54(5)(7), 55(5)); S.I. 1996/396, [art. 3](#)

F1529S. 219(1): definition of "the Monopolies Commission" repealed (1.4.1999) by S.I. 1999/3434, [art. 30\(c\)](#)

F1530Definition of "the NRA" in s. 219(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), [Sch. 22 para. 125\(a\)](#), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

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- F1531** Words in s. 219(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 259(4)** (with Sch. 7)
- F1532** S. 219(1): definition of "new towns residuary body" inserted (1.12.2008) by Housing and Regeneration Act 2008 (c. 17), ss. 56, 325, **Sch. 8 para. 59**; S.I. 2008/3068, **art. 2(1)(w)** (with savings and transitional provisions in arts. 6-13)
- F1533** Words in s. 219(1) inserted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 19 para. 29**; S.I. 2012/628, art. 6(i) (with arts. 9, 11, 14, 15, 17)
- F1534** Words in s. 219(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 68(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F1535** Words in s. 219(1) substituted (1.1.2015) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 120(2)(b)**; S.I. 2014/3320, art. 2(2)(e)(iv)
- F1536** Words in the definitions of "public authority" and "watercourse" in s. 219(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 125(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F1537** Words in s. 219(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 259(2)** (with Sch. 7)
- F1538** S. 219(1): words in definition of "public sewer" inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(6)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)
- F1539** S. 219(1): words in definition of "railway undertakers" substituted (15.7.2003) by The Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), art. 2, **Sch. 1 para. 15**
- F1540** S. 219(1): definition of "regional committee" inserted (1.10.2005) by Water Act 2003 (c.37), ss. 101(01), 105(3), **Sch. 7 para. 27(7)(d)**; S.I. 2005/2714, **art. 2(i)** (with Sch. 2 para. 8)
- F1541** Words in s. 219(1) inserted (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), reg. 1(2), **Sch. 2 para. 11**
- F1542** S. 219(1): words in definition of "service pipe" inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(6)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)
- F1543** Words in s. 219(1) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 120(2)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(aa) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1544** Words in s. 219(1) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 120(2)(d)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(aa) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1545** S. 219(1): words in definition of "water main" inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(2)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)** (with art. 4); S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)
- F1546** Words in s. 219(1) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 120(2)(e)(i)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(aa) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1547** Words in s. 219(1) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 120(2)(e)(ii)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(aa) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1548** Words in s. 219(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 259(3)** (with Sch. 7)
- F1549** Words in s. 219(3) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(9)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)
- F1550** S. 219(4A) inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(3)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)** (with art. 4); S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)
- F1551** S. 219(10) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(9)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)
- F1552** S. 219(11) inserted (1.1.2015 for specified purposes, 1.11.2016 for specified purposes, 1.4.2017 for specified purposes) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 120(3)**; S.I. 2014/3320, art. 2(2)(e)(v); S.I. 2016/1007, art. 2(h)(vii); S.I. 2017/462, art. 3(k)(bb)(xxii)

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Modifications etc. (not altering text)

C332 S. 219 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 16(2)** (with regs. 1(1)(c), 3(2)(5))

Marginal Citations

M104 1980 c. 66.

M105 1991 c. 57.

M106 1989 c. 15.

M107 1989 c. 15.

M108 1973 c. 37.

M109 1991 c. 22.

M110 1978 c. 30.

M111 1968 c. 59.

M112 1991 c. 22.

M113 1950 c. 39.

M114 1991 c. 60.

M115 1991 c. 57.

220 Effect of local Acts.

Subject to any provision to the contrary which is contained in Schedule 26 to the Water Act 1989 or in the Water Consolidation (Consequential Provisions) Act 1991, nothing in any local statutory provision passed or made before 1st September 1989 shall be construed as relieving any relevant undertaker from any liability arising by virtue of this Act in respect of any act or omission occurring on or after that date.

Other supplemental provisions

[221 ^{F1553}**Crown application.**

- (1) Subject to the provisions of this section, this Act shall bind the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the [^{F1554}appropriate agency], a water undertaker or a sewerage undertaker, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.
- (4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.
- (5) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the ^{M116}Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

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- (6) Subject to subsections (4) and (5) above, the powers conferred by sections 155, 159, 161(2) and 167 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (7) In this section—
- [^{F1555}“the appropriate agency” means-
- (a) in relation to any act or omission of the Crown in England, the Agency;
- (b) in relation to any act or omission of the Crown in Wales, the NRBW;]
- “the appropriate authority” has the same meaning as it has in Part XIII of the ^{M117}Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;
- “Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
- “Crown premises” means premises held by or on behalf of the Crown.
- (8) The provisions of subsection (3) of section 293 of the ^{M118}Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.]

Textual Amendments

F1553 S. 221 substituted (1.12.2000) by 1995 c. 25, s. 116, 125(3), **Sch. 21 Pt. I para. 1(1)** (with ss. 7(6), 115, 117)

F1554 Words in s. 221(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 260(2)** (with Sch. 7)

F1555 Words in s. 221(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 260(3)** (with Sch. 7)

Modifications etc. (not altering text)

C333 S. 221(2)-(8) applied (8.4.2010) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(1)(b)(3)(k) (with s. 49(1)(6))

Marginal Citations

M116 1947 c. 44.

M117 1990 c. 8.

M118 1990 c. 8.

[^{F1556}222] Application to the Isles of Scilly.

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—

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- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F1556S. 222 substituted (1.2.1996 for specified purposes and 1.4.2020 in so far as not already in force) by 1995 c. 25, **ss. 118(4)**, 125(3) (with **ss. 7(6)**, 115, 117); S.I. 1996/186, **art. 2**; S.I. 2020/216, **art. 2**

223 Short title, commencement and extent.

- (1) This Act may be cited as the Water Industry Act 1991.
- (2) This Act shall come into force on 1st December 1991.
- (3) Except for the purpose of giving effect to any scheme under Schedule 2 to this Act, this Act extends to England and Wales only.

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SCHEDULES

F1557F1557 SCHEDULE 1

Textual Amendments

F1557 Sch. 1 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 34(4), 101(2), 105(3), [Sch. 9 Pt. 2](#); [S.I. 2005/2714](#), [art. 4\(a\)\(g\)\(i\)](#) (with [Sch. para. 8](#))

F1558 SCHEDULE 1A

Section 1A(3)

THE WATER SERVICES REGULATION AUTHORITY

Textual Amendments

F1558 Sch. 1A inserted (1.4.2006 except para. 11) by [Water Act 2003 \(c. 37\)](#), ss. 34(2), 105(3), [Sch. 1](#); [S.I. 2005/2714](#), [art. 4\(a\)](#) (with [Sch. 2 para. 8](#)) (which said para. 11 was repealed (1.10.2006) by 2006 (c. 16), ss. 105(1)(2), 107, [Sch. 11 para. 172](#), {[Sch. 12](#)}; [S.I. 2006/2541](#), [art. 2](#))

Membership

- 1 (1) The Authority shall consist of a chairman, and at least two other members, appointed by the Secretary of State.
- (2) The Secretary of State shall consult—
 - (a) the Assembly, before appointing any member; and
 - (b) the chairman, before appointing any other member.

Terms of appointment, remuneration, pensions etc

- 2 (1) Subject to this Schedule, the chairman and other members of the Authority shall hold and vacate office as such in accordance with the terms of their respective appointments.
- (2) Their terms of appointment shall be determined by the Secretary of State.

Terms of appointment, remuneration, pensions etc

- 3 (1) An appointment of a person to hold office as chairman or as one of the other members of the Authority shall be for a term not exceeding five years.
- (2) A person holding office as chairman or other member—

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- (a) may resign that office by giving notice in writing to the Secretary of State; and
 - (b) may be removed from office by the Secretary of State on the ground of incapacity or misbehaviour.
- (3) The Secretary of State shall consult the Assembly before removing from office a person holding office as chairman or other member.
 - (4) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.

Terms of appointment, remuneration, pensions etc

- 4 (1) The Authority shall pay to its chairman and its other members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State.
- (2) The Authority shall, if required to do so by the Secretary of State—
 - (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member of the Authority; or
 - (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- (3) If the Secretary of State determines that there are special circumstances which make it right for a person ceasing to hold office as chairman or other member of the Authority to receive compensation, the Authority shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

Staff

- 5 The Authority may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such staff as it may determine.

Committees

- 6 (1) The Authority may establish committees and any committee of the Authority may establish sub-committees.
- (2) The members of a committee of the Authority may include persons who are not members of the Authority (and the members of a sub-committee may include persons who are not members of the committee or the Authority).

Proceedings etc

- 7 (1) The Authority may regulate its own procedure.
- (2) The validity of anything done by the Authority is not affected by a vacancy among its members or by a defect in the appointment of a member.

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Proceedings etc

- 8 A document purporting to be duly executed under the seal of the Authority, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

Code of Practice

- 9 (1) The Authority shall prepare, and may revise, a code of practice governing the discharge by it of its functions.
- (2) The Authority shall, in exercising its functions, have regard to the provisions of the code.
- (3) In preparing or revising the code, the Authority shall consult—
- (a) the Secretary of State;
 - (b) the Assembly;
 - (c) the Environment Agency;
 - [the NRBW;]
 - ^{F1559}(ca) the Council;
 - (e) relevant undertakers;
 - [^{F1560}(f) water supply licensees;
 - (fa) sewerage licensees; and]
 - (g) such other persons as the Authority considers appropriate.
- (4) The Authority shall publish in such manner as it considers appropriate the code as for the time being in force.

Textual Amendments

F1559Sch. 1A para. 9(3)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 261** (with Sch. 7)

F1560Sch. 1A para. 9(3)(f)(fa) substituted for Sch. 1A para. 9(3)(f) and word (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 121**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Performance of functions

- 10 (1) Anything authorised or required to be done by the Authority may be done by—
- (a) any member or employee of the Authority who is authorised for that purpose by the Authority, whether generally or specially;
 - (b) any committee of the Authority which has been so authorised.
- (2) The Authority may not so authorise a committee whose members include any person who is not a member or employee of the Authority.
- [Sub-paragraph (1) is subject to provision in rules made under section 51 of the
- ^{F1561}(3) Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.]

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1561 Sch. 1A para. 10(3) inserted (E.W.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 6**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

Payments to the Authority

- 11 The Secretary of State shall make payments out of money provided by Parliament to the Authority of such amounts, at such times and on such conditions (if any) as he considers appropriate.

Supplementary powers

- 12 (1) The Authority has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.
- (2) That power includes the formation of advisory bodies.]

SCHEDULE 2

Sections 10 and 23.

TRANSITIONAL PROVISION ON TERMINATION OF APPOINTMENTS

Modifications etc. (not altering text)

C335 Sch. 2: power to amend conferred (1.10.2010) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 5(2)-(4)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, **Sch.**

C336 Sch. 2 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 3(3)(a)** (with reg. 1(1)(c))

Cases where Schedule applies

- 1 (1) This Schedule shall apply in each of the cases specified in sub-paragraphs (2) [^{F1562}to (3A)] below.
- (2) The first case in which this Schedule applies is where—
- (a) the Secretary of State or the Director is proposing to make an appointment or variation replacing a company as a relevant undertaker; and
- (b) by virtue of that appointment a company (“the new appointee”) will hold an appointment as the water undertaker or sewerage undertaker for an area which is or includes the whole or any part of the area for which, until the relevant date, another company (“the existing appointee”) holds an appointment as the water undertaker or, as the case may be, sewerage undertaker.
- (3) The second case in which this Schedule applies is where—

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- (a) the High Court has made a special administration order in relation to any company [^{F1563}holding an appointment under Chapter 1 of this Part] (“the existing appointee”); and
- (b) it is proposed that on and after the relevant date another company (“the new appointee”) should, without any such appointment or variation as is mentioned in sub-paragraph (2) above having been made, hold an appointment as water undertaker or sewerage undertaker for an area which is or includes the whole or any part of the area for which until that date the existing appointee holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

[^{F1564}(3A) The third case in which this Schedule applies is where—

- (a) the High Court has made a special administration order in relation to any company which is [^{F1565}a qualifying water supply licensee or a qualifying sewerage licensee] (“the transferor”); and
- (b) it is proposed that on and after the relevant date another company (“the transferee”) should [^{F1566}carry on—
 - (i) activities] relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act which were carried on by the transferor until that date[^{F1567}; or
 - (ii) activities relating to the removal or removals of matter mentioned in section 23(9) of this Act which were carried on by the transferor until that date (as the case may be).]]

(4) In this Schedule—

“existing appointee” and “new appointee” shall be construed in accordance with sub-paragraph (2) or (3) above according to whether this Schedule is applying in the case mentioned in the first or second of those sub-paragraphs;

[^{F1568}“new owner” means, where securities are transferred to a company as described in paragraph 2A(1)(b) or (2)(b), the company to which the transfer is made;]

“other appointees” means any companies, other than the existing appointee and the new appointee, which are likely on or at a time after the relevant date to be holding appointments as water undertakers or sewerage undertakers for any area which is or includes any part of the area for which the existing appointee has at any time held an appointment as water undertaker or sewerage undertaker;

[^{F1569}“other relevant companies” means any companies, other than the transferor and the transferee, which are likely on or at a time after the relevant date [^{F1570}to be—

- (a) holding] appointments as water undertakers for any area in which, or in part of which, the activities relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act will be carried on by the transferee; [^{F1571}or
- (b) holding appointments as sewerage undertakers for any area in which, or in part of which, the activities relating to the removal or removals of matter mentioned in section 23(9) of this Act will be carried on by the transferee (as the case may be);]]

“the relevant date” means—

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- (a) where this Schedule applies by virtue of sub-paragraph (2) above, the coming into force of the appointment or variation mentioned in paragraph (a) of that sub-paragraph; and
- (b) where this Schedule applies by virtue of sub-paragraph (3) [^{F1572}or (3A)] above, such day, being a day before the discharge of the special administration order takes effect, as the High Court may appoint for the purposes of this Schedule; and
- “special administrator”, in relation to a company in relation to which a special administration order has been made, means the person for the time being holding office for the purposes of section 23(1) of this Act;
- [^{F1573}“transferor” and “transferee” shall be construed in accordance with sub-paragraph (3A) above.]

Textual Amendments

- F1562** Words in Sch. 2 para. 1 substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1563** Words in Sch. 2 para. 1(3)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1564** Sch. 2 para. 1(3A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1565** Words in Sch. 2 para. 1(3A)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 122(2)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1566** Words in Sch. 2 para. 1(3A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 122(2)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1567** Sch. 2 para. 1(3A)(b)(ii) and word inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 122(2)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1568** Words in Sch. 2 para. 1(4) inserted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), **3**
- F1569** Sch. 2 para. 1(4): definition of "other relevant companies" inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(5)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1570** Words in Sch. 2 para. 1(4) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 122(2)(d)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1571** Words in Sch. 2 para. 1(4) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 122(2)(e)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F1572** Sch. 2 para. 1(4): words in definition of "the relevant date" inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(5)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F1573** Sch. 2 para. 1(4): definition of "transferor" inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(5)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

- C337** Sch. 2 para. 1 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 3(3)(b)** (with reg. 1(1)(c))

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Making and modification of transfer schemes

- 2 (1) The existing appointee, acting with the consent of the new appointee [^{F1574}and, in relation to the matters affecting them, of any other appointees], may make a scheme under this Schedule for the transfer of property, rights and liabilities from the existing appointee to the new appointee.
- (2) A scheme under this Schedule shall not take effect unless it is approved by the Secretary of State or the Director.
- (3) Where a scheme under this Schedule is submitted to the Secretary of State or the Director for his approval, he may, with the consent of the new appointee [^{F1575}and the existing appointee] modify the scheme before approving it.
- (4) If at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of any company the Secretary of State considers it appropriate to do so and the existing appointee [^{F1576}and the new appointee] consent to the making of the order, the Secretary of State may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (5) An order under sub-paragraph (4) above may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been made by the scheme and, in connection with giving effect to that provision from that time, may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (6) In determining, in accordance with his duties under Part I of this Act, whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State or the Director shall have regard to the need to ensure that any provision for the transfer of property, rights and liabilities in accordance with a scheme under this Schedule allocates property, rights and liabilities to the different companies affected by the scheme in such proportions as appear to him to be appropriate in the context of the different functions which will, by virtue of this Act, be carried out at different times on and after the relevant date by the new appointee, by the existing appointee and by any other appointees.
- (7) It shall be the duty of the new appointee, of the existing appointee and of any other appointees to provide the Secretary of State or the Director with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.

[^{F1577}(7ZA) In a case where—

- (a) another scheme under this Schedule provides for the transfer of the property, rights and liabilities of the existing appointee, and
- (b) that other scheme makes provision for a transfer that is effected as described in paragraph 2A (hive down),

the duty in sub-paragraph (7) also applies to the new owner in relation to that other scheme.]

[^{F1578}(7A) In a case specified in paragraph 1(3A) above—

- (a) the preceding provisions of this paragraph shall have effect as if—
 - (i) any reference to the existing appointee were a reference to the transferor;

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- (ii) any reference to the new appointee were a reference to the transferee; and
 - (iii) any reference to other appointees were a reference to other relevant companies; and
- (b) sub-paragraph (6) above shall have effect as if the reference to functions were, in relation to a company which is a [^{F1579}water supply licensee or sewerage licensee], a reference to activities authorised by its licence and any statutory functions imposed on it in consequence of its licence.]
- (8) A company which without reasonable excuse fails to do anything required of it by virtue of sub-paragraph (7) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (9) Without prejudice to the other provisions of this Act relating to the special administrator of a company, anything which is required by this paragraph to be done by a company shall, where that company is a company in relation to which a special administration order is in force, be effective only if it is done on the company's behalf by its special administrator.

Textual Amendments

- F1574** Words in Sch. 2 para. 2(1) omitted (E.W.) (1.4.2011) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 1(2)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j) (with art. 5(3))
- F1575** Words in Sch. 2 para. 2(3) substituted (E.W.) (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 1(3)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j) (with art. 5(3))
- F1576** Words in Sch. 2 para. 2(4) substituted (E.W.) (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 1(4)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j) (with art. 5(3))
- F1577** Sch. 2 para. 2(7ZA) inserted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), 4
- F1578** Sch. 2 para. 2(7A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(6)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F1579** Words in Sch. 2 para. 2(7A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 122(3)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(bb) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C338** Sch. 2 para. 2 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 3(3)(c)** (with reg. 1(1)(c))

^{F1580}Transfer schemes providing for transfer by hive down

Textual Amendments

- F1580** Sch. 2 para. 2A and cross-heading inserted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), 5

- 2A. (1) In a case specified in paragraph 1(3) (special administration order in relation to existing appointee), a scheme under this Schedule may provide for a transfer under section 23(2) that is effected by—

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- (a) the transfer of property, rights and liabilities from the existing appointee to a new appointee that is a wholly-owned subsidiary of the existing appointee, and
 - (b) the subsequent transfer of securities in the new appointee to another company.
- (2) In a case specified in paragraph 1(3A) (special administration order in relation to a qualifying licensee) where the transferor is a qualifying water supply licensee, a scheme under this Schedule may provide for a transfer under section 23(2A) that is effected by—
- (a) the transfer of property, rights and liabilities from the transferor to a transferee that is a wholly-owned subsidiary of the transferor, and
 - (b) the subsequent transfer of securities in the transferee to another company.
- (3) In a case where a transfer is effected or proposed to be effected as described in sub-paragraph (1) or (2), paragraph 2 has effect as if—
- (a) in sub-paragraphs (1) and (3) of paragraph 2, the references to the consent of the new appointee were references to the consent of the new owner;
 - (b) in sub-paragraph (4), the persons whose consent is required included the new owner;
 - (c) in sub-paragraph (7), the persons subject to the duty imposed by that sub-paragraph included the new owner.]

Transfers by scheme

- 3 (1) A scheme under this Schedule for the transfer of the existing appointee's property, rights and liabilities shall come into force on the relevant date and, on coming into force, shall have effect, in accordance with its provisions and without further assurance, so as to transfer the property, rights and liabilities to which the scheme relates to the new appointee.
- [^{F1581}(1A) Where a scheme under this Schedule provides for a transfer of securities as described in paragraph 2A(1)(b) or (2)(b), that transfer has effect in accordance with the provisions of the scheme and without further assurance, immediately after the transfer of property, rights and liabilities mentioned in paragraph 2A(1)(a) or (2)(a).]
- (2) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities in accordance with a scheme under this Schedule, the provisions of that scheme may—
- (a) create for the existing appointee, the new appointee or any other appointees an interest in or right over any property to which the scheme relates;
 - (b) create new rights and liabilities as between any two or more of those companies [^{F1582}(but may not impose new liabilities on any other appointee);] and
 - (c) in connection with any provision made by virtue of paragraph (a) or (b) above, make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the scheme.
- (3) A scheme under this Schedule may contain provision for the consideration to be provided by the new appointee and by any other appointees in respect of the transfer or creation of property, rights and liabilities by means of the scheme; and any such provision shall be enforceable in the same way as if the property, rights and liabilities

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had been created or transferred, and (if the case so requires) had been capable of being created or transferred, by agreement between the parties.

- [^{F1583}(3A) Where a scheme under this Schedule provides for a transfer of securities as described in paragraph 2A(1)(b) or (2)(b), the scheme may contain provision for the consideration to be provided by the new owner in respect of the transfer; and any such provision is enforceable in the same way as if the securities had been transferred, and (if the case so requires) had been capable of being transferred, by agreement between the parties.]
- (4) The property, rights and liabilities of the existing appointee that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the existing appointee;
 - (b) such property, rights and liabilities to which the existing appointee may become entitled or subject after the making of the scheme and before the relevant date as may be described in the scheme;
 - (c) property situated anywhere in the United Kingdom or elsewhere;
 - (d) rights and liabilities under enactments;
 - (e) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (5) The provision that may be made by virtue of sub-paragraph (2)(b) above includes—
- (a) provision for treating any person who is entitled by virtue of a scheme under this Schedule to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies thereof; and
 - (b) provision applying section 64 of the ^{M120}Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect.
- (6) For the avoidance of doubt, it is hereby declared that the transfers authorised by paragraph (a) of sub-paragraph (4) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than in accordance with a scheme under this Schedule, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the existing appointee is entitled or subject to the property, right or liability in question.
- [^{F1584}(7) In a case specified in paragraph 1(3A) above the preceding provisions of this paragraph shall have effect as if—
- (a) any reference to the existing appointee were a reference to the transferor;
 - (b) any reference to the new appointee were a reference to the transferee; and
 - (c) any reference to other appointees were a reference to other relevant companies.]

Textual Amendments

F1581 Sch. 2 para. 3(1A) inserted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), 6(2)

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F1582 Words in Sch. 2 para. 3(2)(b) added (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 2** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j) (with art. 5(3))

F1583 Sch. 2 para. 3(3A) inserted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), **6(3)**

F1584 Sch. 2 para. 3(7) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

C339 Sch. 2 para. 3 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 3(3)(d)** (with reg. 1(1)(c))

Marginal Citations

M120 1925 c. 20.

Transfer of appointment

- 4 (1) Where a scheme under this Schedule is made in the case specified in paragraph 1(3) above, the scheme may provide for the transfer to the new appointee, with such modifications as may be specified in the scheme, of the appointment under Chapter I of Part II of this Act which is held by the existing appointee.
- (2) In such a case different schemes under this Schedule may provide for the transfer of such an appointment to different companies as respects different parts of the area to which the appointment relates.

^{F1585}Exclusion of transfer of licence

Textual Amendments

F1585 Sch. 2 para. 4A and preceding cross-heading inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 51(8)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

- 4A Where a scheme under this Schedule is made in the case specified in paragraph 1(3A) above, the scheme may not provide for the transfer to the transferee of the licence under Chapter 1A of Part 2 of this Act which is held by the transferor.]

Modifications etc. (not altering text)

C340 Sch. 2 para. 4A applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 3(3)(e)** (with reg. 1(1)(c))

Supplemental provisions of schemes

- 5 (1) A scheme under this Schedule may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, the provision for the transfers or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a scheme under this Schedule may provide—

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- (a) that for purposes connected with any transfers made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) the new appointee is to be treated as the same person in law as the existing appointee;
- (b) that, so far as may be necessary for the purposes of or in connection with any such transfers, agreements made, transactions effected and other things done by or in relation to the existing appointee are to be treated as made, effected or done by or in relation to the new appointee;
- (c) that, so far as may be necessary for the purposes of or in connection with any such transfers, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any officer of, the existing appointee are to have effect with such modifications as are specified in the scheme;
- (d) that proceedings commenced by or against the existing appointee are to be continued by or against the new appointee;
- (e) that the effect of any transfer under the scheme in relation to contracts of employment with the existing appointee is not to be to terminate any of those contracts but is to be that periods of employment with the existing appointee are to count for all purposes as periods of employment with the new appointee;
- (f) that disputes as to the effect of the scheme between ^{F1586}—
 - (i) the existing appointee and the new appointee or new owner,
 - (ii) a person referred to in sub-paragraph (i) and any other appointee or new owner of any other appointee, or
 - (iii) different companies which are other appointees or new owners of other appointees,]are to be referred to such arbitration as may be specified in or determined under the scheme;
- (g) that determinations on such arbitrations and certificates given jointly by two or more such ^{F1587}persons] as are mentioned in paragraph (f) above as to the effect of the scheme as between the companies giving the certificates are to be conclusive for all purposes.

^{F1588}(3) In a case specified in paragraph 1(3A) above—

- (a) sub-paragraph (2) above shall have effect as if—
 - (i) any reference to the existing appointee were a reference to the transferor;
 - (ii) any reference to the new appointee were a reference to the transferee; and
 - (iii) any reference to any other appointee or appointees were a reference to any other relevant company or companies; and
- (b) paragraph (g) of that sub-paragraph shall have effect as if the reference to two or more such ^{F1589}persons] as are mentioned in paragraph (f) of that sub-paragraph were a reference to two or more such persons as are mentioned in that paragraph (as it has effect by virtue of paragraph (a) above).]

Textual Amendments

F1586Sch. 2 para. 5(2)(f)(i)-(iii) substituted for words (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), 7(2)

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F1587 Word in Sch. 2 para. 5(2)(g) substituted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), 7(3)

F1588 Sch. 2 para. 5(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 51(9); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

F1589 Word in Sch. 2 para. 5(3)(b) substituted (23.2.2024) by The Water Industry Act 1991 (Amendment) Order 2024 (S.I. 2024/204), arts. 1(2), 7(4)

Modifications etc. (not altering text)

C341 Sch. 2 para. 5 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), Sch. 1 para. 3(3)(f) (with reg. 1(1)(c))

Duties of existing appointee after the scheme comes into force

- 6 (1) A scheme under this Schedule may provide for the imposition of duties on the existing appointee and on the new appointee to take all such steps as may be requisite to secure that the vesting in the new appointee, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a scheme under this Schedule may require the existing appointee to comply with any directions of the new appointee in performing any duty imposed on the existing appointee by virtue of a provision included in the scheme under subparagraph (1) above.
- (3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of the existing appointee in the new appointee is effective under the relevant foreign law, it shall be the duty of the existing appointee to hold that property or right for the benefit of, or to discharge that liability on behalf of, the new appointee.
- (4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in the new appointee of any foreign property, right or liability.
- (5) A scheme under this Schedule may provide that, in specified cases, foreign property, rights or liabilities that are acquired or incurred by an existing appointee after the scheme comes into force are immediately to become property, rights or liabilities of the new appointee; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the existing appointee when the scheme comes into force.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Any expenses incurred by an existing appointee in consequence of any provision included by virtue of this paragraph in a scheme under this Schedule shall be met by the new appointee.

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- (8) Duties imposed on a company by virtue of this paragraph shall be enforceable in the same way as if they were imposed by a contract between the existing appointee and the new appointee.
- [^{F1590}(9) In a case specified in paragraph 1(3A) above, the preceding provisions of this paragraph shall have effect as if—
- (a) any reference to the existing appointee were a reference to the transferor; and
 - (b) any reference to the new appointee were a reference to the transferee.]

Textual Amendments

F1590 Sch. 2 para. 6(9) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 51\(10\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

Modifications etc. (not altering text)

C342 Sch. 2 para. 6 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 3\(3\)\(g\)](#) (with reg. 1(1)(c))

Further transitional provision and local statutory provisions

- 7 (1) The Secretary of State may, if he thinks it appropriate to do so for the purposes of, or in connection with, any appointment or variation replacing a company as a relevant undertaker or any scheme under this Schedule, by order made by statutory instrument—
- (a) make any provision which corresponds, in relation to any enactment referred to at the passing of the ^{M121}Water Act 1989 in Schedule 26 to that Act, to any provision originally made by that Schedule or makes similar provision in relation to any other enactment; or
 - (b) amend or repeal any local statutory provision.
- (2) An order under this paragraph may—
- (a) make provision applying generally in relation to local statutory provisions of a description specified in the order;
 - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

Modifications etc. (not altering text)

C343 Sch. 2 para. 7 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 3\(3\)\(h\)](#) (with reg. 1(1)(c))

Marginal Citations

M121 1989 c. 15.

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[^{F1591}SCHEDULE 2ZA

Section 12E

PROCEDURE FOR APPEALS UNDER SECTION 12D

Textual Amendments

F1591 Sch. 2ZA inserted (24.1.2022) by Environment Act 2021 (c. 30), ss. 86(6), 147(3), Sch. 13 (with s. 144); S.I. 2022/48, reg. 2(m)

Application for permission to bring appeal

- 1 (1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.
- (2) Only a person entitled under section 12D to bring the appeal if permission is granted may apply for permission.
- (3) Where the Authority publishes a decision to modify the conditions of any appointment under section 12A(9), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published.
- (4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.
- (5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.
- (6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.
- (7) The appellant must send the Authority—
 - (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA, and
 - (b) such other information as may be required by appeal rules.
- (8) The CMA's decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.
- (9) Before the authorised member decides whether to grant permission under this paragraph, the Authority must be given an opportunity of making representations or observations, in accordance with paragraph 3(2).
- (10) The CMA's decision on an application for permission to appeal must be made—
 - (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
 - (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission was received.
- (11) The grant of permission may be made subject to conditions, which may include—

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- (a) conditions which limit the matters that are to be considered on the appeal in question,
 - (b) conditions for the purpose of expediting the determination of the appeal, and
 - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (12) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons—
- (a) to the appellant, and
 - (b) to the Authority.
- (13) A decision of the CMA under this paragraph must be published, in a way an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (14) Section 12I(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication under section 12I of a determination by the CMA on an appeal.

Suspension of decision

- 2 (1) The CMA may direct that, pending the determination of an appeal against a decision of the Authority—
- (a) the decision is not to have effect, or
 - (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) In the case of an appeal against a decision of the Authority which already has effect by virtue of section 12B, the CMA may direct that the modification that is the subject of the decision—
- (a) ceases to have effect entirely or to such extent as may be specified in the direction, and
 - (b) does not have effect, or does not have effect to the specified extent, pending the determination of the appeal.
- (3) The power to give a direction under this paragraph is exercisable only where—
- (a) an application for its exercise has been made by the appellant at the same time the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority,
 - (b) the Authority has been given an opportunity of making representations or observations, in accordance with paragraph 3(2),
 - (c) the appellant (or, where the appellant is within section 12D(2)(c) or (d), those represented by the appellant, or consumers, respectively) would incur significant costs if the decision were to have effect before the determination of the appeal, and
 - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (4) The CMA's decision on an application for a direction under this paragraph must be made—

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- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
 - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (3)(a) is received.
- (5) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (6) A direction under this paragraph must be—
- (a) given by an authorised member of the CMA, and
 - (b) published, in a way an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.
- (7) Section 12I(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication under section 12I of a determination by the CMA on an appeal.

Time limit for representations and observations by the Authority

- 3 (1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the CMA in relation to—
- (a) an application for permission to bring an appeal under paragraph 1;
 - (b) an application for a direction under paragraph 2.
- (2) The Authority must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(7) or 2(5) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the CMA in relation to—
- (a) the Authority’s reasons for the decision in relation to which the appeal is being brought, and
 - (b) any grounds on which that appeal is being brought against that decision.
- (4) The Authority must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.
- (5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

Consideration and determination of appeal by group

- 4 (1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 12D must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
- (a) all the members of the group are present when it is made, and

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- (b) at least two members of the group are in favour of the decision.

Matters to be considered on appeal

- 5 (1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by section 12H, may disregard—
- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application, and
 - (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

Production of documents etc

- 6 (1) For the purposes of this Schedule, the CMA may, by notice, require—
- (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;
 - (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—
- (a) at the time and place specified in the notice, and
 - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court.
- (4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph.
- (5) A notice for the purposes of this paragraph—
- (a) may be issued on the CMA’s behalf by an authorised member of the CMA;
 - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

Oral hearings

- 7 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
- (a) by a person considering an application for permission to bring an appeal under paragraph 1,
 - (b) by a person considering an application for a direction under paragraph 2, or
 - (c) by a group with the function of determining an appeal,

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and, for that purpose, such a person or group may administer oaths.

- (2) The CMA may, by notice, require a person—
 - (a) to attend at a time and place specified in the notice, and
 - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).
- (3) At any oral hearing, the person or group conducting the hearing may require—
 - (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations, or
 - (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If the appellant, the Authority, or the appellant’s or Authority’s representative is not present at a hearing—
 - (a) there is no requirement to give notice to that person under sub-paragraph (2), and
 - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person’s evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person’s place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.
- (8) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

Written statements

- 8 (1) The CMA may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
 - (a) a person who is considering, or is to consider, an application for a direction under paragraph 2, or
 - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
 - (a) to specify the time and place at which it is to be produced, and
 - (b) to require it to be verified by a statement of truth,
 and a statement required to be so verified must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court.
- (4) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

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Expert advice

- 9 Where permission to bring an appeal is granted under paragraph 1, the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

Defaults in relation to evidence

- 10 (1) This paragraph applies if a person (“the defaulter”)—
- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8,
 - (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular, or
 - (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular.
- (2) An authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court.
- (3) The High Court may inquire into a matter certified to it under this paragraph and if, after having heard—
- (a) any witness against or on behalf of the defaulter, and
 - (b) any statement in the defaulter’s defence,
- it is satisfied that the defaulter, without reasonable excuse, failed to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.
- (4) Where the High Court has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).
- (5) A person who wilfully alters, suppresses or destroys a document that the person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—
- (a) on summary conviction to a fine;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Appeal rules

- 11 (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under section 12D.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
- (a) the taking of evidence at an oral hearing, or
 - (b) the making of representations or observations at such a hearing.
- (3) The CMA Board must publish rules made under this paragraph in a way it considers appropriate for bringing them to the attention of those likely to be affected by them.

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- (4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

Costs

- 12 (1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.
- (2) An order under sub-paragraph (1) must require those costs to be paid—
 - (a) where the appeal is allowed in full, by the Authority,
 - (b) where the appeal is dismissed in full, by the appellant, or
 - (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.
- (3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.
- (4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.
- (6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

Interpretation of Schedule

- 13 (1) In this Schedule—
 - “appeal” means an appeal under section 12D;
 - “appeal rules” means rules of procedure under paragraph 11;
 - “authorised member of the CMA”—
 - (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;
 - (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—
 - (i) any member of the CMA Board who is also a member of the CMA panel, or
 - (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;

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“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

“working day” means any day other than—

- (a) Saturday or Sunday;
- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

(2) References in this Schedule to a party to an appeal are references to—

- (a) the appellant, or
- (b) the Authority.]

[^{F1592}SCHEDULE 2A

WATER SUPPLY LICENCES: AUTHORISATIONS

Textual Amendments

F1592Sch. 2A inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 1](#); S.I. 2015/1938, art. 3(d)

Operation of the authorisations in England and Wales

- 1 In the descriptions of the following authorisations, a reference to the supply system of a water undertaker is a reference to the supply system of a water undertaker whose area is wholly or mainly in England—
 - (a) a retail authorisation;
 - (b) a wholesale authorisation.
- 2 In the descriptions of the following authorisations, a reference to the supply system of a water undertaker is a reference to the supply system of a water undertaker whose area is wholly or mainly in Wales—
 - (a) a restricted retail authorisation;
 - (b) a supplementary authorisation.

Retail authorisation

- 3 A retail authorisation given by a water supply licence is an authorisation to the water supply licensee to use the supply system of a water undertaker for the purpose of supplying water to the premises of—
 - (a) the licensee,
 - (b) persons associated with the licensee, or
 - (c) the licensee's customers.
- 4 None of the premises supplied by a water supply licensee under a retail authorisation may be household premises (as defined in section 17C).

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Wholesale authorisation

- 5 A wholesale authorisation given by a water supply licence is an authorisation to the water supply licensee to introduce water into the supply system of a water undertaker—
- (a) by means of which system any particular supply in accordance with a retail authorisation (whether the licensee's or another water supply licensee's) is to take place, and
 - (b) where that introduction is to be made in connection with that intended supply.

Modifications etc. (not altering text)

C344 Sch. 2A para. 5 modified (temp.) (22.3.2017) by [The Water Act 2014 \(Commencement No. 9 and Transitional Provisions\) Order 2017 \(S.I. 2017/462\)](#), **art. 11(5)**

Restricted retail authorisation

- 6 A restricted retail authorisation given by a water supply licence is an authorisation to the water supply licensee to use the supply system of a water undertaker for the purpose of supplying water to the premises of the licensee's customers.
- 7 The following requirements must be satisfied in relation to each of the premises to be supplied by a water supply licensee under a restricted retail authorisation—
- (a) the requirement that the premises are not household premises (as defined in section 17C);
 - (b) the threshold requirement (construed in accordance with section 17D).

Supplementary authorisation

- 8 A supplementary authorisation given by a water supply licence is an authorisation to the water supply licensee to introduce water into the supply system of a water undertaker—
- (a) by means of which system any particular supply in accordance with the licensee's restricted retail authorisation is to take place, and
 - (b) where that introduction is to be made in connection with that intended supply.

Enforcement and guidance

- 9 The requirements in paragraphs 4 and 7 are enforceable by the Authority under section 18.
- 10 (1) The Authority may from time to time, with the approval of the Secretary of State, issue guidance as to the factors that are, or are not, to be taken into account in determining the extent of any premises for the purposes of paragraphs 4 and 7.
- (2) Before giving approval under sub-paragraph (1) the Secretary of State must consult the Welsh Ministers.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Interpretation

- 11 For the purposes of this Schedule, a person (A) is associated with a water supply licensee (L) if—
- (a) where A and L are bodies corporate, one of them is a subsidiary of the other or both are subsidiaries of the same body corporate;
 - (b) where A or L is an individual or an unincorporated association and the other is a body corporate, that individual or unincorporated association controls the other or a body corporate of which the other is a subsidiary;
 - (c) A is a partnership of which L is a member.
- 12 In paragraph 11 “subsidiary” has the meaning given by section 1159 of the Companies Act 2006; and sections 450(1) to (4) and 451(1) to (3) of the Corporation Taxes Act 2010 (control of a company) apply for the purposes of paragraph 11 as they apply for the purposes of Part 10 of that Act.”]

[^{F1593}SCHEDULE 2B

SEWERAGE LICENCES: AUTHORISATIONS

Textual Amendments

F1593 Sch. 2B inserted (1.1.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 3](#); [S.I. 2015/1938, art. 3\(e\)](#)

Retail authorisation

- 1 A retail authorisation given by a sewerage licence is an authorisation to the sewerage licensee to use the sewerage system of a sewerage undertaker for the purpose of enabling the licensee to provide sewerage services in respect of the premises of—
- (a) the licensee,
 - (b) persons associated with the licensee, or
 - (c) the licensee's customers.
- 2 None of the premises served by a sewerage licensee under a retail authorisation may be household premises (as defined in section 17C).
- 3 The requirement in paragraph 2 is enforceable by the Authority under section 18.
- 4 The Authority may from time to time, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of paragraph 2.

Wholesale authorisation

- 5 A wholesale authorisation given by a sewerage licence is an authorisation to the sewerage licensee to remove matter from the sewerage system of a sewerage undertaker where—
- (a) the sewerage system is being used to enable a sewerage licensee (whether the licensee or another sewerage licensee) to provide sewerage services in respect of premises in accordance with a retail authorisation, and

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- (b) the removing of matter from the sewerage system is done in connection with sewerage services so provided.

Disposal authorisation

- 6 A disposal authorisation given by a sewerage licence is an authorisation to the sewerage licensee to remove matter from the sewerage system of a sewerage undertaker.
- 7 If a sewerage licensee with a disposal authorisation has, or a person associated with the licensee has, a retail authorisation—
- (a) the licensee or the person associated with it, or both of them, must obtain a wholesale authorisation, and
- (b) neither the licensee nor the person associated with it (if that person has a disposal authorisation) may remove matter from a sewerage system in accordance with the disposal authorisation (or either disposal authorisation, if both have such an authorisation) while matter may be removed in accordance with the wholesale authorisation (or either wholesale authorisation, if both have such an authorisation).

Interpretation

- 8 For the purposes of this Schedule, a person (A) is associated with a sewerage licensee (L) if—
- (a) where A and L are bodies corporate, one of them is a subsidiary of the other or both are subsidiaries of the same body corporate;
- (b) where A or L is an individual or an unincorporated association and the other is a body corporate, that individual or unincorporated association controls the other or a body corporate of which the other is a subsidiary;
- (c) A is a partnership of which L is a member.
- 9 In paragraph 8 “subsidiary” has the meaning given by section 1159 of the Companies Act 2006; and sections 450(1) to (4) and 451(1) to (3) of the Corporation Taxes Act 2010 (control of a company) apply for the purposes of paragraph 8 as they apply for the purposes of Part 10 of that Act.]

SCHEDULE 3

Section 23.

SPECIAL ADMINISTRATION ORDERS

Modifications etc. (not altering text)

C345 Sch. 3 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 7(4)** (with reg. 1(1)(c))

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

PART I

MODIFICATIONS OF THE 1986 ACT

General application of provisions of 1986 Act

- 1 Where a special administration order has been made, sections 11 to 15, 17 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—
- (a) as if references in those sections to an administration order were references to a special administration order and references to an administrator were references to a special administrator; ^{F1594} ...
- ^{F1594}(b)

Textual Amendments

F1594Sch. 3 para. 1(b) and word omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), s. 115\(3\)\(r\)](#), [Sch. 23 para. 28\(4\)\(e\)\(i\)](#)

Effect of order

- 2 In section 11 of the 1986 Act (effect of order), as applied by this Part of this Schedule—
- (a) the requirement in subsection (1)(a) that any petition for the winding up of the company shall be dismissed shall be without prejudice to the special administration order in a case where the order is made by virtue of section 25 of this Act; and
- ^{F1595}(b) and
- (c) the reference in subsection (3)(d) to proceedings shall include a reference to any proceedings under or for the purposes of section 18 of this Act.

Textual Amendments

F1595Sch. 3 para. 2(b) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), s. 115\(3\)\(r\)](#), [Sch. 23 para. 28\(4\)\(e\)\(ii\)](#)

Appointment of special administrator

- 3 In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—
- “(3) An application for an order under subsection (2) may be made—
- (a) by the Secretary of State;
- (b) with the consent of the Secretary of State, by the Director General of Water Services;
- (c) by any continuing special administrator of the company or, where there is no such special administrator, by the company, the directors or any creditor or creditors of the company.”

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

General powers of special administrator

- 4 In section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule
- (a) in subsection (1)(b), the reference to the powers specified in Schedule 1 to that Act shall be deemed to include a reference to a power to act on behalf of the company for the purposes of this Act, any local statutory provision or the exercise or performance of any power or duty which is conferred or imposed on the company by virtue of its holding an appointment under Chapter I of Part II of this Act [^{F1596}or a licence under Chapter 1A of that Part] ; and
 - (b) in subsection (4), the reference to a power conferred by the company's [^{F1597}articles of association] shall be deemed to include a reference to a power conferred by a local statutory provision or by virtue of the company's holding such an appointment [^{F1598}or licence] .

Textual Amendments

F1596 Words in Sch. 3 para. 4(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(2)(a); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

F1597 Words in Sch. 3 para. 4(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order (S.I. 2009/1941), art. 2(1), {Sch. 1 para. 126(4)} (with art. 10)

F1598 Words in Sch. 3 para. 4(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(2)(b); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

Power to deal with charged property

- 5 (1) Section 15 of the 1986 Act (power to deal with charged property), as applied by this Part of this Schedule, shall have effect as follows.
- (2) In subsection (5)(b) (amount to be paid to chargeholder not to be less than open market value), for the words “in the open market by a willing vendor” there shall be substituted the words “ for the best price which is reasonably available on a sale which is consistent with the purposes of the special administration order ”.

^{F1599}(3)

Textual Amendments

F1599 Sch. 3 para. 5(3) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 28(4)(e)(iii)

Duties of special administrator

- 6 (1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect as follows.
- (2) For subsection (2) there shall be substituted the following subsection—
- “(2) Subject to any directions of the court, it shall be the duty of the special administrator to manage the affairs, business and property of the company

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in accordance with proposals, as for the time being revised under section 23, which have been prepared for the purposes of that section by him or any predecessor of his.”

- (3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors’ meeting) shall be omitted.

Discharge of order

- 7 (1) Section 18 of the 1986 Act (discharge and variation of administration order), as applied by this Part of this Schedule, shall have effect as follows.

- (2) For subsections (1) and (2) there shall be substituted the following subsection—

“(1) An application for a special administration order to be discharged may be made—

- (a) by the special administrator, on the ground that the purposes of the order have been achieved; or
- (b) by the Secretary of State or, with the consent of the Secretary of State, the Director General of Water Services, on the ground that it is no longer necessary that those purposes are achieved.”

- (3) In subsection (3), the words “or vary” shall be omitted.

- (4) In subsection (4), the words “or varied” and “or variation” shall be omitted and for the words “to the registrar of companies” there shall be substituted—

^{F1600}(a)

- (b) ^{F1601}... the words “to the registrar of companies and to the Director General of Water Services”.

Textual Amendments

F1600Sch. 3 para. 7(4)(a) and word omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), s. 115\(3\)\(r\)](#), [Sch. 23 para. 28\(4\)\(e\)\(iv\)](#)

F1601Words in Sch. 3 para. 7(4)(b) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), s. 115\(3\)\(r\)](#), [Sch. 23 para. 28\(4\)\(e\)\(v\)](#)

Notice of making of order

- 8 In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of this Schedule, for the words “to the registrar of companies” there shall be substituted—

^{F1602}(a)

- (b) ^{F1603}... the words “to the registrar of companies, to the Director General of Water Services”.

Textual Amendments

F1602Sch. 3 para. 8(a) and word omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), s. 115\(3\)\(r\)](#), [Sch. 23 para. 28\(4\)\(e\)\(vi\)](#)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F1603 Words in Sch. 3 para. 8(b) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 28(4)(e)(vii)

Statement of proposals

9 In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—

“(1) Where a special administration order has been made, the special administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—

- (a) to the Secretary of State and to the Director General of Water Services;
- (b) so far as he is aware of their addresses, to all creditors of the company; and
- (c) ^{F1604} ... to the registrar of companies;

and may from time to time revise those proposals.

(2) If at any time—

- (a) the special administrator proposes to make revisions of the proposals for achieving the purposes of the special administration order; and
- (b) those revisions appear to him to be substantial,

the special administrator shall, before making those revisions, send a statement of the proposed revisions to the Secretary of State, to the Director General of Water Services, (so far as he is aware of their addresses) to all creditors of the company and ^{F1605} ... to the registrar of companies.

(2A) Where the special administrator is required by subsection (1) or (2) to send any person a statement before the end of any period or before making any revision of any proposals, he shall also, before the end of that period or, as the case may be, before making those revisions either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or
- (b) publish in the prescribed manner a notice stating an address to which members should write for copies of the statement to be sent to them free of charge.”

Textual Amendments

F1604 Words in Sch. 3 para. 9 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 28(4)(e)(viii)

F1605 Words in Sch. 3 para. 9 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 28(4)(e)(ix)

Applications to court

10 (1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.

Status: This version of this Act contains provisions that are prospective.

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(2) After subsection (1) there shall be inserted the following subsection—

“(1A) At any time when a special administration order is in force the Secretary of State or, with the consent of the Secretary of State, the Director General of Water Services may apply to the High Court by petition for an order under this section on the ground that the special administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which—

- (a) will not best ensure the achievement of the purposes of the order; or
- (b) without prejudice to paragraph (a) above, involves either a contravention of the conditions of the company’s appointment under Chapter I of Part II of the Water Industry Act 1991 [^{F1606}or its licence under Chapter 1A of that Part] or of any statutory or other requirement imposed on the company in consequence of that appointment [^{F1607}or licence].”

(3) In subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator’s proposals), for paragraphs (a) and (b) there shall be substituted the words “ the achievement of the purposes of the order ”.

(4) Subsections (4)(d) and (6) (power of court to order discharge) shall be omitted.

Textual Amendments

F1606Words in Sch. 3 para. 10(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(3)(a); S.I. 2005/2714, art. 3(e) (with Sch. para. 8)

F1607Words in Sch. 3 para. 10(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 52(3)(b); S.I. 2005/2714, art. 3(e) (with Sch. para. 8)

PART II

SUPPLEMENTAL

General adaptations and saving

- 11 (1) Subject to the preceding provisions of this Schedule, references in the 1986 Act (except in sections 8 to 10 and 24 to 26), or in any other enactment passed before 6th July 1989, to an administration order under Part II of that Act, to an application for such an order and to an administrator shall include references, respectively, to a special administration order, to an application for a special administration order and to a special administrator.
- (2) Subject as aforesaid and to sub-paragraph (3) below, references in the 1986 Act, or in any other enactment passed before 6th July 1989, to an enactment contained in Part II of that Act shall include references to that enactment as applied by section 24 of this Act or Part I of this Schedule.
- (3) Sub-paragraphs (1) and (2) above shall apply in relation to a reference in an enactment contained in Part II of the 1986 Act only so far as necessary for the purposes of the operation of the provisions of that Part as so applied.

Status: This version of this Act contains provisions that are prospective.

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- (4) The provisions of this Schedule shall be without prejudice to the power conferred by section 411 of the 1986 Act (company insolvency rules), as modified by subparagraphs (1) and (2) above.

Interpretation

- 12 (1) In this Schedule “the 1986 Act” means the ^{M122}Insolvency Act 1986.
- (2) In this Schedule, and in any modification of the 1986 Act made by this Schedule, “special administrator”, in relation to a special administration order, means any person appointed in relation to that order for the purposes of section 23(1) of this Act; and in any such modification “special administration order” has the same meaning as in this Act.

Marginal Citations

M122 1986 c. 45.

[^{F1608}SCHEDULE 3A

Section 27A(11)

THE CONSUMER COUNCIL FOR WATER

Textual Amendments

F1608Sch. 3A inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 35(2), 105(3), [Sch. 2](#); [S.I. 2005/2714](#), [art. 2\(a\)\(i\)](#) (with [Sch. para. 8](#))

Membership of Council

- 1 (1) The Council shall consist of—
- (a) a chairman appointed by the Secretary of State;
 - (b) one other member appointed by the Assembly; and
 - (c) such other members as may be appointed by the Secretary of State.
- (2) The Secretary of State shall consult the Assembly before appointing the chairman.
- (3) The Secretary of State and the Assembly shall consult the chairman before appointing any other member.
- (4) An appointment under this paragraph shall be for a term not exceeding five years.
- (5) In appointing persons under this paragraph the Secretary of State and the Assembly shall have regard to the desirability of including among the members one or more persons who—
- (a) have experience of work among, and the special needs of, disabled persons;
 - or
 - (b) have or have had a disability.

Status: This version of this Act contains provisions that are prospective.

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Membership of Council

- 2 (1) A person holding office as chairman or other member may resign that office by giving notice to the Secretary of State (in the case of a member appointed by him), or to the Assembly (in the case of a member appointed by the Assembly).
- (2) The Secretary of State may remove any person appointed by him from office as chairman or other member on the ground of incapacity or misbehaviour.
- (3) The Secretary of State shall consult the Assembly before removing any person appointed by him as chairman.
- (4) The Assembly may remove any person appointed by it from office as member on the ground of incapacity or misbehaviour.
- (5) Otherwise, the chairman and other members shall hold and vacate office as such in accordance with the terms of their respective appointments.
- (6) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.

Terms of appointment, remuneration, pensions etc

- 3 The Council shall pay to the chairman and other members of the Council such remuneration, and such travelling and other allowances, as the Secretary of State may determine.

Terms of appointment, remuneration, pensions etc

- 4 (1) If the Secretary of State so determines in the case of any holder of the office of chairman or other member, the Council shall pay—
 - (a) such pension, allowance or gratuity to or in respect of him, or
 - (b) such contributions or payments towards provision for such a pension, allowance or gratuity,as the Secretary of State may determine.
- (2) If, when any person ceases to hold office as chairman or other member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

Members appointed by Assembly

- 5 In relation to any member of the Council appointed by the Assembly, the matters mentioned in paragraphs 3 and 4 above shall be determined by the Assembly instead of by the Secretary of State.

Staff

- 6 (1) The Council shall, with the approval of the Secretary of State, appoint a principal officer on such terms of employment as it may, with that approval, determine.
- (2) The Council may, with the approval of the Secretary of State as to numbers and terms of employment, appoint such other employees as it may determine.

Status: This version of this Act contains provisions that are prospective.

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- (3) The persons to whom section 1 of the Superannuation Act 1972 (persons to or in respect of whom benefits may be provided by schemes under that section) applies shall include employees of the Council.
- (4) The Council shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (3) above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Annual reports

- 7 (1) As soon as practicable after the end of each financial year the Council shall report to the Secretary of State on its activities during the year.
- (2) The annual report for each year shall include a report on the progress of the projects described in the Council's forward work programme for that year.
- (3) In making any report under this paragraph the Council shall not include any information which relates to the affairs of a particular individual or body of persons (corporate or unincorporate) unless one or more of paragraphs (a) to (c) of sub-paragraph (4) below applies to the information.
- (4) Information relating to a particular individual or body may be included in the report if—
 - (a) that individual or body has consented to its inclusion;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (5) Before deciding to include any information relating to a particular individual or body in pursuance of sub-paragraph (4)(c) above, the Council shall—
 - (a) consult that person or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of sub-paragraph (4)(c) above to the information or as to the desirability or otherwise of its publication,
 and paragraph (b) applies whether the opinion is given in relation to information itself or to information of a description which applies to that information.
- (6) In making any report under this paragraph the Council shall not include any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (7) In considering whether information relates to any matter as mentioned in sub-paragraph (6) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (8) The Secretary of State shall lay a copy of each annual report of the Council before each House of Parliament.

Status: This version of this Act contains provisions that are prospective.

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- (9) The Council shall send a copy of each annual report to the Authority and the Assembly and shall arrange for the report to be published in such further manner as it considers appropriate.

Financial provisions and accounts

- 8 (1) It shall be the duty of the Council to comply with any notice given by the Secretary of State requiring it to perform duties of a financial nature specified in the notice.
- (2) The Secretary of State shall consult the Assembly before giving any notice to the Council under sub-paragraph (1) above.

Financial provisions and accounts

- 9 (1) The Council shall prepare, in respect of each financial year, a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Council.
- (2) The statement of accounts shall comply with any requirement which the Secretary of State has notified to the Council.
- (3) The Council shall, within such period after the end of the financial year to which it relates as the Secretary of State may specify by notice given to the Council, send copies of each statement of accounts of the Council to—
- (a) the Secretary of State and the Assembly; and
 - (b) the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General shall—
- (a) examine, certify and report on every statement sent to him under sub-paragraph (3) above; and
 - (b) lay a copy of the statement and of his report before each House of Parliament.

Financial provisions and accounts

- 10 The Secretary of State and the Assembly shall pay to the Council such sums as he or it thinks fit to enable it to meet its expenses.

Regional committees

- 11 (1) The Council shall not establish or abolish a regional committee, or alter the allocation of a relevant undertaker to a regional committee, without the approval of the appropriate authority.
- (2) If the Council proposes to do anything mentioned in sub-paragraph (1) above it shall, after consulting the appropriate authority, give notice—
- (a) describing its proposals; and
 - (b) specifying the time from the date of the notice (not being less than two months) within which representations may be made with respect to the proposals;
- and shall consider any representations that are duly made and not withdrawn.

Status: This version of this Act contains provisions that are prospective.

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- (3) A notice under sub-paragraph (2) above shall be given by publishing it in such manner as the Council considers appropriate for bringing the proposals to the attention of those likely to be affected.
- (4) An appropriate authority shall not give its approval under sub-paragraph (1) above until after the time specified in the notice under sub-paragraph (2) above.

Regional committees

- 12 (1) A regional committee of the Council shall consist of—
 - (a) a chairman appointed by the appropriate authority;
 - (b) such other members as the Council may appoint.
- (2) Any regional committee may establish sub-committees.
- (3) The members of a regional committee of the Council may include persons who are not members of the Council (and the members of a sub-committee of the committee may include persons who are not members of the committee or the Council).
- (4) In appointing members of a regional committee the Council shall take account of any guidance given to them by the appropriate authority.
- (5) The Council may pay to the chairman and other members of a regional committee, or a sub-committee, such remuneration, and such travelling and other allowances, as the appropriate authority may determine.

Regional committees

- 13 (1) If the appropriate authority so determines in the case of any holder of the office of chairman or other member of a regional committee, or of any sub-committee of a regional committee, the Council shall pay—
 - (a) such pension, allowance or gratuity to or in respect of him; or
 - (b) such contributions or payments towards provision for such a pension, allowance or gratuity,
 as the appropriate authority may determine.
- (2) If, when any person ceases to hold office as chairman or other member of a regional committee, the appropriate authority determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the appropriate authority.

Regional committees

- 14 In paragraphs 11 to 13 above the “appropriate authority” means—
 - (a) the Assembly, in relation to committees established (or proposed to be established) for relevant undertakers whose areas are wholly or mainly in Wales, to sub-committees of those committees, and to any relevant undertaker whose area is wholly or mainly in Wales;
 - (b) the Secretary of State, in relation to committees established (or proposed to be established) for other relevant undertakers, to sub-committees of those committees, and to any other relevant undertaker.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Other committees

- 15 (1) The Council may establish committees other than regional committees and any such committee may establish sub-committees.
- (2) The members of any such committee may include persons who are not members of the Council (and the members of a sub-committee may include persons who are not members of the relevant committee or the Council).
- (3) The Council may pay to the chairman and other members of any such committee, or of a sub-committee, such remuneration, and such travelling and other allowances, as the Secretary of State may determine.

Other committees

- 16 (1) If the Secretary of State so determines in the case of any holder of the office of chairman or other member of any such committee, or of any sub-committee of such a committee, the Council shall pay—
- (a) such pension, allowance or gratuity to or in respect of him; or
 - (b) such contributions or payments towards provision for such a pension, allowance or gratuity,
- as the Secretary of State may determine.
- (2) If, when any person ceases to hold office as chairman or other member of any such committee, or of any sub-committee of such a committee, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

Performance of functions of the Council

- 17 Anything authorised or required to be done by the Council may be done by any member or employee of the Council who, or any regional or other committee of the Council which, is authorised for the purpose by the Council (whether generally or specially).

Performance of functions of the Council

- 18 The validity of anything done by the Council is not affected by a vacancy among its members or by a defect in the appointment of a member.

Supplementary powers

- 19 (1) The Council shall have power to do anything which is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions.
- (2) That power includes, among other things, power to enter into agreements and to acquire and dispose of property.
- (3) The Council may make charges for facilities or services provided by it at the request of any person.

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First financial year of the Council

- 20 (1) If the period beginning with the day on which the Council is established and ending with the next 31st March is six months or more, the first financial year of the Council is that period.
- (2) If the period mentioned in sub-paragraph (1) above is less than six months, the first financial year of the Council is the period beginning with the day on which the body is established and ending with 31st March in the following year.

Compensation for members of customer service committees

- 21 The Authority may pay to any person who immediately before the abolition by the Water Act 2003 of a customer service committee established under section 28(1) of this Act is the chairman of that body such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Secretary of State may determine.]

F1609F1609 SCHEDULE 4

Textual Amendments

F1609 Sch. 4 repealed (1.10.2005) by Water Act 2003 (c. 37), ss. 35(4), 101(2), 105(3), Sch. 9 Pt. 2; S.I. 2005/2714, art. 2(a)(ii) (with Sch. para. 8)

[F1610 SCHEDULE 4ZA

Section 34

APPLICATION OF PROVISIONS OF ENTERPRISE
ACT 2002 TO MERGERS OF WATER ENTERPRISES

Textual Amendments

F1610 Sch. 4ZA inserted (29.12.2004) by Enterprise Act 2002 (c. 40), ss. 70(2), 279, Sch. 6; S.I. 2004/3233, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)

- 1 Part 3 of the 2002 Act (and any other provisions of that Act so far as relating to that Part) shall apply, with such prescribed modifications as the Secretary of State considers to be necessary or expedient, in relation to water mergers and merger references under section 32 of this Act as it applies in relation to relevant merger situations and references under Part 3 of that Act.
- 2 The modifications made by virtue of paragraph 1 above shall include modifications to give effect to paragraphs [F1611 2A to 6] below.

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1611 Words in Sch. 4ZA para. 2 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(2\)](#) (with art. 3)

[^{F1612}2A. Where a reference is made to the chair of the CMA under section 32 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA in relation to the matter are to be carried out on behalf of the CMA by the group so constituted in any case where those functions would be carried out by a group so constituted in relation to a reference under Part 3 of that Act.]

Textual Amendments

F1612 Sch. 4ZA para. 2A inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(3\)](#) (with art. 3)

- 3 (1) The first questions to be decided by the [^{F1613}CMA] on a merger reference under section 32(a) of this Act shall be—
- (a) whether arrangements are in progress which, if carried into effect, will result in a water merger; and
 - (b) if so, whether that merger may be expected to prejudice the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises.
- (2) The first questions to be decided by the [^{F1613}CMA] on a merger reference under section 32(b) of this Act shall be—
- (a) whether a water merger has taken place; and
 - (b) if so, whether that merger has prejudiced, or may be expected to prejudice, the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises.
- (3) Any decision of the [^{F1614}CMA] on a merger reference under section 32(a) of this Act that arrangements are in progress which, if carried into effect, will result in a water merger shall be treated as a decision that no arrangements are in progress which, if carried into effect, will result in a water merger if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [^{F1615}under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] .
- (4) Any decision of the [^{F1614}CMA] on a merger reference under section 32(a) of this Act that a water merger may be expected to prejudice the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises shall be treated as a decision that the water merger may be expected not to prejudice that ability of the Director if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [^{F1615}under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] .
- (5) Any decision of the [^{F1614}CMA] on a merger reference under section 32(b) of this Act that a water merger has taken place shall be treated as a decision that no water

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merger has taken place if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference in [F1615 under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] .

- (6) Any decision of the [F1614 CMA] on a merger reference under section 32(b) of this Act that a water merger has prejudiced, or may be expected to prejudice, the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises shall be treated as a decision that the water merger has not prejudiced, or may be expected not to prejudice, that ability of the Director if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [F1615 under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] .

Textual Amendments

F1613 Word in Sch. 4ZA para. 3(1)(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(4\)\(a\)](#) (with art. 3)

F1614 Word in Sch. 4ZA para. 3(3)-(6) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(4\)\(b\)\(i\)](#) (with art. 3)

F1615 Words in Sch. 4ZA para. 3(3)-(6) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(4\)\(b\)\(ii\)](#) (with art. 3)

- 4 (1) In deciding, on a merger reference under section 32(a) of this Act whether to take action for the purpose of remedying, mitigating or preventing the prejudice to the Director or any adverse effect which may be expected to result from the prejudice to the Director and, if so, what action should be taken, the [F1616 CMA] may, in particular, have regard to the effect of any such action on any relevant customer benefits in relation to the merger concerned provided that—
- (a) a consideration of those benefits would not prevent a solution to the prejudice concerned; or
 - (b) the benefits which may be expected to accrue are substantially more important than the prejudice concerned.
- (2) In deciding, on a merger reference under section 32(b) of this Act whether to take action for the purpose of remedying, mitigating or preventing the prejudice to the Director or any adverse effect which has resulted from, or may be expected to result from, the prejudice to the Director and, if so, what action should be taken, the [F1616 CMA] may, in particular, have regard to the effect of any such action on any relevant customer benefits in relation to the merger concerned provided that—
- (a) a consideration of those benefits would not prevent a solution to the prejudice concerned; or
 - (b) the benefits which have accrued, or may be expected to accrue, are substantially more important than the prejudice concerned.
- (3) This paragraph is without prejudice to the power of the Secretary of State to provide in regulations made under paragraph 1 above for other matters to which the [F1616 CMA] may or must have regard in deciding the questions as mentioned in subparagraph (1) or (2) above (including matters which are to take priority over the effect of action on relevant customer benefits).

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Textual Amendments

F1616Word in Sch. 4ZA para. 4 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(5\)](#) (with art. 3)

- 5 (1) No enforcement action shall be taken on a merger reference under section 32(b) of this Act in respect of an actual merger unless the reference was made within the period of four months beginning with whichever is the later of—
- (a) the day on which the merger took place; and
 - (b) the day on which the material facts about the transactions which resulted in the merger first came to the attention of the ^{F1617}CMA] or were made public (within the meaning given by section 24(3) of the 2002 Act).
- (2) This paragraph is without prejudice to the power of the Secretary of State to provide in regulations made under paragraph 1 above for extensions of the four month period; and, if any such provision is made in such regulations, the provision which is to be made in regulations under paragraph 1 above by virtue of sub-paragraph (1) above or paragraph 6 below may be adjusted accordingly.

Textual Amendments

F1617Word in Sch. 4ZA para. 5 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(6\)](#) (with art. 3)

- 6 If, on a merger reference under section 32(b) of this Act, the ^{F1618}CMA] are satisfied that the reference was not made within the period of four months mentioned in paragraph 5 above, its report on the reference shall state that fact.

Textual Amendments

F1618Word in Sch. 4ZA para. 6 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(7\)](#) (with art. 3)

- 7 (1) For the purposes of this Schedule a benefit is a relevant customer benefit if—
- (a) it is a benefit to relevant customers in the form of—
 - (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom; or
 - (ii) greater innovation in relation to such goods or services; and
 - (b) the ^{F1619}CMA] believes—
 - (i) in the case of a merger reference under section 32(a) of this Act, as mentioned in sub-paragraph (2) below; and
 - (ii) in the case of a merger reference under section 32(b) of this Act, as mentioned in sub-paragraph (3) below.
- (2) The belief, in the case of a merger reference under section 32(a) of this Act, is that—
- (a) the benefit may be expected to accrue within a reasonable period as a result of the merger concerned; and

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- (b) the benefit is unlikely to accrue without the merger concerned or a similar prejudice to the Director.
- (3) The belief, in the case of a merger reference under section 32(b) of this Act is that—
 - (a) the benefit has accrued as a result of the merger concerned or may be expected to accrue within a reasonable period as a result of the merger concerned; and
 - (b) the benefit was, or is, unlikely to accrue without the merger concerned or a similar prejudice to the Director.
- (4) In sub-paragraph (1) above “relevant customers” means—
 - (a) customers of any person carrying on an enterprise which, in the merger concerned, has ceased to be, or (as the case may be) will cease to be, a distinct enterprise;
 - (b) customers of such customers; and
 - (c) any other customers in a chain of customers beginning with the customers mentioned in paragraph (a);
 and in this sub-paragraph “customers” includes future customers.

Textual Amendments

F1619 Word in Sch. 4ZA para. 7 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 93\(7\)](#) (with art. 3)

- 8 In this Schedule—
- “customers”, “goods”, “market in the United Kingdom”, “services” and “relevant merger situation” have the same meanings as in Part 3 of the 2002 Act; and
 - “water merger” means a merger of any two or more water enterprises.]

[^{F1620}SCHEDULE 4A

PREMISES THAT ARE NOT TO BE DISCONNECTED FOR NON-PAYMENT OF CHARGES

Textual Amendments

F1620 Sch. 4A inserted (30.6.1999) by [1999 c. 9, ss. 1\(2\), 17\(2\)](#), [Sch. 1](#)

- 1 (1) Any dwelling which is occupied by a person as his only or principal home.
- (2) In this paragraph “dwelling” means—
- (a) a private dwelling-house (which may be a building or part of a building),
 - (b) a caravan within the meaning of Part I of the ^{M123}Caravan Sites and Control of Development Act 1960 (disregarding the amendment made by section 13(2) of the ^{M124}Caravan Sites Act 1968), or
 - (c) a boat or similar structure designed or adapted for use as a place of permanent habitation.

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Marginal Citations

M123 1960 c.62.

M124 1968 c.52.

- 2 (1) Any house in multiple occupation which does not constitute a dwelling within the meaning of paragraph 1 above and in which any person has his only or principal home.

[^{F1621}(2) In this paragraph “house in multiple occupation” means a house in multiple occupation as defined by sections 254 to 259 of the Housing Act 2004, as they have effect for the purposes of Part 1 of that Act (that is, without the exclusions contained in Schedule 14 to that Act).]

Textual Amendments

F1621Sch. 4A para. 2(2) substituted (6.4.2006 for E. and 16.6.2006 for W.) by [Housing Act 2004 \(c. 34\)](#), ss. 265(1), 270, {Sch. 15 para. 36}); [S.I. 2006/1060](#), [art. 2\(1\)\(d\)](#); [S.I. 2006/1535](#), [art. 2\(b\)](#)

- 3 (1) Accommodation for the elderly in which a person has his only or principal home.
- (2) In this paragraph “accommodation for the elderly” means residential accommodation to which sub-paragraph (3) or (4) below applies, but which is not a dwelling within the meaning of paragraph 1 above or a house in multiple occupation within the meaning of paragraph 2 above.
- (3) This sub-paragraph applies to residential accommodation—
- which is particularly suitable, having regard to its location, size, design, heating systems and other features, for occupation by elderly persons,
 - which it is the practice of the landlord to let for occupation by persons aged 60 or more, and
 - where the services of a warden are provided.
- (4) This sub-paragraph applies to any building or part of a building designed or adapted for use as residential accommodation for elderly persons.

[^{F1622}4 A hospital as defined by section 275 of the National Health Service Act 2006 in relation to England or section 206 of the National Health Service (Wales) Act 2006 in relation to Wales.]

Textual Amendments

F1622Sch. 4A para. 4 substituted (6.4.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments\) Order 2010 \(S.I. 2010/750\)](#), arts. 1(1), 2

- 5 Premises used for the provision of medical services by a registered medical practitioner.
- 6 Premises used for the provision of dental services by a person who under the ^{M125}Dentists Act 1984 is permitted to practise dentistry.

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Marginal Citations

M125 1984 c.24.

[^{F1623}7 Premises not falling within paragraph 5 or 6 above which are used for the provision of primary medical services or primary dental services under [^{F1624}the National Health Service Act 2006 or the National Health Service (Wales) Act 2006] .]

Textual Amendments

F1623Sch. 4A para. 7 substituted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 184, 199, **Sch. 11 para. 58**; S.I. 2004/288, **art. 5(2)(v)** (as amended by S.I. 2004/866, S.I. 2004/1009 and S.I. 2005/2925); S.I. 2004/480, **art. 4(2)(z)** (as amended by S.I. 2006/345)

F1624Words in Sch. 4A para. 7 substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), **Sch. 1 para. 139(a)**

[(1) A care home or independent hospital.

[^{F1625}8

(2) In this paragraph—

“care home” means—

(a) a care home [^{F1626}in England] within the meaning of the Care Standards Act 2000;

(aa) [^{F1627}premises in Wales at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), is provided;]

(b) ^{F1628} ...

(c) [^{F1629}a building or part of a building in which accommodation is provided under Part 1 of the Care Act 2014;]

(d) [^{F1630}a building or part of a building—

(i) in which accommodation is provided under Part 4 of the Social Services and Well-being (Wales) Act 2014^{F1631} ...

(^{F1632}ii) ...]

^{F1633} ...

[In this paragraph “independent hospital”, in relation to England, means—

^{F1634}(3) (a) an establishment, not being a health service hospital as defined by section 275 of the National Health Service Act 2006,—

(i) the main purpose of which is to provide medical or psychiatric treatment for illness or mental disorder or palliative care; or

(ii) in which (whether or not other services are provided) any of the services listed in sub-paragraph (5) are provided; or

(b) any other establishment, not being a health service hospital as so defined, in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983.

(4) In this paragraph “independent hospital”, in relation to Wales, means an independent hospital within the meaning of the Care Standards Act 2000.

(5) The services referred to in sub-paragraph (3)(a)(ii) are as follows—

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- (a) medical treatment under anaesthesia or intravenously administered sedation;
 - (b) dental treatment under general anaesthesia;
 - (c) obstetric services and, in connection with childbirth, medical services;
 - (d) termination of pregnancies;
 - (e) cosmetic surgery, other than—
 - (i) ear and body piercing,
 - (ii) tattooing,
 - (iii) the subcutaneous injection of a substance or substances into the skin for cosmetic purposes, or
 - (iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current.
- (6) In sub-paragraph (3)(a)(i)—
- (a) “illness” includes any injury; and
 - (b) “mental disorder” has the same meaning as in the Mental Health Act 1983.]]

Textual Amendments

- F1625**Sch. 4A paras. 8, 9 substituted (1.4.2002) by 2000 c. 14, s. 116, Sch. 4 para. 18; S.I. 2001/4150, art. 3(3)(a) (subject to transitional provisions in art. 4 and S.I. 2002/1493, art. 4); S.I. 2002/920, art. 3(3)(d) (with transitional provisions and savings in arts. 3(4)-(10), Schs. 1-3)
- F1626**Words in Sch. 4A para. 8(2)(a) inserted (2.4.2018) by The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195), regs. 2(1), 16(2)(a)
- F1627**Sch. 4A para. 8(2)(aa) inserted (2.4.2018) by The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195), regs. 2(1), 16(2)(b)
- F1628**Words in Sch. 4A para. 8(2) omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), 129(a)
- F1629**Words in Sch. 4A para. 8(2) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), Sch. para. 53 (with arts. 1(3), 3)
- F1630**Words in Sch. 4A para. 8(2) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), 129(b)
- F1631**Word in Sch. 4A para. 8(2)(d)(i) omitted (2.4.2018) by virtue of The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195), regs. 2(1), 16(2)(c)
- F1632**Sch. 4A para. 8(2)(d)(ii) omitted (2.4.2018) by virtue of The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195), regs. 2(1), 16(2)(d)
- F1633**Words in Sch. 4A para. 8(2) omitted (1.10.2010) by virtue of The Health and Social Care Act 2008 (Consequential Amendments No.3) Order 2010 (S.I. 2010/2224), arts. 1(1), 2(a)
- F1634**Sch. 4A para. 8(3)-(6) inserted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.3) Order 2010 (S.I. 2010/2224), arts. 1(1), 2(b)

F1635⁹ A children’s home [^{F1636}in England] within the meaning of the Care Standards Act 2000.

Textual Amendments

- F1635**Sch. 4A paras. 8, 9 substituted (1.4.2002) by 2000 c. 14, s. 116, Sch. 4 para. 18; S.I. 2001/4150, art. 3(3)(a) (subject to transitional provisions in art. 4 and S.I. 2002/1493, art. 4); S.I. 2002/920, art. 3(3)(d) (subject to transitional provisions and savings in arts. 3(4)-(10), Schs. 1-3)

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F1636 Words in Sch. 4A para. 9 inserted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), regs. 2(1), **16(3)**

[^{F1637}9A. Premises in Wales at which a secure accommodation service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, is provided.]

Textual Amendments

F1637 Sch. 4A para. 9A inserted (29.4.2019) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2019 \(S.I. 2019/772\)](#), regs. 1(2), **6**

10 A school within the meaning of the ^{M126}Education Act 1996.

Marginal Citations

M126 1996 c.56.

[^{F1638}10A A 16 to 19 Academy.]

Textual Amendments

F1638 Sch. 4A para. 10A inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 13 para. 7](#); [S.I. 2012/924](#), art. 2

- 11 (1) Premises used by an institution within the further education sector or an institution within the higher education sector for, or in connection with, the provision of education.
- (2) In this paragraph the references to an institution within the further education sector or within the higher education sector are to be construed in accordance with section 91 of the ^{M127}Further and Higher Education Act 1992.

Marginal Citations

M127 1992 c.13.

- [^{F1639}12(1) Premises in England which are used for the provision of childcare by a person who is registered (otherwise than as a childminder) under Part 3 of the Childcare Act 2006
^{F1640}...]
- (2) Premises in Wales which are used for the provision of day care for children by a person who is registered under [^{F1641}Part 2 of the Children and Families (Wales) Measure 2010] in respect of the premises.]

Textual Amendments

F1639 Sch. 4A para. 12 substituted (6.4.2007) by [Childcare Act 2006 \(c. 21\)](#), ss. 103(1), 109, [Sch. 2 para. 19](#); [S.I. 2007/1019](#), art. 4 (with savings in [Sch. para. 4](#))

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F1640 Words in Sch. 4A para. 12(1) omitted (1.1.2016) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 2 para. 20](#); S.I. 2015/1329, reg. 6(b)

F1641 Words in Sch. 4A para. 12(2) substituted (1.4.2011) by [Children and Families \(Wales\) Measure 2010 \(nawm 1\), s. 75\(3\), Sch. 1 para. 9](#); S.I. 2010/2582, art. 2, Sch. 1 (with Sch. 2, Sch. 3)

- 13 (1) A prison or ^{F1642}removal centre] .
- (2) In this paragraph “prison” means—
- (a) any prison, young offender institution or remand centre which is under the general superintendence of, or is provided by, the Secretary of State under the ^{M128}Prison Act 1952, including a contracted out prison within the meaning of Part IV of the ^{M129}Criminal Justice Act 1991,
- (b) any secure training centre ^{F1643} ...
- ^{F1644}(ba) [a secure college, or]
- (c) a naval, military or air force prison.
- (3) In this paragraph “^{F1642}removal centre]” means any premises which are used solely for detaining persons under the ^{M130}Immigration Act 1971 or the ^{F1645}Nationality, Immigration and Asylum Act 2002] , but which are not a part of a prison.

Textual Amendments

F1642 Words in Sch. 4A para. 13 substituted (10.2.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), ss. 66\(2\)\(3\)\(p\), 162\(2\)](#); S.I. 2003/1, art. 2, Sch.

F1643 Words in Sch. 4A para. 13(2)(b) omitted (20.3.2015) by virtue of [Criminal Justice and Courts Act 2015 \(c. 2\), s. 95\(1\), Sch. 9 para. 10\(a\)](#); S.I. 2015/778, art. 2(1)(c)

F1644 Sch. 4A para. 13(2)(ba) inserted (20.3.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), s. 95\(1\), Sch. 9 para. 10\(b\)](#); S.I. 2015/778, art. 2(1)(c)

F1645 Words in Sch. 4A para. 13(3) substituted (4.4.2003) by [The Nationality, Immigration and Asylum Act 2002 \(Consequential and Incidental Provisions\) Order 2003 \(S.I. 2003/1016\), art. 3, Sch. para. 5](#)

Marginal Citations

M128 1952 c.52.

M129 1991 c.53.

M130 1971 c.77.

- 14 Premises occupied for the purposes of a police force.
- 15 Premises occupied for the purposes of a ^{F1646}fire and rescue authority] .

Textual Amendments

F1646 Words in Sch. 4A para. 15 substituted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\), ss. 53, 61, {Sch. 1 para. 78}](#); S.I. 2004/2304, art. 2(2) (subject to savings in art. 3); S.I. 2004/2917, art. 2

- 16 Premises occupied for the purposes of the provision of an ambulance service by a National Health Service trust established under ^{F1647}the National Health Service Act 2006 or the National Health Service (Wales) Act 2006] ^{F1648}or by an NHS foundation trust] .]

Status: This version of this Act contains provisions that are prospective.

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Textual Amendments

F1647 Words in Sch. 4A para. 16 substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8\(2\), Sch. 1 para. 139\(b\)](#)

F1648 Words in Sch. 4A para. 16 inserted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 34, 119, Sch. 4 para. 90; S.I. 2004/759, art. 2](#)

SCHEDULE 5

Section 65.

PROCEDURE FOR ORDERS RELATING TO PRESSURE AND CONSTANCY OF SUPPLY

Applications for orders

- 1 (1) Where the Director or a water undertaker applies to the Secretary of State for an order under section 65(5) of this Act, the applicant shall—
- (a) submit to the Secretary of State a draft of the order applied for;
 - (b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in the locality which would be affected by the provision proposed to be made by the order;
 - (c) not later than the date on which that notice is first published serve a copy of the notice on every affected local authority and every affected water undertaker; and
 - (d) publish a notice in the London Gazette which—
 - (i) states that the draft order has been submitted to the Secretary of State;
 - (ii) names every local authority on whom a notice is required to be served under this paragraph;
 - (iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.
- (2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order shall—
- (a) state the general effect of the order applied for;
 - (b) specify a place where a copy of the draft 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 twenty-eight 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.
- (3) For the purposes of subsection (1)(c) above a local authority or a water undertaker which is not the applicant shall be affected by an application for an order if its area includes the whole or any part of the locality which would be affected by the provision proposed to be made by the order.

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Supply of copies of draft orders

- 2 The applicant for an order under section 65(5) of this Act shall, at the request of any person and on payment by that person of such charge (if any) as the applicant may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above.

Modifications of proposals

- 3 (1) On an application for an order under section 65(5) of this Act, the Secretary of State may make the order either in the terms of the draft order submitted to him or, subject to sub-paragraph (2) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.
- (2) The Secretary of State shall not make such a modification of a draft order submitted to him as he considers is likely adversely to affect any persons unless he is satisfied that the applicant for the order has given and published such additional notices, in such manner, as the Secretary of State may have required.

Consideration of objections etc.

- 4 Where an application for an order to which this Schedule applies has been made, the Secretary of State may, if he considers it appropriate to do so, hold a local inquiry before making any order on the application.

SCHEDULE 6

Sections 71 to 84 & 162 to 172.

SUPPLEMENTAL PROVISIONS RELATING TO RIGHTS OF ENTRY

PART I

RIGHTS REQUIRING NOTICE FOR ENTRY TO NON-BUSINESS PREMISES

Notice of entry

- 1 (1) Where this Part of this Schedule applies to any right of entry conferred by a provision of this Act, admission to any premises which are not business premises shall not be demanded as of right by virtue of that provision, unless twenty-four hours notice of the intended entry has been given to the occupier of the premises.
- (2) In this paragraph “business premises” means—
- (a) any factory; or
 - (b) any place in which persons are employed otherwise than in domestic service;
- and in this sub-paragraph “factory” has the same meaning as in the ^{M131}Factories Act 1961.

Marginal Citations

M131 1961 c. 34.

Status: This version of this Act contains provisions that are prospective.

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Warrants to exercise right

- 2 (1) Subject to sub-paragraph (3) below, if it is shown to the satisfaction of a justice of the peace, on sworn information in writing—
- (a) that any one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to any premises which a person is entitled to enter by virtue of a right of entry to which this Part of this Schedule applies; and
 - (b) that there is reasonable ground for entry to the premises for any purpose for which the right is exercisable,
- the justice may by a warrant under his hand authorise that person to enter the premises, if need be by force.
- (2) The conditions mentioned in sub-paragraph (1) above are—
- (a) that admission to the premises has been refused to the person having the right to enter them;
 - (b) that such refusal is apprehended;
 - (c) that the premises are unoccupied or the occupier is temporarily absent;
 - (d) that the case is one of urgency;
 - (e) that an application for admission would defeat the object of the entry.
- (3) A warrant under this Part of this Schedule shall not be issued by a justice of the peace in a case in which he is satisfied that the condition mentioned in paragraph (a) or (b) of sub-paragraph (2) above is fulfilled unless he is also satisfied—
- (a) that notice of the intention to apply for a warrant has been given to the occupier;
 - (b) that a condition mentioned in either of paragraphs (c) and (d) of that sub-paragraph is also fulfilled in relation to the premises; or
 - (c) that the giving of such notice as is mentioned in paragraph (a) above would defeat the object of the entry.
- (4) Every warrant under this Part of this Schedule shall continue in force until the purpose for which the entry is necessary has been fulfilled.
- (5) A person leaving any unoccupied premises which he has entered by virtue of a warrant under this Part of this Schedule shall leave them as effectually secured against trespassers as he found them.

Supplementary power of person making entry

- 3 Any person entitled to enter any premises by virtue of a right to which this Part of this Schedule applies, or of a warrant under this Part of this Schedule, may take with him such other persons as may be necessary.

Obstruction of person exercising right

- 4 Any person who wilfully obstructs any person upon whom a right of entry has been conferred by virtue of—
- (a) any provision of this Act relating to a right of entry to which this Part of this Schedule applies; or
 - (b) a warrant under this Part of this Schedule,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

Status: This version of this Act contains provisions that are prospective.

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Duty of persons exercising rights to maintain confidentiality

- 5 (1) Without prejudice to section 206 of this Act and subject to sub-paragraphs (2) and (3) below, any person who is admitted to any premises in compliance—
- (a) with any provision of this Act relating to a right of entry to which this Part of this Schedule applies; or
 - (b) with a warrant under this Part of this Schedule,
- shall be guilty of an offence under this paragraph if he discloses to any person any information obtained by him there with regard to any manufacturing process or trade secret.
- (2) A person shall not be guilty of an offence under this paragraph in respect of any disclosure made in the performance of his duty.
- (3) For the purposes of the application of this Part of this Schedule to the right conferred by section 171 of this Act, the reference to premises in subsection (1) above shall have effect as a reference only to business premises, within the meaning of paragraph 1 above.
- (4) A person who is guilty of an offence under this paragraph, other than such a person as is mentioned in sub-paragraph (5) below, shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding three months or to a fine or to both.
- (5) A person who is guilty of an offence under this paragraph by virtue of the application of this Part of this Schedule to the rights conferred by section 171 of this Act shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both.

PART II

OTHER RIGHTS OF ENTRY AND RELATED POWERS

Modifications etc. (not altering text)

C346 Sch. 6 Pt. 2 applied (29.3.2017) by [The Glyn Rhonwy Pumped Storage Generating Station Order 2017 \(S.I. 2017/330\)](#), art. 1, **Sch. 6 para. 8(2)** (with art. 31)

Notice of entry

- 6 (1) Without prejudice to any power exercisable by virtue of a warrant under this Part of this Schedule, no person shall make an entry into any premises by virtue of any right or power to which this Part of this Schedule applies except—
- (a) in an emergency; or
 - (b) at a reasonable time and after the required notice of the intended entry has been given to the occupier of the premises.
- (2) For the purposes of this paragraph the required notice is—

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- (a) in the case of the rights and powers conferred by virtue of any of sections 74(4), 84(2) and (3), 86(4) and 170(1)(c) and (3) of this Act, twenty-four hours' notice; and
 - (b) in any other case, seven days' notice.
- (3) For the purposes of the application of this Part of this Schedule to any right or power conferred by section 168 of this Act the reference in sub-paragraph (1) above to an emergency—
- (a) in relation to any entry to premises for the purposes of, or for purposes connected with, the exercise or proposed exercise of any power in relation to a street, includes a reference to any circumstances requiring the carrying out of emergency works within the meaning of Part III of the ^{M132}New Roads and Street Works Act 1991; and
 - (b) in relation to any other entry to premises, includes a reference to any danger to property and to any interruption of a supply of water provided to any premises by any person and to any interruption of the provision of sewerage services to any premises.
- (4) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (3)(a) above shall have effect as if the reference to Part III of that Act were a reference to the ^{M133}Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).
- (5) For the purposes of the application of this Part of this Schedule to the rights and other powers conferred by section 172 of this Act sub-paragraph (1) above shall have effect as if the power in an emergency to make an entry to any premises otherwise than at a reasonable time and after the required notice were omitted.

Marginal Citations

M132 1991 c. 22.

M133 1950 c. 39.

Warrant to exercise right or power

- 7 (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
- (a) that there are reasonable grounds for the exercise in relation to any premises of a right or power to which this Part of this Schedule applies; and
 - (b) that one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to those premises,
- the justice may by warrant authorise the relevant authority to designate a person who shall be authorised to exercise the right or power in relation to those premises in accordance with the warrant and, if need be, by force.
- (2) The conditions mentioned in sub-paragraph (1)(b) above are—
- (a) that the exercise of the right or power in relation to the premises has been refused;
 - (b) that such a refusal is reasonably apprehended;

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- (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises;
 - (e) that the case is one of urgency; or
 - (f) that an application for admission to the premises would defeat the object of the proposed entry.
- (3) A justice of the peace shall not issue a warrant under this Part of this Schedule by virtue only of being satisfied that the exercise of a right or power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied—
- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or
 - (b) that the giving of such a notice would defeat the object of the proposed entry.
- (4) For the purposes of the application of this Part of this Schedule to the rights and powers conferred by section 169 of this Act in a case to which subsection (4) of that section applies, a justice of the peace shall not issue a warrant under this Part of this Schedule unless he is satisfied that the Secretary of State has given his authorisation for the purposes of that subsection in relation to that case.
- (5) Every warrant under this Part of this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

Modifications etc. (not altering text)

- C347** Sch. 6 paras. 7-10 applied (23.12.2003) by The United Utilities Water plc (Ullswater) (Drought) Order 2003 (S.I. 2003/3341), {art. 2}
- C348** Sch. 6 Pt. II para. 7 applied (*temp.* from 3.10.1995 to 29.2.1996) by S.I. 1995/2585, **art. 2(1)(5)**
Sch. 6 Pt. II para. 7 applied (6.12.1995) by S.I. 1995/3179, **art. 2(5)**
Sch. 6 Pt. II para. 7 applied (17.2.1996) by S.I. 1996/367, **art. 2(4)**
Sch. 6 Pt. II para. 7 applied (*temp.* from 4.4.1996 to 3.10.1996) by S.I. 1996/1079, **art. 2(5)**

Manner of exercise of right or power

- 8 A person designated as the person who may exercise any right or power to which this Part of this Schedule applies shall produce evidence of his designation and other authority before he exercises the right or power.

Modifications etc. (not altering text)

- C349** Sch. 6 paras. 7-10 applied (23.12.2003) by The United Utilities Water plc (Ullswater) (Drought) Order 2003 (S.I. 2003/3341), {art. 2}
- C350** Sch. 6 Pt. II para. 8 applied (*temp.* from 3.10.1995 to 29.2.1996) by S.I. 1995/2585, **art. 2(1)(5)**
Sch. 6 Pt. II para. 8 applied (6.12.1995) by S.I. 1995/3179, **art. 2(5)**
Sch. 6 Pt. II para. 8 applied (17.2.1996) by S.I. 1996/367, **art. 2(4)**
Sch. 6 Pt. II para. 8 applied (*temp.* from 4.4.1996 to 3.10.1996) by S.I. 1996/1079, **art. 2(5)**

Supplementary powers of person making entry etc.

- 9 A person authorised to enter any premises by virtue of any right or power to which this Part of this Schedule applies shall be entitled, subject in the case of a right or

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power exercisable under a warrant to the terms of the warrant, to take with him on to the premises such other persons and such equipment as may be necessary.

Modifications etc. (not altering text)

- C351** Sch. 6 paras. 7-10 applied (23.12.2003) by The United Utilities Water plc (Ullswater) (Drought) Order 2003 (S.I. 2003/3341), {art. 2}
- C352** Sch. 6 Pt. II para. 9 applied (*temp.* from 3.10.1995 to 29.2.1996) by S.I. 1995/2585, **art. 2(1)(5)**
 Sch. 6 Pt. II para. 9 applied (6.12.1995) by S.I. 1995/3179, **art. 2(5)**
 Sch. 6 Pt. II para. 9 applied (17.2.1996) by S.I. 1996/367, **art. 2(4)**
 Sch. 6 Pt. II para. 9 applied (*temp.* from 4.4.1996 to 3.10.1996) by S.I. 1996/1079, **art. 2(5)**

Duty to secure premises

- 10 A person who enters any premises in the exercise of any right or power to which this Part of this Schedule applies shall leave the premises as effectually secured against trespassers as he found them.

Modifications etc. (not altering text)

- C353** Sch. 6 paras. 7-10 applied (23.12.2003) by The United Utilities Water plc (Ullswater) (Drought) Order 2003 (S.I. 2003/3341), {art. 2}
- C354** Sch. 6 Pt. II para. 10 applied (*temp.* from 3.10.1995 to 29.2.1996) by S.I. 1995/2585, **art. 2(1)(5)**
 Sch. 6 Pt. II para. 10 applied (6.12.1995) by S.I. 1995/3179, **art. 2(5)**
 Sch. 6 Pt. II para. 10 applied (17.2.1996) by S.I. 1996/367, **art. 2(4)**
 Sch. 6 Pt. II para. 10 applied (*temp.* from 4.4.1996 to 3.10.1996) by S.I. 1996/1079, **art. 2(5)**

Compensation

- 11 (1) Where any person exercises any right or power to which this Part of this Schedule applies, it shall be the duty of the relevant authority to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise by the designated person of that right or power or of any power to take any person or equipment with him when entering the premises in relation to which the right or power is exercised; or
 - (b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 10 above.
- (2) Compensation shall not be payable by virtue of sub-paragraph (1) above in respect of any loss or damage if the loss or damage—
- (a) is attributable to the default of the person who sustained it; or
 - (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.
- (3) Any dispute as to a person's entitlement to compensation under this paragraph or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant authority and the person who claims to have sustained the loss or damage or, in default of agreement—
- (a) by the [^{F1649}Upper Tribunal] where the relevant authority is the Secretary of State; and
 - (b) by the Secretary of State, in any other case.

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Textual Amendments

F1649 Words in [Sch. 6 para. 11\(3\)\(a\)](#) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order ([S.I. 2009/1307](#)), art. 5(1)(2), {[Sch. 1 para. 221](#)} (with [Sch. 5](#))

Obstruction of person exercising right or power

- 12 A person who intentionally obstructs another person acting in the exercise of any right or power to which this Part of this Schedule applies shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Modifications etc. (not altering text)

C355 [Sch. 6 para. 12](#) applied (23.12.2003) by The United Utilities Water plc (Ullswater) (Drought) Order 2003 ([S.I. 2003/3341](#)), {[art. 2](#)}

C356 [Sch. 6 Pt. II para. 12](#) applied (*temp.* from 3.10.1995 to 29.2.1996) by [S.I. 1995/2585](#), [art. 2\(1\)\(5\)](#)
[Sch. 6 Pt. II para. 12](#) applied (6.12.1995) by [S.I. 1995/3179](#), [art. 2\(5\)](#)
[Sch. 6 Pt. II para. 12](#) applied (17.2.1996) by [S.I. 1996/367](#), [art. 2\(4\)](#)
[Sch. 6 Pt. II para. 12](#) applied (*temp.* from 4.4.1996 to 3.10.1996) by [S.I. 1996/1079](#), [art. 2\(5\)](#)

Interpretation of Part II

- 13 (1) In this Part of this Schedule “relevant authority”, in relation to a right or power to which this Part of this Schedule applies, means the person who, by virtue of—
- (a) the provision by which the right or power is conferred; or
 - (b) (except in paragraph 7 above) the warrant,
- is entitled to designate the person by whom the right or power may be exercised.
- (2) References in this Part of this Schedule, except in paragraph 7 above, to a right or power to which this Part of this Schedule applies include references to a right or power exercisable by virtue of a warrant under this Part of this Schedule.
- (3) For the purposes of paragraphs 10 and 11 above a person enters any premises by virtue of a right or power to which this Part of this Schedule applies notwithstanding that he has failed (whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with—
- (a) any requirement to enter those premises at a reasonable time or after giving notice of his intended entry; or
 - (b) the requirement imposed by paragraph 8 above.

Modifications etc. (not altering text)

C357 [Sch. 6 para. 13](#) applied (23.12.2003) by The United Utilities Water plc (Ullswater) (Drought) Order 2003 ([S.I. 2003/3341](#)), {[art. 2](#)}

C358 [Sch. 6 Pt. II para. 13](#) applied (*temp.* from 3.10.1995 to 29.2.1996) by [S.I. 1995/2585](#), [art. 2\(1\)\(5\)](#)
[Sch. 6 Pt. II para. 13](#) applied (6.12.1995) by [S.I. 1995/3179](#), [art. 2\(5\)](#)
[Sch. 6 Pt. II para. 13](#) applied (17.2.1996) by [S.I. 1996/367](#), [art. 2\(4\)](#)
[Sch. 6 Pt. II para. 13](#) applied (*temp.* from 4.4.1996 to 3.10.1996) by [S.I. 1996/1079](#), [art. 2\(5\)](#)

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F1650 SCHEDULE 7

Section 91.

PRE-1985 FLUORIDATION SCHEMES

Textual Amendments

F1650 Sch. 7 repealed (26.3.2010 for E.) by Water Act 2003 (c. 37), ss. 58(9), 105(3), Sch. 9 Pt. 3; S.I. 2010/975, art. 2

Operation of pre-1985 schemes

- 1 (1) Where in pursuance of any such arrangements entered into by a water authority or statutory water company before 20th December 1984 as have effect immediately before the coming into force of this Act as arrangements entered into by a water undertaker—
- (a) a scheme for increasing the fluoride content of water supplied by the authority or company in any part of England and Wales was in operation immediately before that date; or
 - (b) work had been begun by the authority or company before that date for enabling such a scheme to be brought into operation,
- that water undertaker may, while the conditions mentioned in sub-paragraph (2) below are satisfied, operate the scheme.
- (2) The conditions referred to in sub-paragraph (1) above are that the arrangements require—
- (a) fluoridation to be effected only by the addition of one or more of the compounds of fluorine mentioned in subsection (4) of section 87 of this Act; and
 - (b) the concentrations of fluoride in the water supplied to consumers to be maintained, so far as reasonably practicable, at one milligram per litre.

Supplies by other undertakers and revocation or variation of scheme

- 2 (1) Where a water undertaker is operating a fluoridation scheme by virtue of this Schedule—
- (a) subsections (6) and (7) of section 87 of this Act shall apply in relation to the scheme as they apply in relation to any scheme operated in exercise of the power conferred by that section or section 1 of the ^{M134}Water (Fluoridation) Act 1985;
 - (b) the scheme shall cease to have effect upon the appropriate authority giving to the undertaker reasonable notice of the authority's desire to terminate it; and
 - (c) the arrangements under which the scheme is operated may be varied to take account of any amendment of section 87(2) of this Act which is made under section 88 of this Act.
- (2) In this paragraph “appropriate authority”, in relation to a fluoridation scheme which is operated under this Schedule, means the [^{F1651}Strategic Health Authority or][^{F1652}Health Authority] to which the water undertaker concerned is answerable in accordance with the arrangements under which the scheme is operated.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1651 Words in Sch. 7 inserted (1.10.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Supplementary, Consequential etc. Provisions\) Regulations 2002 \(S.I. 2002/2469\)](#), reg. 4, **Sch. 1 Pt. I para. 18(4)**

F1652 Words in Sch. 7 para. 2(2) substituted (1.4.1996) by [1995 c. 17 s. 2\(1\)\(3\)](#), Sch. 1 Pt. III para. 120(4)(a)

Marginal Citations

M134 [1985 c. 63](#).

Publicity and consultation

- 3 (1) Section 89 of this Act (including the power of the Secretary of State under subsection (6) of that section to dispense with the other requirements of that section) shall apply where a [^{F1653}Strategic Health Authority or][^{F1654}Health Authority] propose to terminate a scheme which may be operated by virtue of this Schedule as it applies where [^{F1655}Strategic Health Authority or][^{F1656}a Health Authority] propose to withdraw an application under section 87 of this Act.
- (2) Accordingly, in subsection (7) of section 89 of this Act, the reference to the question whether an application under section 87 of this Act should be withdrawn shall be treated by virtue of sub-paragraph (1) above as a reference to whether a scheme should be terminated under this Schedule.

Textual Amendments

F1653 Words in Sch. 7 inserted (1.10.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Supplementary, Consequential etc. Provisions\) Regulations 2002 \(S.I. 2002/2469\)](#), reg. 4, **Sch. 1 Pt. I para. 18(4)**

F1654 Words in Sch. 7 para. 3(1) substituted (1.4.1996) by [1995 c. 17, s. 2\(1\)\(3\)](#), **Sch. 1 Pt. III para. 120(4)(b)(i)**

F1655 Words in Sch. 7 inserted (1.10.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Supplementary, Consequential etc. Provisions\) Regulations 2002 \(S.I. 2002/2469\)](#), reg. 4, **Sch. 1 Pt. I para. 18(4)**

F1656 Words in Sch. 7 para. 3(1) substituted (1.4.1996) by [1995 c. 17, s. 2\(1\)\(3\)](#), **Sch. 1 Pt. III para. 120(4)(b)(ii)**

SCHEDULE 8

Section 140.

PRE-1989 ACT TRANSITIONAL AUTHORITY FOR TRADE EFFLUENT DISCHARGES ETC.

Trade effluent agreements

- 1 Nothing in Chapter III of Part IV of this Act (except so far as it relates to special category effluent) or in the repeals made by the ^{M135}Water Consolidation (Consequential Provisions) Act 1991 shall affect—

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- (a) any agreement with respect to any trade effluent to which a sewerage undertaker is a party by virtue of its having been duly made before 1st July 1937 between a predecessor of the undertaker and the owner or occupier of any trade premises; or
- (b) any agreement saved by section 63(8) of the ^{M136}Public Health Act 1961 (pre-1961 Act agreements with respect to discharges from premises used for farming or for scientific research or experiment).

Marginal Citations

M135 1991 c. 60.
M136 1961 c. 64.

Authorisations having effect as deemed consents under the Control of Pollution Act 1974

- 2 (1) Where, by virtue of section 43(2) of the ^{M137}Control of Pollution Act 1974 there is, immediately before the commencement of this Act, a deemed consent for the purposes of the ^{M138}Public Health (Drainage of Trade Premises) Act 1937 which has effect under the ^{M139}Water Act 1989 in relation to any sewerage undertaker, that deemed consent shall have effect as a deemed consent for the purposes of Chapter III of Part IV of this Act subject to the following provisions of this paragraph.
- (2) The sewerage undertaker—
- (a) may at any time; and
 - (b) shall if requested to do so by any person entitled to make a discharge in pursuance of the deemed consent,
- by notice served on the owner and any occupier of the premises in question cancel the deemed consent and, subject to sub-paragraph (3) below, give its actual consent for such discharges as were authorised by the deemed consent.
- (3) An actual consent given under sub-paragraph (2) above shall be so given either conditionally or subject to any conditions which may be attached to consents by virtue of section 121 of this Act.
- [^{F1657}(3A) If a sewerage undertaker serves a notice under sub-paragraph (2) in relation to premises in respect of which a sewerage licensee provides sewerage services, the sewerage undertaker must send a copy of the notice to the sewerage licensee.]
- (4) It is hereby declared that the provisions of Chapter III of Part IV of this Act with respect to the variation of conditions of a consent apply in relation to an actual consent under sub-paragraph (2) above as they apply in relation to any other actual consent under Chapter III of Part IV of this Act.
- (5) A notice signifying an actual consent under sub-paragraph (2) above shall indicate that a right of appeal is conferred under the following paragraph in respect of the notice.

Textual Amendments

F1657Sch. 8 para. 2(3A) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 123](#); [S.I. 2017/462, art. 3\(k\)\(xxiii\)](#)

Status: This version of this Act contains provisions that are prospective.

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Modifications etc. (not altering text)

- C359** Sch. 8 para. 2 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 8** (with ss. 42, 46).
C360 Sch. 8 paras. 2-4 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**)
C361 Sch. 8 paras. 2-4 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 paras. 1(3), 2 Table 9 (with regs. 1(3), 77-79, Sch. 4)

Marginal Citations

- M137** 1974 c. 40.
M138 1937 c. 40.
M139 1989 c. 15.

Appeals in respect of consents under paragraph 2

- 3 (1) A person on whom notice is served in pursuance of paragraph 2(2) above may, in accordance with regulations made by the Secretary of State, appeal to the Director.
- (2) Section 137 of this Act shall apply, with the necessary modifications, in relation to appeals under this paragraph as it applies in relation to appeals under section 122 of this Act.
- (3) On an appeal under this paragraph the Director may give the sewerage undertaker in question any such direction as he thinks fit with respect to the notice and it shall be the duty of the undertaker to comply with the direction.

Modifications etc. (not altering text)

- C360** Sch. 8 paras. 2-4 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**)
C361 Sch. 8 paras. 2-4 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 paras. 1(3), 2 Table 9 (with regs. 1(3), 77-79, Sch. 4)
C362 Sch. 8 para. 3 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 8** (with ss. 42, 46).

Determinations of disputes as to transitional matters

- 4 (1) Any dispute in so far as it—
- (a) arises after the commencement of this Act and relates to a deemed consent in respect of discharges previously authorised under section 4 of the ^{M140}Public Health (Drainage of Trade Premises) Act 1937; and
- (b) is a dispute as to the nature or composition of any trade effluent discharged from any trade premises into a sewer during any period, as to the quantity of trade effluent so discharged on any one day during any period or as to the rate of trade effluent so discharged during any period,
- shall, unless the parties otherwise agree, be referred to the Director for determination.
- (2) On a reference under this paragraph the Director may make such order in the matter as he thinks just.

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- (3) An order on a reference under this paragraph shall be final; but section 137 of this Act shall apply, with the necessary modifications, in relation to references under this paragraph as it applies in relation to appeals under section 122 of this Act.

Modifications etc. (not altering text)

- C360** Sch. 8 paras. 2-4 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](#))
- C361** Sch. 8 paras. 2-4 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 paras. 1(3), 2 Table 9 (with regs. 1(3), 77-79, Sch. 4)
- C363** Sch. 8 para. 4 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), [Sch. 3 Pt. 1 para. 8](#) (with ss. 42, 46).

Marginal Citations

M140 1937 c. 40.

Regulations as to residue of agreements

- 5 The Secretary of State may by regulations make provisions in relation to the provisions of any agreement to which subsection (1) of section 43 of the ^{M141}Control of Pollution Act 1974 applied and which apart from that section would be in force after the commencement of this Act—
- (a) for determining, by arbitration or otherwise, whether any such agreement continues to have effect as relating to a matter other than the discharge of trade effluent into a sewerage undertaker's sewer;
 - (b) for determining, by arbitration or otherwise, what modifications (if any) are appropriate in consequence of any prescribed provision of section 43 of that Act or any provision of this Schedule re-enacting any such provision; and
 - (c) in a case in which the conditions on which any discharges authorised by such an agreement included, immediately before the coming into force of section 43 of that Act, a condition as to charges in respect of the discharges and other matters—
 - (i) for determining, by arbitration or otherwise, the proportion of the charges attributable to the discharges; and
 - (ii) for limiting accordingly the conditions which are to be treated by virtue of section 43 of that Act as included in the deemed consent which has effect by virtue of this Schedule.

Marginal Citations

M141 1974 c. 40.

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SCHEDULE 9

Section 155.

MODIFICATION OF COMPENSATION PROVISIONS ETC.
IN RELATION TO THE CREATION OF NEW RIGHTS*Compensation enactments*

- 1 Subject to the following provisions of this Schedule, the enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under section 155 of this Act of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

Adaptation of the Compulsory Purchase Act 1965

- 2 The Compulsory Purchase Act 1965 (in the following provisions of this Schedule referred to as “the 1965 Act”) shall have effect with the modifications necessary to make it apply to the compulsory acquisition under section 155 of this Act of a right by the creation of a new right as it applies to the compulsory acquisition under that section of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—
- (a) the right acquired or to be acquired; or
 - (b) the land over which the right is or is to be exercisable.
- (2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under section 155 of this Act of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

Section 7 of the 1965 Act

- 3 For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—
- “7 In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

Section 8 of the 1965 Act

- [^{F1658}4 Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

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“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

- 1 (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
- (2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).
- 2 In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

- 3 A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
- 4 A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

- 5 On receiving a counter-notice the acquiring authority must decide whether to—
- (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
- 6 The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
- 7 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 8 If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
- 9 If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

- 10 On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—
- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

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- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
- 11 In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right,
 - (b) the proposed use of the right, and
 - (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.
- 12 If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.
- 13 If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.
- 14 (1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
- (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
- (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”]

Textual Amendments

F1658Sch. 9 para. 4 substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), Sch. 17 paras. 6, 7; [S.I. 2017/75](#), reg. 3(g) (with reg. 5)

Effect of deed poll

- 5 The following provisions of the 1965 Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—
- (a) section 9(4) (refusal by owners to convey);
 - (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
 - (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
 - (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),
- shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

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Section 11 of the 1965 Act

- 6 Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) shall be modified correspondingly.

Section 20 of the 1965 Act

- 7 Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under section 155 of this Act of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

Section 22 of the 1965 Act

- 8 Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Section 157.

PROCEDURE RELATING TO BYELAWS UNDER SECTION 157

Confirmation of byelaws

- 1 (1) No byelaw made by a relevant undertaker under section 157 of this Act shall have effect until confirmed by the Secretary of State under this Schedule.
- (2) At least one month before it applies for the confirmation of any such byelaw, a relevant undertaker shall—
- (a) cause a notice of its intention to make the application to be published in the London Gazette and in such other manner as it considers appropriate for the purpose of bringing the proposed byelaw to the attention of persons likely to be affected by it; and
 - (b) cause copies of the notice to be served on any persons carrying out functions under any enactment who appear to it to be concerned.
- (3) For at least one month before an application is made by a relevant undertaker for the confirmation of any such byelaw, a copy of it shall be deposited at one or more of the offices of the relevant undertaker, including (if there is one) at an office in the area to which the byelaw would apply.

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- (4) A relevant undertaker shall provide reasonable facilities for the inspection free of charge of a byelaw deposited under sub-paragraph (3) above.
- (5) Every person shall be entitled, on application to a relevant undertaker, to be furnished free of charge with a printed copy of a byelaw so deposited.

Confirmation with or without modifications

- 2 (1) The Secretary of State, with or without a local inquiry, may refuse to confirm any byelaw submitted to him by a relevant undertaker for confirmation under this Schedule, or may confirm the byelaw either without or, if the relevant undertaker consents, with modifications.
- (2) The relevant undertaker which has so submitted a byelaw shall, if so directed by the Secretary of State, cause notice of any proposed modifications to be given in accordance with his directions.

Commencement of byelaw

- 3 (1) The Secretary of State may fix the date on which any byelaw confirmed under this Schedule is to come into force.
- (2) If no date is so fixed, the byelaw shall come into force at the end of the period of one month beginning with the date of confirmation.

Availability of confirmed byelaws

- 4 (1) Every byelaw made by a relevant undertaker and confirmed under this Schedule shall be printed and deposited at one or more of the offices of the relevant undertaker, including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.
- (2) Every person shall be entitled, on application to a relevant undertaker and on payment of such reasonable sum as the relevant undertaker may determine, to be furnished with a copy of any byelaw so deposited by that undertaker.

Revocation of byelaws

- 5 Without prejudice to subsection (5) of section 157 of this Act and subject to paragraph 4(4) of Schedule 2 to the ^{M142}Water Consolidation (Consequential Provisions) Act 1991, if it appears to the Secretary of State that the revocation of a byelaw under that section is necessary or expedient, he may, after—
 - (a) giving notice to the relevant undertaker which made the byelaw;
 - (b) considering any representations or objections made by that undertaker; and
 - (c) if required by that undertaker, holding a local inquiry,
 revoke that byelaw.

Modifications etc. (not altering text)

C364 Sch. 10 para. 5 amended (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991](#) (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(4)**.

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Marginal Citations

M142 1991 c. 60.

Proof of byelaws etc.

- 6 The production of a printed copy of a byelaw purporting to be made by a relevant undertaker upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by that undertaker;
 - (b) that the copy is a true copy of the byelaw;
 - (c) that on a specified date the byelaw was confirmed under this Schedule; and
 - (d) the date, if any, fixed under paragraph 3 above for the coming into operation of the byelaw,
- shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

SCHEDULE 11

Section 167.

ORDERS CONFERRING COMPULSORY WORKS POWERS

Modifications etc. (not altering text)

- C365** Sch. 11 applied (with modifications) (2.5.2006 for E. and 11.5.2006 for W. in accordance with reg. 1) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 2, **Sch. Pt. 1**
- C366** Sch. 11 applied (with modifications) (24.3.2005) by [The New Forest National Park Authority \(Establishment\) Order 2005 \(S.I. 2005/421\)](#), art. 16, **Sch. 3 para. 5(1)**
- C367** Sch. 11 applied (with modifications) (4.6.1996) by [S.I. 1996/1243](#), art. 18, **Sch. 5 Pt. II para. 6(1)**
 Sch. 11: functions for certain purposes exercised concurrently with the Secretary of State (1.7.1999) by [S.I. 1999/672](#), art. 2, **Sch. 1**
- C368** Sch. 11 applied (24.3.2010) by [The South Downs National Park Authority \(Establishment\) Order 2010 \(S.I. 2010/497\)](#), art. 1, **Sch. 3 para. 4(1)**
- C369** Sch. 11 applied (with modifications) (1.7.2015) by [The National Park Authorities \(England\) Order 2015 \(S.I. 2015/770\)](#), art. 1, **Sch. 3 para. 5(1)**

Applications for orders

- 1 (1) Where a water undertaker applies to the Secretary of State for a compulsory works order, it shall—
- (a) submit to the Secretary of State a draft of the order applied for;
 - (b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality;
 - (c) not later than the date on which that notice is first published—
 - (i) serve a copy of the notice on each of the persons specified in relation to the application in sub-paragraph (3) below; and

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- (ii) in the case of a draft order which would authorise the stopping-up or diversion of a footpath or bridleway, cause such a copy, together with a plan showing the general effect of the draft order so far as it relates to the footpath or bridleway, to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted;
- and
- (d) publish a notice in the London Gazette which—
 - (i) states that the draft order has been submitted to the Secretary of State;
 - (ii) names every local authority on whom a notice is required to be served under this paragraph;
 - (iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.
- (2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order by a water undertaker shall—
 - (a) state the general effect of the order applied for;
 - (b) in the case of an application made wholly or partly for the purpose of enabling any discharges of water to be made—
 - (i) contain particulars of the proposed discharges, stating the purposes of the discharges and specifying each place of discharge;
 - (ii) specify the places at which the water to be comprised in the proposed discharges is to be taken and the treatment (if any) which the draft order proposes to require the water, or any of it, to receive before being discharged under the order; and
 - (iii) state the effect which, in the opinion of the undertaker, the proposed discharges would have on the flow, level and quality of water in any inland waters or underground strata;
 - (c) specify a place where a copy of the draft 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 twenty-eight days beginning with the date of the first publication of the notice; and
 - (d) state that any person may, within that period, by notice to the Secretary of State object to the making of the order.
- (3) The persons mentioned in sub-paragraph (1)(c) above in relation to an application for a compulsory works order a draft of which has been submitted to the Secretary of State are—
 - (a) [F1659the Environment Agency][F1660], if the whole or any part of a relevant locality is in England;
 - [F1661](aa) the NRBW, if the whole or any part of a relevant locality is in Wales;
 - (b) every local authority whose area is or includes the whole or any part of a relevant locality;
 - (c) every water undertaker, not being the applicant, whose area is or includes the whole or any part of such a locality;

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- (d) every navigation authority, harbour authority and conservancy authority which would be affected by, or has functions in relation to any inland waters which would be affected by, any provision proposed to be made by the order;
- [^{F1662}(e) every person—
- (i) who is an owner, lessee, tenant (whatever the tenancy period) or occupier of any land in relation to which compulsory powers would become exercisable if the order were made in the terms of the draft order; or
- (ii) who the water undertaker thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory powers become exercisable, so far as he is known to the water undertaker after making diligent inquiry;]
- (f) every person who has given notice to the water undertaker requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the undertaker may have required him to pay for being notified by virtue of this paragraph;
- (g) such other persons as may be prescribed.
- (4) In this paragraph “relevant locality”, in relation to an application for an order a draft of which is submitted to the Secretary of State by a water undertaker, means—
- (a) any locality which would be affected by any provision proposed to be made by the order for the purpose of enabling any engineering or building operations to be carried out; and
- (b) where provision is proposed to be made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the proposed discharges is situated or in which there appears to that undertaker to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the proposed discharges.

Textual Amendments

F1659 Words in Sch. 11 para. 1(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 126** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F1660 Words in Sch. 11 para. 1(3)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 262(2)** (with Sch. 7)

F1661 Sch. 11 para. 1(3)(aa) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 262(3)** (with Sch. 7)

F1662 Sch. 11 para. 1(3)(e) substituted (24.5.2007) by The Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007 (S.I. 2007/1519), **art. 1(1)**, **Sch. para. 8(a)** (with art. 1(3))

Supply of copies of draft orders

- 2 A water undertaker applying for a compulsory works order shall, at the request of any person and on payment by that person of such charge (if any) as the undertaker may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above and of any relevant map or plan.

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Powers on an application

- 3
- (1) On an application for a compulsory works order, the Secretary of State may make the order either in the terms of the draft order submitted to him or, subject to sub-paragraphs (2) and (3) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.
 - (2) The Secretary of State shall not make such a modification of a draft order submitted to him by any water undertaker as he considers is likely adversely to affect any persons unless he is satisfied that the undertaker has given and published such additional notices, in such manner, as the Secretary of State may have required.
 - (3) The Secretary of State shall not, unless all interested parties consent, make a compulsory works order so as to confer in relation to any land any powers of compulsory acquisition which would not have been conferred in relation to that land if the order were made in the terms of the draft order submitted to him under paragraph 1 above.
 - (4) Where, on an application by a water undertaker for a compulsory works order, the Secretary of State refuses to make an order, the undertaker shall, as soon as practicable after the refusal, notify the refusal to every person on whom it was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application.
 - (5) The duty of a water undertaker under sub-paragraph (4) above shall be enforceable under section 18 of this Act by the Secretary of State.

Consideration of objections etc.

- 4
- (1) If, where an application for a compulsory works order has been made by a water undertaker, any notice of an objection to it is received, before the end of the relevant period, by the Secretary of State from—
 - (a) any person on whom a notice under paragraph 1 or 3 above is required to be served; or
 - (b) from any other person appearing to the Secretary of State to be affected by the order as submitted to him or as proposed to be modified under paragraph 3 above,then, unless the objection is withdrawn, the Secretary of State shall, before making the order, either cause a local inquiry to be held or afford to the objector and to the undertaker an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
 - (2) Where any objection received by the Secretary of State as mentioned in sub-paragraph (1) above relates to any powers of compulsory acquisition, the Secretary of State may require the objector to state in writing the grounds of his objection; and if the Secretary of State is satisfied that the objection relates exclusively to matters that can be dealt with in the assessment of compensation, he may disregard the objection for the purposes of that sub-paragraph.
 - (3) In this paragraph “the relevant period”, in relation to an application for any order, means the period ending with whichever is the later of—
 - (a) the end of the period of twenty-eight days beginning with the date of the first publication of the notice published with respect to the application for the purposes of paragraph 1(1)(b) above; and

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(b) the end of the period of twenty-five days beginning with the date of the publication in the London Gazette of the notice published for the purposes of the application by virtue of paragraph 1(1)(d) above, together, in the case of an application for an order modifications to which have been proposed by the Secretary of State, with any further periods specified with respect to the modifications in notices under paragraph 3(2) above.

Notice after making of order

- 5 (1) As soon as practicable after a compulsory works order has been made, the undertaker on whose application it is made shall—
- (a) publish a notice of the making of the order, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality; and
 - (b) not later than the date on which that notice is first published—
 - (i) serve a copy of the notice on every person on whom that undertaker was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application for the order; and
 - (ii) in the case of an order authorising the stopping-up or diversion of a footpath or bridleway, cause such a copy, together with a plan showing the general effect of the order so far as it relates to the footpath or bridleway, to be displayed in a prominent position at the ends of the appropriate part of the path or way.
- (2) The notice required by virtue of sub-paragraph (1)(a) above to be published with respect to a compulsory works order shall—
- (a) state the general effect of the order;
 - (b) in the case of an order made wholly or partly for the purpose of enabling any discharges of water to be made—
 - (i) contain particulars of the discharges, stating the purposes of the discharges and specifying each place of discharge;
 - (ii) specify the places at which the water to be comprised in the discharges is to be taken and the treatment (if any) which the order requires the water, or any of it, to receive before being discharged under the order; and
 - (iii) state the effect which, in the opinion of the applicant undertaker, the discharges would have on the flow, level and quality of water in any inland waters or underground strata;
- and
- (c) specify a place where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times.
- (3) Where a compulsory works order has been made, the undertaker on whose application it was made shall, at the request of any person and on payment by that person of such charge (if any) as that undertaker may reasonably require, furnish that person with a copy of the order and of any relevant map or plan.
- (4) The duties of a water undertaker under this paragraph shall be enforceable under section 18 of this Act by the Secretary of State.
- (5) In this paragraph “relevant locality”, in relation to any compulsory works order, means—

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- (a) any locality which is affected by any provision made by the order for the purpose of enabling any engineering or building operations to be carried out; and
- (b) where provision is made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the discharges is situated or in which there appears to the undertaker which applied for the order to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the discharges.

Compulsory acquisition provisions

- 6 (1) Without prejudice to the provisions of Schedule 14 to this Act—
- (a) Part I of the ^{M143}Compulsory Purchase Act 1965;
 - (b) [^{F1663}sections 2A and] 4 and Part III of, and Schedule 3 to, the ^{M144}Acquisition of Land Act 1981; and
 - (c) the enactments for the time being in force with respect to compensation for the compulsory purchase of land,

shall apply in relation to so much of a compulsory works order as confers powers of compulsory acquisition as they apply in relation to a compulsory purchase order made by virtue of section 155 of this Act and, accordingly, shall so apply, where the case so requires, with the modifications made by Schedule 9 to this Act.

- (2) Subject to the provisions of sub-paragraph (6) below, if any person aggrieved by a compulsory works order containing powers of compulsory acquisition, or by a certificate given under the special land provisions in connection with such an order, desires—
- (a) to question the validity of the order, or of any provision of the order, on the grounds that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred, or that any of the relevant requirements have not been complied with in relation to the order; or
 - (b) to question the validity of the certificate on the grounds that any of the relevant requirements have not been complied with in relation to the certificate,

he may make an application for the purpose to the High Court at any time before the end of the period of six weeks beginning with the date on which notice of the making of the order is first published in accordance with paragraph 5 above or, as the case may be, notice of the giving of the certificate is first published in accordance with the special land provisions.

- (3) On any application under sub-paragraph (2) above with respect to any order or certificate, the High Court—
- (a) may by interim order suspend the operation of the order, or any provision of the order, or of the certificate (either generally or in so far as it affects any property of the applicant to the High Court) until the final determination of the proceedings; and
 - (b) if satisfied—
 - (i) that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred; or
 - (ii) that the interests of that applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to the order or the certificate,

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may quash the order, or any provision of the order, or the certificate (either generally or in so far as it affects any property of that applicant).

- (4) Except as provided by sub-paragraph (2) above, the validity of any such order or certificate as is mentioned in that sub-paragraph shall not, either before or after the order or certificate has been made or given, be questioned in any legal proceedings whatsoever.
- (5) Subject to any order of the High Court under sub-paragraph (3) above, any such order or certificate as is mentioned in sub-paragraph (2) above shall become operative (except, in the case of an order, where it is subject by virtue of the special land provisions to special parliamentary procedure) on the date on which notice of the making or giving of the order or certificate is published as mentioned in the said sub-paragraph (2).
- (6) Where an order such as is mentioned in sub-paragraph (2) above is subject to special parliamentary procedure, sub-paragraphs (2) to (4) of this paragraph—
- (a) shall not apply to the order if it is confirmed by Act of Parliament under section [^{F1664}4 or] 6 of the ^{M145}Statutory Orders (Special Procedure) Act 1945; and
 - (b) in any other case, shall have effect as if the reference in sub-paragraph (2) of this paragraph to the date on which notice of the making of the order is first published in accordance with paragraph 5 above were a reference to the date on which the order becomes operative under the said Act of 1945.
- (7) In this paragraph—
- “the special land provisions” means the provisions, as applied by virtue of sub-paragraph (1) above, of Part III of the ^{M146}Acquisition of Land Act 1981 or, as the case may require, of Part II of Schedule 3 to that Act; and
- “the relevant requirements”, in relation to an order or certificate, means the requirements of this Schedule and such requirements of the special land provisions or of any other enactment as are applicable to that order or certificate by virtue of this paragraph.

Textual Amendments

F1663 Words in Sch. 11 para. 6(1)(b) substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), [Sch. 17 para. 10](#); S.I. 2017/75, reg. 3(g)

F1664 Words in Sch. 11 para. 6(6)(a) inserted (25.6.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [ss. 25\(9\)](#), 35(1); S.I. 2013/1488, art. 3(e) (with art. 8(3))

Marginal Citations

M143 1965 c. 56.

M144 1981 c. 67.

M145 1945 c. 18 (9 & 10 Geo. 6).

M146 1981 c. 67.

Compensation in certain cases of compulsory acquisition

7

Where—

- (a) in connection with any engineering or building operations to which a compulsory works order relates, a licence under Chapter II of Part II of the

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^{M147}Water Resources Act 1991 is granted, or is deemed to be granted, to the water undertaker in question; and

- (b) that licence is a licence to abstract water or to obstruct or impede the flow of any inland waters,

no compensation shall be payable by virtue of sub-paragraph (1) of paragraph 6 above in respect of any land or interest injuriously affected by the carrying out of those operations, in so far as that land or interest is injuriously affected by the abstraction of water, or the obstruction or impeding of the flow, in accordance with the provisions of the licence.

Marginal Citations

M147 1991 c. 57.

Compensation in respect of powers other than acquisition powers

- 8 (1) If the value of any interest in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—
- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
- (b) grants authority for the carrying out of the operations,
- the person entitled to that interest shall be entitled to compensation from the applicant for the order of an amount equal to the amount of the depreciation.
- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to so much of any compulsory works order as—
- (i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
- (ii) grants authority for the carrying out of the operations;
- (b) does not consist in depreciation of the value of that interest; and
- (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act in pursuance of a notice to treat served on the date on which the order comes into force,
- he shall be entitled to compensation from the applicant for the order in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to so much of any compulsory works order as—
- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
- (b) grants authority for the carrying out of the operations,
- the applicant for the order shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.

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- (4) A person who sustains any loss or damage which is attributable to any discharge of water made by a water undertaker in pursuance of a compulsory works order shall be entitled to recover compensation from the undertaker in respect of the loss or damage.
- (5) For the purposes of sub-paragraph (4) above any extra expenditure—
- (a) which it becomes reasonably necessary for any water undertaker or public authority (other than the undertaker making the discharge) to incur for the purpose of properly carrying out any statutory functions; and
 - (b) which is attributable to any such discharge of water as is mentioned in that sub-paragraph,
- shall be deemed to be a loss sustained by the undertaker or public authority and to be so attributable.
- (6) Any question of disputed compensation under this paragraph, shall be referred to and determined by the ^{F1665}Upper Tribunal]; and in relation to the determination of any such compensation the provisions of ^{F1666}section] 4 of the ^{M148}Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (7) For the purpose of assessing any compensation under this paragraph, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the ^{M149}Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (8) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (7) above is subject to a mortgage—
- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
 - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (9) In this paragraph “relevant land”, in relation to a compulsory works order, means any land which is not land in relation to which powers of compulsory acquisition are conferred by the order but is—
- (a) land where any operations for which authority is granted by the order are to be carried out;
 - (b) land in relation to which compulsory powers are conferred by the order; or
 - (c) land held with any land falling within paragraph (a) or (b) above.

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Textual Amendments

F1665 Words in [Sch. 11 para. 8\(6\)](#) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order ([S.I. 2009/1307](#)), art. 5(1)(2), {Sch. 1 para. 223(a)} (with Sch. 5)

F1666 Word in [Sch. 11 para. 8\(6\)](#) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order ([S.I. 2009/1307](#)), art. 5(1)(2), {Sch. 1 para. 223(b)} (with Sch. 5)

Marginal Citations

M148 1961 c. 33.

M149 1961 c. 33.

Protection of public undertakings

- 9 The provisions of section 186 of this Act and of Part I of Schedule 13 to this Act shall apply, as they apply in relation to the carrying out of works in exercise of powers under this Act, in relation to the carrying out of works by virtue of an authority granted by so much of any compulsory works order as makes provision other than provision conferring powers of compulsory acquisition.

Interpretation

- 10 In this Schedule—
“bridleway” and “footpath” have the same meanings as in the ^{M150}Highways Act 1980;
“compulsory works order” means an order under section 167 of this Act;
“powers of compulsory acquisition” means any such powers as are mentioned in subsection (4)(a) of section 167 of this Act;

F1667 ...

Textual Amendments

F1667 Words Sch. 11 para. 10 omitted (24.5.2007) by virtue of The Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007 ([S.I. 2007/1519](#)), art. 1(1), **Sch. para. 8(b)** (with art. 1(3))

Marginal Citations

M150 1980 c. 66.

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SCHEDULE 12

Section 180.

COMPENSATION ETC. IN RESPECT OF PIPE-LAYING AND OTHER WORKS POWERS

Modifications etc. (not altering text)

C370 Sch. 12 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 13(3)** (with reg. 1(1)(c))

Compensation in respect of street works powers

- 1 (1) This paragraph applies, in relation to a relevant undertaker, to the powers conferred on it in relation to streets by sections 158, 161 and 162 of this Act.
- (2) It shall be the duty of every relevant undertaker—
 - (a) to do as little damage as possible in the exercise of the powers to which this paragraph applies; and
 - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (2) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the [^{F1668}Director].
- (4) Until the coming into force of Part III of the ^{M151}New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the ^{M152}Public Utilities Street Works Act 1950 (provisions against duplication of compensation) as made under an enactment passed before that Act of 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this paragraph).

Textual Amendments

F1668 Word in [Sch. 12 para. 1\(3\)](#) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para.29**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I

Marginal Citations

M151 1991 c. 22.

M152 1950 c. 39.

Compensation in respect of pipe-laying works in private land

- 2 (1) If the value of any interest in any relevant land is depreciated by virtue of the exercise, by any relevant undertaker, of any power to carry out pipe-laying works on private

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land, the person entitled to that interest shall be entitled to compensation from the undertaker of an amount equal to the amount of the depreciation.

- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to the exercise by any relevant undertaker of any power to carry out pipe-laying works on private land;
 - (b) does not consist in depreciation of the value of that interest; and
 - (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act,
- he shall be entitled to compensation from the undertaker in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by any relevant undertaker, of any power to carry out pipe-laying works on private land, the undertaker shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
- (4) The Secretary of State may by regulations make provision requiring a relevant undertaker, where it is proposing or has begun, in a prescribed case, to exercise any power to carry out pipe-laying works on private land, to make advance payments on account of compensation that will become payable in respect of the exercise of that power.
- (5) In this paragraph “relevant land”, in relation to any exercise of a power to carry out pipe-laying works on private land, means the land where the power is exercised or land held with that land.
- (6) In this paragraph the references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of sections 159, 161(2) and 163 of this Act.

Assessment of compensation under paragraph 2

- 3 (1) Any question of disputed compensation under paragraph 2 above shall be referred to and determined by the [^{F1669}Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [^{F1670}section] 4 of the ^{M153}Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (2) For the purpose of assessing any compensation under paragraph 2 above, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (3) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (2) above is subject to a mortgage—
- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;

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- (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
 - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (4) Where, apart from this sub-paragraph, any person entitled to an interest in any land would be entitled under paragraph 2 above to an amount of compensation in respect of any works, there shall be deducted from that amount an amount equal to the amount by which the carrying out of the works has enhanced the value of any other land which—
- (a) is contiguous or adjacent to that land; and
 - (b) is land to an interest in which that person is entitled in the same capacity.

Textual Amendments

F1669 Words in *Sch. 12 para. 3(1)* substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307), art. 5(1)(2), {Sch. 1 para. 224(a)} (with Sch. 5)

F1670 Word in *Sch. 12 para. 3(1)* substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307), art. 5(1)(2), {Sch. 1 para. 224(b)} (with Sch. 5)

Marginal Citations

M153 1961 c. 33.

Compensation in respect of sewerage works etc.

- 4 (1) Subject to the following provisions of this paragraph, a sewerage undertaker shall make full compensation to any person who has sustained damage by reason of the exercise by the undertaker, in relation to a matter as to which that person has not himself been in default, of any of its powers under the relevant sewerage provisions.
- (2) Subject to sub-paragraph (3) below, any dispute arising under this paragraph as to the fact of damage, or as to the amount of compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the ^{F1671}Director].
- (3) If the compensation claimed under this paragraph in any case does not exceed ^{F1672}£5,000], all questions as to the fact of damage, liability to pay compensation and the amount of compensation may, ^{F1673}be referred to the Director for determination under section 30A of this Act by either party.]
- ^{F1674}(4)
- (5) No person shall be entitled by virtue of this paragraph to claim compensation on the ground that a sewerage undertaker has, in the exercise of its powers under the relevant sewerage provisions, declared any sewer ^{F1675}, lateral drain] or sewage disposal works, whether belonging to that person or not, to be vested in the undertaker.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F1671** Word in [Sch. 12 para. 4\(2\)](#) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 30](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt. I](#)
- F1672** Words in [Sch. 12 para. 4\(3\)](#) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 31\(a\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)
- F1673** Words in [Sch. 12 para. 4\(3\)](#) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\)](#), [Sch. 1 para. 31\(b\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 4, Sch. Pt. II](#)
- F1674** [Sch. 12 para. 4\(4\)](#) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt. I](#)
- F1675** Words in [Sch. 12 para. 4\(5\)](#) inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 97\(10\), 105\(3\)](#); [S.I. 2004/641, art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

Compensation in respect of metering works

- 5 (1) Without prejudice to section 148 of this Act or to paragraph 11 of Schedule 6 to this Act or paragraph 1 above, where a person authorised by any relevant undertaker carries out any works by virtue of section 162 of this Act on any premises, the undertaker shall make good, or pay compensation for, any damage caused by that person or by any person accompanying him by or in connection with the carrying out of the works.
- (2) Any dispute between a relevant undertaker and any other person (including another such undertaker)—
- (a) as to whether the undertaker should pay any compensation under this paragraph; or
- (b) as to the amount of any such compensation,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Director.

Compensation in respect of discharges for works purposes

- 6 (1) It shall be the duty of every water undertaker—
- (a) to cause as little loss and damage as possible in the exercise of the powers conferred on it by section 165 of this Act; and
- (b) to pay compensation for any loss caused or damage done in the exercise of those powers.
- (2) For the purposes of subsection (1) above any extra expenditure—
- (a) which it becomes reasonably necessary for any other water undertaker or any sewerage undertaker or public authority to incur for the purpose of properly carrying out any statutory functions; and
- (b) which is attributable to any discharge of water under section 165 of this Act, shall be deemed to be a loss sustained by the undertaker or public authority and to have been caused in exercise of the powers conferred by that section.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (1) above, or as to the amount of any such compensation, shall be referred to the

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arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

SCHEDULE 13

Section 183.

PROTECTIVE PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS

Modifications etc. (not altering text)

C371 Sch. 13 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 13(7)** (with reg. 1(1)(c))

PART I

PROVISIONS APPLYING GENERALLY

General provisions protecting undertakings

- 1 (1) Nothing in this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—
 - (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
 - (b) with the use of any such works or property,
 as to affect injuriously those works or that property or the carrying on of that undertaking.
- (2) Without prejudice to the construction of sub-paragraph (1) above for the purposes of its application in relation to the other provisions of this Act, that sub-paragraph shall have effect in its application in relation to the relevant sewerage provisions as if any use of, injury to or interference with any sluices, floodgates, sewers, groynes, sea defences or other works which are vested in or under the control of ^[F1676]the Environment Agency^[F1677] or the NRBW] or an internal drainage board were such an interference with works or property vested in or under the control of ^[F1676]the Environment Agency^[F1677] or the NRBW] or that board as to affect injuriously the works or property or the carrying on of the undertaking of ^[F1676]the Environment Agency^[F1677] or the NRBW] or of that board.
- (3) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) Subject to the following provisions of this Schedule, any dispute—
 - (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;

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- (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
- (c) as to whether any condition subject to which any such consent has been given was reasonable,

shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

- (5) The following are the undertakings protected by this paragraph, that is to say-
- (a) the undertakings of [^{F1676}the Environment Agency], [^{F1678}the NRBW,] the Civil Aviation Authority, [^{F1679}the Coal Authority] and [^{F1680}a universal service provider (so far as it is the provider’s undertaking in relation to the provision of a universal postal service)];
 - (b) the undertaking of any relevant undertaker;
 - [^{F1681}(c) any undertaking consisting in the provision of an electronic communications network;]
 - (d) any airport to which Part V of the ^{M154}Airports Act 1986 applies;
 - (e) the undertaking of any public gas supplier within the meaning of Part I of the ^{M155}Gas Act 1986;
 - (f) the undertaking of any person authorised by a licence under Part I of the ^{M156}Electricity Act 1989 to generate, [^{F1682}supply or participate in the transmission of] electricity;
 - (g) the undertaking of any navigation, harbour or conservancy authority or of any internal drainage board;
 - (h) the undertaking of any railway undertakers;
 - (i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act.
 - ^{F1683}[(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;]
 - [^{F1684}(k) the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services) to the extent that it is the person’s undertaking as licence holder.]

[^{F1685}(5A) In sub-paragraph (5)(a) above “universal service provider” has the same meaning as in [^{F1686}Part 3 of the Postal Services Act 2011]; and the reference to the provision of a universal postal service shall be construed in accordance with [^{F1687}that Part].]

- (6) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (5)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.

Textual Amendments

F1676 Words in Sch. 13 para. 1(2)(5)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 127** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F1677 Words in Sch. 13 para. 1(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 263(2)** (with Sch. 7)

F1678 Words in Sch. 13 para. 1(5)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 263(3)** (with Sch. 7)

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- F1679** Words in Sch. 13 para. 1(5)(a) substituted (31.10.1994) by 1994 c. 21, ss. 67(1), 68(2), **Sch. 9 para. 42(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F1680** Words in Sch. 13 para. 1(5)(a) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 88(2)**
- F1681** Sch. 13 para. 1(5)(c) substituted (25.7.2003) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 17 para. 111(2)**; S.I. 2003/1900, **art. 2(1)**, Sch. 1
- F1682** Words in Sch. 13 para. 1(5)(f) substituted (1.9.2004) by Energy Act 2004 (c. 20), ss. 143, 198(2), **Sch. 19 para. 17**; S.I. 2004/2184, **art. 2(2)**, Sch. 2
- F1683** Sch. 13 para. 1(5)(j) inserted (31.10.1994) by 1994 c. 21, ss. 67(1), 68(2), **Sch. 9 para. 42(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F1684** Sch. 13 para. 1(5)(k) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 14**; S.I. 2001/869, **art. 2**
- F1685** Sch. 13 para. 1(5A) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 88(3)**
- F1686** Words in Sch. 13 para. 1(5A) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 137(a)**; S.I. 2011/2329, art. 3
- F1687** Words in Sch. 13 para. 1(5A) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 137(b)**; S.I. 2011/2329, art. 3

Modifications etc. (not altering text)

- C372** Sch. 13 para. 1(5)(e) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(m)**; S.I. 1996/218, **art. 2**

Marginal Citations

- M154** 1986 c. 31.
M155 1986 c. 44.
M156 1989 c. 29.

Protection for statutory powers and jurisdiction

- 2 Nothing in any provision of this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.

Special protection for certain undertakings in respect of street works

- 3 (1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the^{M157}Highways Act 1980)—
- (a) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority; or
 - (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,
- except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the^{M158}New Roads and Street Works Act 1991.

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- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or
 - (b) as to whether the conditions to which any such consent is made subject are reasonable,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) If any relevant undertaker contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) The restrictions contained in paragraphs (1) to (5) of section 32 of the ^{M159}Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provisions—
- (a) as they apply in relation to the powers mentioned in that section; and
 - (b) as if references in that section to a tramway included references to a trolley vehicle system.
- (7) In this paragraph “the street works provisions” means so much of sections 158, 161 and 162 of this Act as relates to powers exercisable in relation to streets.
- (8) Until the coming into force of section 52 of the ^{M160}New Roads and Street Works Act 1991, sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the ^{M161}Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

Modifications etc. (not altering text)

C373 Sch. 13 para. 3 applied (with modifications) (21.7.1994) by 1994 c. xi, s. 11(2)

Marginal Citations

M157 1980 c. 66.

M158 1991 c. 22.

M159 1870 c. 78.

M160 1991 c. 22.

M161 1950 c. 39.

Status: This version of this Act contains provisions that are prospective.

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Protection for ^{F1688}electronic communications networks]

Textual Amendments

F1688 Words in Sch. 13 para. 4 heading substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 30(c); S.I. 2017/1286, reg. 2(d)

- 4 ^{F1689}Part 10] of [^{F1690}Schedule 3A to the Communications Act 2003] (which provides a procedure for certain cases where works involve the alteration of [^{F1691}electronic communications apparatus]) shall apply to every relevant undertaker for the purposes of any works carried out by that undertaker in exercise of any of the powers conferred by any enactment ^{F1692}...

Textual Amendments

F1689 Words in Sch. 13 para. 4 substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 30(a); S.I. 2017/1286, reg. 2(d)

F1690 Words in Sch. 13 para. 4 substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 30(b); S.I. 2017/1286, reg. 2(d)

F1691 Words in Sch. 13 para. 4 substituted (25.7.2003) by Communications Act 2003 (c. 21), ss. 406, 411(2) (3), Sch. 17 para. 111(3); S.I. 2003/1900, art. 2(1), Sch. 1

F1692 Words in Sch. 13 para. 4 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 28(4)(f)

PART II

FURTHER PROTECTIVE PROVISIONS IN RESPECT OF SEWERAGE POWERS

Protection for dock undertakers

- 5 (1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the dock undertakers concerned—
- (a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation thereon or the use thereof or the access thereto, or to interfere with any towing path, so as to interrupt the traffic thereon;
 - (b) to interfere with any bridges crossing any river, canal, dock, harbour or basin;
 - (c) to carry out any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to dock undertakers and is held or used by them for the purposes of their undertaking;
 - (d) to carry out any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir, or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof.
- (2) For the purposes of this paragraph dock undertakers shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if—
- (a) it belongs to them and forms part of their undertaking; or

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- (b) they have statutory rights of navigating on or using it or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (3) A consent under this paragraph shall not be unreasonably withheld.
- (4) Any dispute as to whether or not consent under this paragraph is unreasonably withheld shall be referred, if either party so require, to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) Upon an arbitration under this paragraph, the arbitrator shall determine—
- (a) whether any works which the sewerage undertaker proposes to carry out are such works as under this paragraph the undertaker is not entitled to carry out without the consent of any dock undertakers;
 - (b) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and
 - (c) if the works are of such a nature, the conditions subject to which the sewerage undertaker may carry out the works, including the amount of the compensation (if any) to be paid by the sewerage undertaker to the dock undertakers.
- (6) The sewerage undertaker in question shall not proceed to carry out any proposed works if, on an arbitration under this paragraph, the arbitrator determines—
- (a) that the proposed works are such works as the sewerage undertaker is not entitled to carry out without the consent of the dock undertakers; and
 - (b) that the works would cause injury to the dock undertakers of such a nature as not to admit of being fully compensated by money,
- but, in any other case, the sewerage undertaker may carry out the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator may have determined.
- (7) Nothing in this paragraph shall be construed as limiting the powers of a sewerage undertaker under this Act in respect of the opening and the breaking up of streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes.

Protection for airports, railways etc.

- 6 (1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the Civil Aviation Authority or, as the case may be, of the airport operator or railway undertakers concerned, to carry out any works along, across or under—
- (a) any property of the Civil Aviation Authority;
 - (b) an airport to which Part V of the ^{M162}Airports Act 1986 applies; or
 - (c) any railway of any railway undertakers.
- (2) Sub-paragraphs (3) to (7) of paragraph 5 above shall apply for the purposes of this paragraph as they apply for the purposes of sub-paragraph (1) of that paragraph but as if references to the dock undertakers were references, as the case may require, to the Civil Aviation Authority, to the relevant airport operator or to the railway undertakers.

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Marginal Citations

M162 1986 c. 31.

Saving for Part I and other powers

- 7 The provisions of this Part of this Schedule are without prejudice to the provisions of Part I of this Schedule or to any power conferred on a sewerage undertaker otherwise than by the relevant sewerage provisions.

SCHEDULE 14

Section 188.

MINERAL RIGHTS

Acquisition of mineral rights

- 1 (1) This paragraph applies in each of the following cases, that is to say—
- (a) where a relevant undertaker acquires any land (whether compulsorily in exercise of any power conferred by or under this Act or otherwise); and
 - (b) where a relevant undertaker carries out any works in relation to any land for the purposes of, or in connection with, the carrying out of any of its functions.
- (2) Subject to sub-paragraph (3) below, a relevant undertaker shall not, by virtue only of its acquisition of the land or the carrying out of the works, become entitled to any mines or minerals lying under the land; and, accordingly, any such mines or minerals shall be deemed to be excepted from any instrument by virtue of which the land vests in the relevant undertaker unless express provision to the contrary is contained—
- (a) where the land vests in the relevant undertaker by virtue of a conveyance, in the conveyance; or
 - (b) where the land is acquired by the relevant undertaker in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.
- (3) A relevant undertaker shall be entitled to such parts of any mines or minerals that lie under the land as it may be necessary for it to dig, carry away or use in carrying out any works for the purposes of constructing, making, erecting or laying any part of its undertaking.

Notice required for the working of underlying mines

- 2 (1) If the owner of any mines or minerals underlying any part of a relevant undertaker's undertaking proposes to work them, he shall, not less than thirty days before the commencement of working, serve notice of his intention to do so on the relevant undertaker.
- (2) On receipt of a notice under sub-paragraph (1) above the relevant undertaker may cause the mines or minerals to be inspected by a person designated by it for the purpose.

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- (3) Subject to sub-paragraph (5) and paragraph 3 below, if, where notice has been served under this paragraph, the relevant undertaker—
 - (a) considers that the working of the underlying mines or minerals is likely to damage any part of its undertaking;
 - (b) is willing to compensate the owner of the mines or minerals for the restriction imposed by virtue of this sub-paragraph; and
 - (c) serves notice to that effect on the owner of the mines or minerals before the end of the period of thirty days mentioned in sub-paragraph (1) above,the owner shall not work the mines or minerals except to such extent as may be determined by the relevant undertaker, and the relevant undertaker shall so compensate the owner.
- (4) Any dispute as to the amount of any compensation payable by virtue of sub-paragraph (3) above shall be referred to and determined by the [^{F1693}Upper Tribunal].
- (5) If before the end of the period of thirty days mentioned in sub-paragraph (1) above, no notice has been served under sub-paragraph (3)(c) above by the relevant undertaker, the entitlement of the owner of the mines and minerals to work them shall be an entitlement to work them by proper methods and in the usual manner of working such mines or minerals in the district in question.
- (6) If any damage to the undertaking of a relevant undertaker is caused by the working otherwise than as authorised by this paragraph of any mines or minerals underlying any part of its undertaking—
 - (a) the owner of the mines or minerals shall, at his own expense, forthwith repair the damage; and
 - (b) the relevant undertaker may, without waiting for the owner to perform his duty, repair the damage and may recover the expenses reasonably incurred by it in doing so from the owner.

Textual Amendments

F1693 Words in [Sch. 12 para. 2\(4\)](#) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order ([S.I. 2009/1307](#)), art. 5(1)(2), {Sch. 1 para. 225} (with Sch. 5)

Mining communications

- 3 (1) If the working of any mines or minerals is prevented by reason of any of the preceding provisions of this Schedule, the owner of the mines or minerals may cut and make such communication works through the mines or minerals, or the strata in which they are situated, as are required for the ventilation, drainage and working of mines or minerals which are not underlying any part of the undertaking of the relevant undertaker in question.
- (2) Communication works cut or made under this paragraph—
 - (a) shall not, in a case where—
 - (i) the part of the undertaking in question was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the relevant undertaker in pursuance of any powers of compulsory acquisition; and

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- (ii) the order authorising the works or acquisition designates dimensions or sections for the communication works, exceed those dimensions or fail to conform to those sections; and
 - (b) in any other case, shall not be more than 2.44 metres high or more than 2.44 metres wide.
- (3) Communication works cut or made under this paragraph shall not be cut or made on the land where the part of the undertaking is situated so as to cause damage to that part of the undertaking.
- (4) Where works carried out under this paragraph by the owner of any mines or minerals cause loss or damage to the owner or occupier of land lying over the mines or minerals, the relevant undertaker shall pay full compensation to him for the loss or damage.
- (5) Sub-paragraph (4) above shall not apply where the person sustaining the loss or damage is the owner of the mines.
- (6) In this paragraph “communication works” means airways, headways, gateways or water levels.

Compensation relating to severance

- 4 (1) Where mines or minerals underlying any part of a relevant undertaker’s undertaking are situated so as, on two or more sides of that land, to extend beyond the land on which that part of the undertaking is situated, the relevant undertaker shall from time to time pay to the owner of the mines or minerals (in addition to any compensation under paragraph 2 above) any expenses and losses incurred by him in consequence of—
- (a) the severance by the undertaking of the land lying over the mines;
 - (b) the interruption of continuous working of the mines in consequence of paragraph 2(3) above;
 - (c) the mines being so worked in accordance with restrictions imposed by virtue of this Act or any order made under this Act,
- and shall pay for any minerals not purchased by the relevant undertaker which cannot be got or won by reason of the part of the undertaking in question being situated where it is or by reason of the requirement to avoid damage to any part of the relevant undertaker’s undertaking.
- (2) Any dispute as to whether any sum should be paid under this paragraph or as to the amount payable shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant undertaker and the owner of the mines or minerals or, in default of agreement, by the Secretary of State.

Powers of entry

- 5 (1) Any person designated in writing for the purpose by a relevant undertaker may, for any purpose specified in sub-paragraph (2) below—
- (a) enter on any land in which the mines or minerals are, or are thought to be, being worked, and which is in or near to the land where any part of that undertaker’s undertaking is situated; and
 - (b) enter the mines and any works connected with the mines.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) The purposes mentioned in sub-paragraph (1) above are—
- (a) carrying out any inspection under paragraph 2(2) above;
 - (b) ascertaining whether any mines or minerals have been worked so as to damage the undertaking of the relevant undertaker in question; and
 - (c) carrying out any works and taking any other steps which the relevant undertaker in question is authorised to carry out or take under paragraph 2(6) above.
- (3) A person authorised to enter any premises under this paragraph may—
- (a) make use of any equipment belonging to the owner of the mines or minerals in question; and
 - (b) use all necessary means for discovering the distance from any part of the undertaking of the relevant undertaker to the parts of the mines or the minerals which are, or are about to be, worked.
- (4) Part II of Schedule 6 to this Act shall apply to the rights and other powers conferred by this paragraph.

No exemption for injury to mines and minerals

- 6 Nothing in any provision of this Act or of any order made under this Act shall be construed as exempting a relevant undertaker from any liability to which it would, apart from that provision, have been subject in respect of any damage to any mines or minerals underlying any part of its undertaking or in respect of any loss sustained in relation to any such mines or minerals by a person having an interest therein.

Interpretation

- 7 (1) In this Schedule—
- “conveyance” has the same meaning as in the ^{M163}Law of Property Act 1925;
 - “designated distance”, in relation to any part of a relevant undertaker’s undertaking, means, subject to sub-paragraph (6) below, thirty-seven metres;
 - “mines” means mines of coal, ironstone, slate or other minerals;
 - “owner”, in relation to mines and minerals, includes a lessee or occupier; and
 - “underlying”, in relation to any part of the undertaking of a relevant undertaker, means lying under, or within the designated distance from, that part of that undertaking.
- (2) For the purposes of this Schedule the undertaking of a relevant undertaker shall be taken to consist of so much of any of the following as is for the time being vested in or held by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions, that is to say—
- (a) any buildings, reservoirs, wells, boreholes or other structures; and
 - (b) any pipes or other underground works particulars of which fall or would fall to be incorporated in any records kept under section 198 or 199 of this Act.
- (3) References in this Schedule to the working of any mines or minerals include references to the draining of mines and to the winning or getting of minerals.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) For the purposes of this Schedule land shall be treated as acquired by a relevant undertaker in pursuance of powers of compulsory acquisition if it—
- (a) was so acquired by a water authority established under section 2 of the ^{M164}Water Act 1973 or any predecessor of such a water authority or by a predecessor of a statutory water company; and
 - (b) is now vested in that undertaker in accordance with a scheme under Schedule 2 to the ^{M165}Water Act 1989 or Schedule 2 to this Act or otherwise.

(5) In relation—

- (a) to any land treated by virtue of sub-paragraph (4) above as acquired in pursuance of powers of compulsory acquisition; or
- (b) to any land acquired by a statutory water company before 1st September 1989 in pursuance of any such powers,

references in this Schedule to the order authorising the acquisition include references to any local statutory provision which immediately before 1st September 1989 had effect in relation to that land for the purposes of any provisions corresponding to the provisions of this Schedule.

(6) For the purposes of this Schedule where—

- (a) any part of a relevant undertaker's undertaking was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the relevant undertaker in pursuance of any powers of compulsory acquisition; and
- (b) the order authorising the works or acquisition designates any distance for the purposes of any enactment relating to mines or minerals underlying that part of the undertaking,

then for the purposes of this Schedule that distance shall be the designated distance in relation to that part of the undertaking, instead of the distance specified in sub-paragraph (1) above.

Marginal Citations

M163 1925 c. 20.

M164 1973 c. 37.

M165 1989 c. 15.

SCHEDULE 15

DISCLOSURE OF INFORMATION

PART I

PERSONS IN RESPECT OF WHOSE FUNCTIONS DISCLOSURE MAY BE MADE

Any Minister of the Crown.

F1694 ...

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1694 Words in Sch. 15 Pt. 1 omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 94\(a\)](#) (with art. 3)

The [^{F1695}CMA]

Textual Amendments

F1695 Word in Sch. 15 Pt. 1 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 94\(a\)](#) (with art. 3)

[^{F1696}The Office of Communications]

Textual Amendments

F1696 Sch. 15 Pt. 1: entry substituted (25.7.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411(2)(3), [Sch. 17 para. 112\(2\)](#); S.I. 2003/1900, [art. 2\(1\)](#), Sch. 1

The Civil Aviation Authority.

The Director General of Gas Supply.

The Director General of Electricity Supply.

[^{F1697}The Office of Rail and Road.]

Textual Amendments

F1697 Words in Sch. 15 substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), [Sch. para. 4\(i\)](#)

[^{F1698}The National Association of Citizens Advice Bureaux.]

Textual Amendments

F1698 Words in Sch. 15 Pt. 1 inserted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 6\(a\)](#) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

A local weights and measures authority in England and Wales.

^{F1699}
...

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1699 Sch. 15 Pt. 1 entry omitted (1.4.2014) by virtue of [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 6(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

PART II

ENACTMENTS ETC. IN RESPECT OF WHICH DISCLOSURE MAY BE MADE

Modifications etc. (not altering text)

C374 Sch. 15 Pt. 2 modified (8.2.2007 in accordance with art. 1 of amending S.I.) by [The Wireless Telegraphy \(Pre-Consolidation Amendments\) Order 2006 \(S.I. 2006/1391\)](#), art. 2, **Sch. para. 7(3)(b)**

The ^{M166}Trade Descriptions Act 1968.

Marginal Citations

M166 1968 c. 29.

The ^{M167}Fair Trading Act 1973.

Marginal Citations

M167 1973 c. 41.

The ^{M168}Consumer Credit Act 1974.

Marginal Citations

M168 1974 c. 39.

F1700

Textual Amendments

F1700 Entries in Sch. 15 Pt. II repealed (1.3.2000) by [1998 c. 41](#), ss. 66(5), 74(3), Sch. 10 Pt. IV para. 13(10) (a), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

F1700

The ^{M169}Estate Agents Act 1979.

Marginal Citations

M169 1979 c. 38.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

The ^{M170}Competition Act 1980.

Marginal Citations

M170 1980 c. 21.

The ^{M171}Telecommunications Act 1984.

Marginal Citations

M171 1984 c. 12.

The ^{M172}Airports Act 1986.

Marginal Citations

M172 1986 c. 31.

The ^{M173}Gas Act 1986.

Marginal Citations

M173 1986 c. 44.

The ^{M174}Consumer Protection Act 1987.

Marginal Citations

M174 1987 c. 43.

The ^{M175}Electricity Act 1989.

Marginal Citations

M175 1989 c. 29.

[^{F1701}The Railways Act 1993]

Textual Amendments

F1701Entry in Sch. 15 Pt. II inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), **Sch. 12 para. 30**; S.I. 1993/3237, **art. 2(2)**.

^{F1702}[The Competition Act 1998]

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1702Entry in Sch. 15 Pt. II inserted (11.1.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 13(10)(b)** (with s. 73); S.I. 1998/3166, art. 2, **Sch.**

[^{F1703}Part I of the Transport Act 2000.]

Textual Amendments

F1703Entry in Sch. 15 Pt. II inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. IV para. 21**

[^{F1704}The Enterprise Act 2002.]

Textual Amendments

F1704Sch. 15 Pt. 2: entry inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(12)(b)**; S.I. 2003/1397, art. 2(1), Sch.

[^{F1705}The Communications Act 2003.]

Textual Amendments

F1705Sch. 15 Pt. 2: entry inserted (25.7.2003) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 17 para. 112(3)**; S.I. 2003/1900, art. 2(1), Sch. 1

[^{F1706}The Railways Act 2005.]

[^{F1707}The Consumers, Estate Agents and Redress Act 2007.]

Textual Amendments

F1706Sch. 15 Pt. 2: entry inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 10**; S.I. 2005/1444, art. 2(1), Sch. 1

F1707Sch. 15 Pt. 2: entry inserted (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), ss. 63, 66, **Sch. 7 para. 10(b)**; S.I. 2008/2550, art. 2, Sch. (subject to art. 3)

[^{F1708}Part 1 of the Civil Aviation Act 2012.]

Textual Amendments

F1708Words in Sch. 15 Pt. 2 inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 6** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(3)

F1709

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: *Water Industry Act 1991 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F1709 Words in Sch. 15 Pt. 2 repealed (26.5.2008) by The Consumer Protection from Unfair Trading Regulations (S.I. 2008/1277), reg. 30(1)(3), Sch. 2 para. 49(a), {Sch. 4 Pt. 1} (with reg. 28(2)(3))

[^{F1710}Any subordinate legislation made for the purpose of securing compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Textual Amendments

F1710 Words in Sch. 15 Pt. 2 inserted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations (S.I. 2008/1277), reg. 30(1), {Sch. 2 para. 49(b)} (with reg. 28(2)(3))

Any subordinate legislation made for the purpose of securing compliance with Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.]

[^{F1711}Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.]

Textual Amendments

F1711 Words in Sch. 15 Pt. 2 inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 94(b) (with art. 3)

[^{F1712}SCHEDULE 16

PROCEDURE ON APPEALS UNDER SECTION 207A

Textual Amendments

F1712 Sch. 16 inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 6; S.I. 2016/465, art. 2(1) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Regulations as to procedure

- 1 The Secretary of State may by regulations make provision about the procedure applying to appeals under section 207A.

Particular provision

- 2 Regulations under this Schedule may in particular make provision about—
 - (a) making an application for permission to bring an appeal;
 - (b) imposing conditions on the granting of permission to appeal (including conditions requiring an appeal to be considered together with other appeals, whether relating to the same revision or the same code or not);

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- (c) the persons who may be party to an appeal;
- (d) making an application for permission to be made party to an appeal;
- (e) imposing conditions on the granting of permission to become party to an appeal;
- (f) enabling a member of the CMA to make decisions as to the matters referred to in paragraphs (a), (b), (d) and (e);
- (g) enabling a member of the CMA to direct, pending the determination of the appeal, that the code in question—
 - (i) is to have effect without the revision, or
 - (ii) is to have effect with the revision but with modifications specified by the direction;
- (h) the number of persons in a group constituted to hear an appeal;
- (i) the making of a decision by the group;
- (j) the participation of the Authority in the appeal (including provision as to the making of representations and observations by the Authority otherwise than in connection with the consideration of the appeal);
- (k) the imposing of time limits (including provision for time limits to be waived in certain cases by a member of the CMA);
- (l) orders for costs;
- (m) the recovery of the CMA's costs.

Consideration and determination of appeals

- 3 (1) Regulations under this Schedule may make provision about—
 - (a) the consideration and determination of the appeal;
 - (b) giving effect to the determination.
- (2) Provision under sub-paragraph (1)(a) may include in particular—
 - (a) provision for disregarding, when determining an appeal, matters not raised as required by the regulations;
 - (b) provision as to the time within which an appeal is to be determined.

Evidence

- 4 (1) Regulations under this Schedule may make provision about—
 - (a) requiring the production of documents;
 - (b) requiring persons to attend an oral hearing;
 - (c) requiring persons attending an oral hearing—
 - (i) to give evidence at the hearing;
 - (ii) to make representations and observations;
 - (d) requiring persons—
 - (i) to produce a written statement;
 - (ii) to verify the statement by a statement of truth.
- (2) No person is to be compelled under the regulations—
 - (a) to produce a document that the person could not be compelled to produce in civil proceedings in the High Court;
 - (b) to give evidence which the person could not be compelled to give in civil proceedings in the High Court;

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- (c) to produce a written statement with respect to a matter about which the person could not be compelled to give evidence in civil proceedings in the High Court.
- (3) The regulations may provide for a notice requiring the production of documents, attendance of a person, or the production of a written statement to be issued by any member of the CMA.
- 5 (1) Regulations under this Schedule may provide for penalties to be imposed where—
 - (a) a person fails without reasonable excuse to comply with a requirement imposed in accordance with regulations under paragraph 4;
 - (b) having been required to produce a document in accordance with paragraph 4, a person wilfully alters, suppresses or destroys the document;
 - (c) having been required to produce a written statement in accordance with paragraph 4, a person makes without reasonable excuse a false statement in the written statement produced;
 - (d) having been required by appeal rules to verify information with a statement of truth, a person provides without reasonable excuse information that is false in a material particular.
- (2) The regulations may provide for conduct falling within sub-paragraph (1)(a), (c) or (d) to be punished by the High Court as if the person had been guilty of contempt.
- (3) The regulations may provide that, where a body corporate may be punished for contempt of court, the High Court has power to punish for contempt of court any director or other officer of the body (instead of or as well as the body).
- (4) The regulations may provide for conduct falling within sub-paragraph (1)(b) to be an offence triable either summarily or on indictment.
- (5) The regulations may provide for such an offence to be punishable—
 - (a) on summary conviction, by a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, by imprisonment for a term not exceeding two years or by a fine, or by both.

Appeal rules

- 6 (1) The CMA may make rules regulating the conduct and disposal of appeals.
- (2) The rules may include provision supplementing regulations made under this Schedule; and that provision may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing;
 - (b) the making of representations or observations at such a hearing.
- (3) The CMA must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (4) Before making rules under this paragraph, the CMA must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

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Interpretation

- 7 In this Schedule—
- “appeal” means an appeal under section 207A;
 - “appeal rules” means rules under paragraph 6;
 - “statement of truth” means a statement that the person producing the document believes the facts stated in the document to be true.]

TABLE OF DERIVATIONS

Notes:

1. The following abbreviations are used in this Table:—

1936 =	The Public Health Act 1936 (c. 49)
1937 =	The Public Health (Drainage of Trade Premises) Act 1937 (c. 40)
1945 =	The Water Act 1945 (c. 42)
1948 =	The Water Act 1948 (c. 22)
1961(F) =	The Factories Act 1961 (c. 34)
1961 =	The Public Health Act 1961 (c. 64)
1963(L) =	The London Government Act 1963 (c. 33)
1973 =	The Water Act 1973 (c. 37)
1974 =	The Control of Pollution Act 1974 (c. 40)
1977 =	The Criminal Law Act 1977 (c. 45)
1980 =	The Highways Act 1980 (c. 66)
1981 =	The Water Act 1981 (c. 12)
1981(SC) =	[^{F1713} Senior Courts Act 1981]
1982(CA) =	The Civil Aviation Act 1982 (c. 16)
1982(CJA) =	The Criminal Justice Act 1982 (c. 43)
1985(LG) =	The Local Government Act 1985 (c. 51)
1985 =	The Water (Fluoridation) Act 1985 (c. 63)
1986(AA) =	The Airports Act 1986 (c. 31)
1986(GA) =	The Gas Act 1986 (c. 44)
1989 =	The Water Act 1989 (c. 15)
1989(EA) =	The Electricity Act 1989 (c. 29)
1990(FS) =	The Food Safety Act 1990 (c. 16)
1990(EP) =	The Environmental Protection Act 1990 (c. 43)

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1991(NR) =	The New Roads and Street Works Act 1991 (c. 22)
R: (followed by a number) =	The recommendation so numbered as set out in the Appendix to the Report of the Law Commission (Cm. 1483).

Textual Amendments

F1713 Table of Derivations: for the words "Supreme Court Act 1981" wherever they occur there is substituted (1.10.2009) the words "Senior Courts Act 1981" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, [art. 2](#)

2. The functions originally vested in the Minister of Health under 1936 and 1937 have become vested in the Secretary of State as a result of the following transfer of functions orders ("TFOs"): SI 1951/142; SI 1951/1900; SI 1965/319; 1970/1681. Other TFOs, where applicable in relation to a provision re-enacted in this Bill, are specified at the appropriate place in column 2 of this Table.

3. General provisions contained in section 32 of the Magistrates' Courts Act 1980 (c. 43) and section 46 of the Criminal Justice Act 1982 (c. 48) provide, respectively, for the maximum fine on summary conviction of an either way offence to be the statutory maximum and for a reference to the amount of the maximum fine to which a person is liable in respect of a summary offence to become a reference to a level on the standard scale. Where the effect of one of these enactments is consolidated it is not referred to separately in column 2 of this Table.

Provision of Act	Derivation
1	1989 s. 5.
2	1989 s. 7(1)–(4).
3	1989 ss. 8(1)–(3), (5)–(7) & 20(8)(a)(i) & (c).
4	1989 ss. 9 & 20(8)(a)(i) & (c); 1990(EP) Sch 9 para 17(2).
5	1989 s. 10; 1990(EP) Sch 9 para 17(3).
6	1989 s. 11(1)–(3), (5) & (8).
7	1989 ss. 11(4)(part), (6) & (7) & 12 (2).
8	1989 s. 13(1), (2)(part), (3), (5) & (7).
9	
(1)	1989 s. 13(2)(part).
(2)	1989 s. 13(4).
(3) & (4)	1989 s. 12(3) & (4).
(5)	1989 s. 12(4) & (6).
10	1989 s. 13(6).
11	1989 s. 14(1), (3) & (8)–(10).
12	1989 s. 14(2), (6) & (7).

Status: This version of this Act contains provisions that are prospective.

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13	1989 s. 15.
14	1989 s. 16.
15	1989 s. 17.
16	1989 s. 18.
17	1989 s. 19.
18	1989 s. 20(1)–(4) & (7)–(10).
19	1989 s. 20(5), (6) & (8).
20	1989 s. 21.
21	1989 s. 22(1)–(3).
22	1989 s. 22(4)–(8).
23	1989 s. 23(2), (3), (8) & (9).
24	1989 s. 23(1), (4)–(7) & (9).
25	1989 s. 24(2).
26	1989 ss. 24(1) & 23(9).
27	1989 s. 26.
28	1989 s. 6.
29	1989 s. 27(1), (3) & (4).
30	1989 s. 27 (2).
31	1989 s. 28.
32	1989 s. 29(1), (3) & (4).
33	1989 s. 29(3), (5), (6) & (10).
34	1989 s. 30(1)–(5).
35	1989 ss. 29(2), (8) & (9) & 30(6).
36	1989 s. 12(1), (5) & (6).
37	1989 ss. 37 & 38(6).
38	1989 s. 38(1)–(3).
39	1989 s. 38(4).
40	1989 s. 39.
41	1989 s. 40(1) & (2) & (6)–(8).
42	1989 s. 41(1), (2) & (8)–(10).
43	1989 s. 41(3)–(7) & (9).
44	1989 s. 40(3)–(5) & (8).
45	1989 ss. 42(1),(2) & (5), 44(1), (4) & (5) & 176.
46	1989 ss. 42(3)–(5) & 44(1) & (4)–(6).

Status: This version of this Act contains provisions that are prospective.

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47	1989 s. 43(1) & (2).
48	1989 s. 43(3).
49	1989 s. 43(4)–(6).
50	1989 s. 43(7).
51	1989 ss. 42(6), 44(2), (3) & (7) & 176.
52	1989 s. 45(1)–(5).
53	1989 s. 45(6).
54	1989 s. 45(7) & (8).
55	1989 ss. 46(1)–(3), (7)–(9) & 49(1)(part).
56	1989 s. 46(4)–(6).
57	1989 s. 47(1), (2), (4)–(9) & (11).
58	1989 s. 47(3) & (6)–(11).
59	1989 s. 48.
60	1989 s. 49(1)–(3).
61	1989 s. 49(1) & (4)–(6).
62	1989 s. 49(1) & (7).
63	1989 s. 49(8) & (9).
64	1989 s. 50.
65	1989 s. 51(1)–(4) & (7)–(9).
66	1989 s. 51(5), (6) & (10).
67	1989 s. 65.
68	1989 s. 52; 1990(FS) s. 55(2).
69	1989 s. 53; 1990(FS) s. 55(2).
70	1989 s. 54.
71	1945 s. 14(9), (10) & (12); 1948 s. 5(4); 1977 Sch 6; 1989 Sch 25 para 7(1).
72	1945 s. 21(1), (3) & (4); 1989 Sch 25 para 7(4)(a) & (d); R: 21.
73	1989 s. 61.
74	1989 s. 62(1)–(4), (6) & (7) & Sch 26 para 19.
75	1989 s. 63.
76	1945 s. 16(1)–(4); 1977 Sch 6; IA s. 17; 1989 Sch 25 para 7(3)(a)–(c).
77	1989 s. 56(1) & (4)–(6).
78	1989 s. 56(2) & (3); 1990(FS) s. 55(3).

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79	1989 ss. 55 & 56(2)(part).
80	1989 ss. 57 & 164(3); 1990(FS) s. 55(4).
81	1989 s. 58(1)–(4).
82	1989 s. 58(5)–(10).
83	1989 s. 164.
84	1945 ss. 21(2) & (2A), 53 & 59; 1963(L) Sch 11 Pt I para 27; 1989 ss. 59(2) & 62(4) & Sch 25 para 7(4)(b) & (c).
85	1989 s. 59(1), (4) & (5).
86	1989 s. 60(1)–(4) & (6).
87	1985 ss. 1 & 5; 1989 Sch 25 para 73.
88	1985 ss. 2 & 5; 1989 Sch 25 para 73.
89	1985 ss. 4 & 5; 1989 Sch 25 para 73.
90	1989 s. 172.
91	Introduces Sch 7.
92	1989 s. 171.
93	1989 ss. 66 & 164(3) & Sch 19 para 11; 1990(FS) s. 55(5) & (6).
94	1989 ss. 67 & 68(6).
95	1989 s 68(1)–(3).
96	1989 s. 68(4).
97	1989 s. 73 & Sch 25 para 3.
98	1989 s. 71(1)–(3), (7) & (8).
99	1989 s. 72(1), (2) & (8)–(10).
100	1989 s. 72(3)–(7) & (9).
101	1989 s. 71(4)–(6) & (9).
102	1936 s. 17(1), (2) & (4)–(6); 1973 s. 14; 1989 Sch 8 para 1.
103	1936 s. 17(7)–(9); 1973 s. 14; 1989 Sch 8 para 1; R: 1.
104	1936 s. 18(1)–(4); 1973 s. 14; 1989 s. 176 and Sch 8 paras 1 & 2(1).
105	1936 ss. 17(3) & 18(4)–(6); 1973 s. 14; 1989 s. 176 and Sch 8 paras 1 & 2(1).
106	1936 ss. 34(1) & (3), 303–302 & 343(1) (part); 1961(F) s. 184 & Sch 6 para 1; 1973 s. 14 & Sch 8 para 37; 1989 Sch 8 paras 1 & 2(6)(a).

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107	1936 ss. 36 & 291–294; 1973 s. 14; 1974 Sch 2 para 9; 1982(CJA) s. 38; 1989 Sch 8 paras 1 & 2(7).
108	1936 s. 34(2) & (4); 1973 s. 14; 1989 Sch 8 paras 1 & 2(6)(b).
109	1936 ss. 34(5) & 291–294; 1973 s. 14; 1974 Sch 2 para 8; 1982(CJA) s. 38; 1989 Sch 8 paras 1.
110	1989 s.70(3)–(5).
111	1936 ss. 27, 297 & 343(1)(part); 1974 Sch 2 para 7.
112	1936 s. 19; 1989 Sch 8 para 2(2).
113	1936 ss. 42, 90(1)(part) & 300–302; 1973 s. 14; 1974 s. 43(6); 1989 Sch 8 paras 1 & 5(1)(a).
114	1936 ss. 48 & 343(1)(part); 1973 Sch 8 para 39; 1989 Sch 8 para 1.
115	1936 s. 21; 1973 s. 14; 1980(H) Sch 24 para 4(b); 1985(LG) Sch 4 para 47; 1989 Sch 8 paras 1 & 2(3).
116	1936 s. 22; 1973 s. 14; 1989 Sch 8 paras 1 & 2(4).
117	1936 ss. 30, 31, 90(5), 283 & 343(1); 1963(L) Sch 11 Pt I paras 1 & 24(b); 1973 s. 14; 1989 ss. 71(2) & (9), 72(7)(part) & Sch 8 para 1.
118	1937 ss. 1 & 2(5) & (5A); 1961 s. 69(1); 1973 s. 14; 1989 Sch 8 paras 1 & 3(1)(c); R: 2.
119	1937 s. 2(1); 1973 s. 14; 1989 Sch 8 paras 1 & 3(1)(a).
120	1989 Sch 9 paras. 1(1),(2), (4) & (5), 5 & 9.
121	1937 ss. 2(3), (5) & (5A) & 14(1); 1961 ss. 1(3) & 59; 1973 s. 14; 1989 Sch 8 paras 1 & 3(1)(b) & (c).
122	1937 s. 3; 1961 ss. 61 & 66(2); 1973 s. 14; 1989 Sch 8 paras 1 & 3(2) & (3).
123	1989 Sch 9 para 1(3)–(6).
124	1961 s. 60(1)–(4), (6) & (8); 1973 s. 14; 1989 Sch 8 para 1.
125	1974 s. 45(1)–(3); 1989 Sch 8 para 5(3).

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126	1961 s. 60(5)–(7) & 66(2); 1973 s. 14; 1974 s. 45(4); 1989 Sch 8 paras 1 & 4(2) & (4) & 5(3) & (4).
127	1989 Sch 9 para 2.
128	1961 s 62; 1973 s. 14; 1989 Sch 8 paras 1 & 4(2).
129	1936 s. 90(5); 1937 ss. 7(1) & (2) & 14(2); 1973 s. 14; 1989 Sch 8 para 1; R: 2.
130	1989 Sch 9 para 1(1), (4) & (5) & 5.
131	1989 Sch 9 para 2.
132	1989 Sch 9 paras 3, 4(3) & 7.
133	1989 Sch 9 para 4 & 5.
134	1989 Sch 9 para 6.
135	1989 Sch 8 paras 3(4) & 4(3).
136	1961 s. 67(1).
137	1961 s. 66(1); 1981(SC) Sch 5.
138	1989 s. 74; 1990(EP) Sch 15 para 28.
139	1961 s. 64; TFOs: SI 1965/319; SI 1970/1681.
140	Introduces Sch 8.
141	1936 s. 283; 1937 ss. 13 & 14(1); 1961 ss. 1(3) & 63(1); 1973 s. 14; 1989 Sch 8 paras 1 & 4(5) .
142	1989 s. 75.
143	1989 s. 76.
144	1989 s. 77 & Sch 26 para 16(10).
145	1989 s. 80.
146	1989 s. 79.
147	1989 s. 81.
148	1989 Sch 10 para 2(1)–(3) & (5) & 5.
149	1989 s. 78(2) & (3).
150	1989 s. 82.
151	1944 (c. 26) s. 1(1), (4) & (5); 1955 (c. 13) s. 1; 1971 (c. 49) s. 1; 1989 Sch 25 paras 6 & 21; TFOs: SI 1951/142; SI 1951/1900; SI 1965/319; SI 1970/1681.
152	1989 s. 170(7).
153	1989 s. 25.

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154	1989 s. 184.
155	1989 s. 151.
156	1989 s. 152; 1990(EP) Sch 8 para 8 & Sch 9 para 17(4).
157	1989 ss. 158 & 186.
158	1989 Sch 19 paras 1(1) & 2(1)–(3), (7) & (8).
159	1989 Sch 19 paras 1(1) & 4.
160	1936 ss. 275 & 291–294; 1945 Sch 4; 1973 s. 14; 1989 Sch 8 para 1.
161	1989 s. 154 & Sch 19 paras 1(2), 2(1)(c) & (d) & 4(1)(c) & (d).
162	1989 Sch 10 paras 1(1)–(3), (5) & (7) & 5 & Sch 19 para 1(5).
163	1989 Sch 19 para 5.
164	1945 ss. 15, 53 & 59(1); 1963(L) Sch 11 Pt I para 27; 1972 (c. 61) s. 18(6); 1973 Sch 8 para 49; 1989 Sch 25 para 7(2).
165	1989 Sch 19 paras 1(1) & 8(1), (5) & (6).
166	1989 s. 176 & Sch 19 para 9(1) & (3)–(8) & Sch 26 para 43(1).
167	1989 ss. 155 and 157(1).
168	1989 Sch 19, para 10(1)–(3).
169	1989 s. 156(1)–(5).
170	1945 ss. 16(5) & 21(2); 1948 s. 6; 1989 ss. 62(4) & 64(1)–(3) & (5) & Sch 25 para 7(3) (d) & (4); 1990(FS) s. 55(2).
171	1936 s. 287; 1937 s. 10; 1973 s. 14; 1974 Sch 3 para 10; 1989 Sch 8 paras 1, 2(9) & 3(7).
172	1961 s. 67(2); 1989 Sch 10 para 1(1) & (4).
173	1989 s. 180.
174	1945 s. 35(4); 1977 s. 31(6); 1989 s. 167 & Sch 25 para 7(5)(b).
175	1989 Sch 10 para 3(1) & (2).
176	1989 Sch 10 paras 3(3) & (4) & 5.
177	1989 Sch 10 paras 3(5) & (6) & 5.
178	1936 ss. 288 & 289; 1982(CJA) ss. 35 & 38.
179	1945 s. 35(2); 1989 s. 153, Sch 19 para 1(1) & Sch 25 para 7(5)(a).
180	Introduces Sch 12.

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181	1989 s. 162(1)–(5), (10) & (11).
182	1989 s. 162(6)–(10).
183	Introduces Sch 13.
184	1936 s. 330 & 332; 1973 s. 14; 1982(CA) Sch 2 para 1(2); 1986(AA) Sch 2 para 2; 1989 Sch 8 para 1.
185	1989 s. 161.
186	1936 ss. 331, 332, 334 & 339; 1973 s. 14; 1989 s. 160(4)–(7) & (9) & Sch 8 para 1.
187	1936 s. 340; 1989 Sch 19 para 7; TFO: SI 1970/1537.
188	1989 s. 159.
189	1936 s. 276; 1973 s. 14; 1989 Sch 8 para 1.
190	1989 s. 163; 1990 (c. 11) Sch 2 para 81(2).
191	1989 s. 157(2)–(4).
192	1936 s. 328; 1989 Sch 19 paras 1(3), (4) & (6) & 11.
193	1989 s. 35.
194	1989 s. 36.
195	1989 s. 31.
196	1937 s. 7A; 1989 Sch 8 para 3(5).
197	1989 Sch 19 para 9(2) & (8).
198	1989 s. 165.
199	1989 s. 166(1), (2), (3)(b) & (5)–(9).
200	1989 s. 166(3)(a), (4) & (8) & (9).
201	1989 s. 34.
202	1989 s. 32.
203	1989 s. 33.
204	1937 s. 9; 1973 s. 14; 1974 Sch 2 para 14; 1982(CJA) s. 38; 1989 Sch 8 para 1.
205	1989 Sch 10 paras 4 & 5.
206	1961 s. 68; 1989 s. 174 & Sch 9 para 8; R: 11.
207	1945 s. 45; 1989 s. 175 & Sch 25 para 7(8); R: 12.
208	1989 s. 170(1)–(6) & (9).
209	1981 s. 6; 1986(GA) Sch 7 para 2(6); 1989 Sch 25 para 63; 1989(EA) Sch 16 para 1(5);

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	1990 (c. 11) para 46; 1991(NR) Sch 8 para 106.
210	1989 s. 177; R: 13.
211	1936 s. 298; 1973 s. 14; 1989 Sch 8 para 1.
212	1989 s. 182.
213	1936 s. 319; 1946 (c. 36) ss. 4(3) and 5(2); 1974 s. 104; 1989 s. 185.
214	1936 ss. 283; 1937 s. 14(2); 1961 s. 1(3); 1973 s. 14; 1989 s. 189 (definition of “prescribed”) & Sch 8 paras 1, 3(7) & 4(6).
215	1936 s. 318; 1989 s. 181 & Sch 8 paras 1 & 2(10).
216	1989 s. 187; R: 14.
217	1989s. 188.
218	1989 s. 189(2) & (3); R: 21.
219	1936 ss. 90(4) & 343(1)(part); 1961 s. 67(3); 1989 ss. 43(8), 77(5), 78(4), 160(3), 166(9), 167(7) & 189 & Sch 8 para 2(12), Sch 10 para 6 & Sch 19 paras 1, 3(6), 8(8) & 11; 1991(NR) Sch 8 para 116(3); R: 15 & 17–20.
220	1989 s. 191(6).
221	1936 s. 341; 1989 s. 192 & Sch 8 para 1; 1990 (c. 11) Sch 2 para 81(3).
222	1985 s. 5(2); 1989 s. 193 & Sch 25 para 73.
Sch 1	1989 Sch. 3 paras 1–5.
Sch 2	1989 Sch 5.
Sch 3	1989 Sch 6.
Sch 4	1989 Sch 4 paras 1–5.
Sch 5	1989 Sch 7.
Sch 6	
Pt I	1936 ss. 287 & 288; 1945 s. 48; 1961(F) s. 184 & Sch 6 para 1; 1973 s. 14; 1989 Sch 8 para 1.
Pt II	1989 ss. 59(3), 60(5), 62(5), 64(4) & (5), 156(6), 178 & 179, Sch 10 para 1(6), Sch 19 para 10(4) & (5) & Sch 21 para 5(4); 1991(NR) Sh 8 para 116(4).
Sch 7	1985 ss. 3 & 4.
Sch 8	1937 ss. 4(4) & 7(4) & (5); 1961 s. 63(8); 1973 s. 14; 1974 Sch 3 para 9; 1989 Sch 8 paras 1, 3(2) & (4), 4(2) & 5(2).

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Sch 9	1989 Sch 18.
Sch 10	1989 Sch 24.
Sch 11	1989 Sch 20.
Sch 12	1936 ss. 278 & 303; 1973 s. 14; 1989 Sch 8 para 1, Sch 10, paras 1(2), 2(4) & 5 & Sch 19 paras 2(4)–(6), 6 & 8(2)–(4).
Sch 13	1936 ss. 333 & 334; 1973 s. 14; 1982(CA) Sch 2 para 1(2); 1986(AA) Sch 2 para 2; 1989 s. 160(1)–(3) & (6)–(8) & Sch 8 para 1, Sch 10 para 1(2) & Sch 19 para 2(9) & 3; 1989(EA) Sch 16 para 37; 1991(NR) Sch 8 para 116(4).
Sch 14	1989 Sch 21.
Sch 15	1989 s. 174(2)(d) & (3).

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Changes and effects yet to be applied to :

- Pt. 3 Ch. 2A heading substituted by 2014 c. 21 Sch. 2 para. 1
- s. 2(2C) word inserted by 2014 c. 21 Sch. 5 para. 2(a)(i)
- s. 2(2C)(f) and word repealed by 2014 c. 21 Sch. 5 para. 2(a)(ii)
- s. 2(2D) repealed by 2014 c. 21 Sch. 5 para. 2(b)
- s. 2B(4)(d) words inserted by 2014 c. 21 Sch. 5 para. 3
- s. 14B(1A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 4(2) (as substituted) by S.I. 2019/1245 reg. 21 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 16B(6A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 4(3) (as substituted) by S.I. 2019/1245 reg. 21 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17(2)(a) word omitted by virtue of S.I. 2019/93, Sch. 1 para. 4(4)(a) (as substituted) by S.I. 2019/1245 reg. 21 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(2) words repealed by 2014 c. 21 Sch. 5 para. 4(2)(a)
- s. 17A(3) words repealed by 2014 c. 21 Sch. 5 para. 4(3)
- s. 17B(4A) words repealed by 2014 c. 21 Sch. 5 para. 6(a)
- s. 17B(5)-(8) repealed by 2014 c. 21 Sch. 5 para. 6(b)
- s. 17C(1) words substituted by 2014 c. 21 Sch. 5 para. 9
- s. 17D repealed by 2014 c. 21 Sch. 5 para. 10
- s. 17E(2)(a) words repealed by 2014 c. 21 Sch. 5 para. 12(a)
- s. 17E(2)(c) repealed by 2014 c. 21 Sch. 5 para. 12(b)
- s. 17G(4)(a)(iii) words repealed by 2014 c. 21 Sch. 5 para. 14
- s. 17H(1A) repealed by 2014 c. 21 Sch. 5 para. 15(2)
- s. 17H(2) words substituted by 2014 c. 21 Sch. 5 para. 15(3)
- s. 17H(3) words substituted by 2014 c. 21 Sch. 5 para. 15(4)(a)
- s. 17H(3) words substituted by 2014 c. 21 Sch. 5 para. 15(4)(b)
- s. 17H(4) words substituted by 2014 c. 21 Sch. 5 para. 15(5)
- s. 17H(8)(b)(i) words repealed by 2014 c. 21 Sch. 5 para. 15(6)
- s. 17H(9) words repealed by 2014 c. 21 Sch. 5 para. 15(7)
- s. 17I(4)(b)(iv) words repealed by 2014 c. 21 Sch. 5 para. 17(a)
- s. 17I(5A) words repealed by 2014 c. 21 Sch. 5 para. 17(b)
- s. 17J(4)(b)(iv) words repealed by 2014 c. 21 Sch. 5 para. 18(2)
- s. 17J(5A) words repealed by 2014 c. 21 Sch. 5 para. 18(3)
- s. 17J(10) words repealed by 2014 c. 21 Sch. 5 para. 18(4)
- s. 17K(5)(b)(iv) words repealed by 2014 c. 21 Sch. 5 para. 19

- s. 17M(1A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 4(5) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17N(10)(a)(iv) words repealed by [2014 c. 21 Sch. 5 para. 20\(2\)](#)
- s. 17N(11)(a)(ii) words repealed by [2014 c. 21 Sch. 5 para. 20\(3\)](#)
- s. 17N(12) words repealed by [2014 c. 21 Sch. 5 para. 20\(4\)](#)
- s. 17O(5)(c)(iii) words repealed by [2014 c. 21 Sch. 5 para. 21](#)
- s. 17P(7)(b)(v) words repealed by [2014 c. 21 Sch. 5 para. 22](#)
- s. 17Q(6A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 4(6) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17R(2)(a) word omitted by virtue of S.I. 2019/93, Sch. 1 para. 4(7)(a) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(2) repealed by [2014 c. 21 Sch. 5 para. 5\(3\)](#)
- s. 17AA(5)(b)(c) repealed by [2014 c. 21 Sch. 5 para. 5\(4\)](#)
- s. 17BA(1) words repealed by [2014 c. 21 Sch. 5 para. 7\(2\)](#)
- s. 17BB(1) words inserted by [2014 c. 21 Sch. 5 para. 8](#)
- s. 17DA(a) repealed by [2014 c. 21 Sch. 5 para. 11](#)
- s. 17FA(1)(a) words repealed by [2014 c. 21 Sch. 5 para. 13\(2\)](#)
- s. 17FA(2)(a) words repealed by [2014 c. 21 Sch. 5 para. 13\(3\)](#)
- s. 17HA(10) words inserted by [2014 c. 21 Sch. 5 para. 16\(3\)](#)
- s. 23(2B)(b) words substituted by [2014 c. 21 Sch. 7 para. 35\(5\)\(a\)](#)
- s. 23(2B)(b)(ii) words substituted by [2014 c. 21 Sch. 7 para. 35\(5\)\(b\)](#)
- s. 23(2C) words substituted by [2014 c. 21 Sch. 7 para. 35\(6\)](#)
- s. 23(6)(a) words repealed by [2014 c. 21 Sch. 5 para. 23](#)
- s. 24(1A)(b) word inserted by [2014 c. 21 Sch. 7 para. 36\(2\)\(b\)](#)
- s. 24(1B) words repealed by [2014 c. 21 Sch. 5 para. 24](#)
- s. 27(2)(b) words inserted by [2014 c. 21 Sch. 7 para. 39\(3\)\(b\)](#)
- s. 27C(1) word inserted by [2014 c. 21 Sch. 5 para. 25\(a\)\(i\)](#)
- s. 27C(1)(f) and word repealed by [2014 c. 21 Sch. 5 para. 25\(a\)\(ii\)](#)
- s. 27C(2) repealed by [2014 c. 21 Sch. 5 para. 25\(b\)](#)
- s. 31(3)(a) word inserted by [S.I. 2019/93 Sch. 1 para. 4\(2\)](#) (This amendment not applied to legislation.gov.uk. Sch. 1 para. 4(2)(3) substituted immediately before IP completion day by S.I. 2020/1343, regs. 1(1), 16)
- s. 31(3)(a) word inserted by S.I. 2019/93, Sch. 1 para. 4(8)(a) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 31(3)(c) omitted by [S.I. 2019/93 Sch. 1 para. 4\(3\)](#) (This amendment not applied to legislation.gov.uk. Sch. 1 para. 4(2)(3) substituted immediately before IP completion day by S.I. 2020/1343, regs. 1(1), 16)
- s. 31(3)(c)(d) omitted by virtue of S.I. 2019/93, Sch. 1 para. 4(8)(b) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated

and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)

- s. 31(3)(d) omitted by [S.I. 2019/93 Sch. 1 para. 4\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 1 para. 4(2)(3) substituted immediately before IP completion day by [S.I. 2020/1343](#), regs. 1(1), 16)
- s. 37A heading words omitted by [2021 c. 30 s. 78\(2\)\(a\)](#)
- s. 37A(3)(b) words omitted by [2021 c. 30 s. 78\(2\)\(b\)](#)
- s. 37A(4) words inserted by [2021 c. 30 s. 78\(2\)\(c\)\(i\)](#)
- s. 37A(4) words omitted by [2021 c. 30 s. 78\(2\)\(c\)\(ii\)](#)
- s. 37A(6) words omitted by [2021 c. 30 s. 78\(2\)\(d\)](#)
- s. 37A(8) omitted by [2021 c. 30 s. 78\(2\)\(e\)](#)
- s. 37A(10) omitted by [2021 c. 30 s. 78\(2\)\(f\)](#)
- s. 37B omitted by [2021 c. 30 s. 78\(3\)](#)
- s. 37C omitted by [2021 c. 30 s. 78\(3\)](#)
- s. 37D(1) words substituted by [2021 c. 30 s. 78\(4\)\(a\)](#)
- s. 37D(3)(a) words substituted by [2021 c. 30 s. 78\(4\)\(b\)\(i\)](#)
- s. 37D(3)(b) and word omitted by [2021 c. 30 s. 78\(4\)\(b\)\(ii\)](#)
- s. 38ZA(1) words repealed by [2014 c. 21 Sch. 5 para. 26\(2\)](#)
- s. 38ZA(6) words substituted by [2014 c. 21 Sch. 5 para. 26\(3\)](#)
- s. 39B heading words omitted by [2021 c. 30 s. 78\(5\)\(a\)](#)
- s. 39B(4)(b) words omitted by [2021 c. 30 s. 78\(5\)\(b\)](#)
- s. 39B(5) substituted by [2021 c. 30 s. 78\(5\)\(c\)](#)
- s. 39B(6) words omitted by [2021 c. 30 s. 78\(5\)\(d\)\(ii\)](#)
- s. 39B(6)(c) words omitted by [2021 c. 30 s. 78\(5\)\(d\)\(i\)](#)
- s. 39B(7) omitted by [2021 c. 30 s. 78\(5\)\(e\)](#)
- s. 39B(9) words omitted by [2021 c. 30 s. 78\(5\)\(f\)](#)
- s. 39C omitted by [2021 c. 30 s. 78\(6\)](#)
- s. 52(4A) word inserted by [2014 c. 21 Sch. 5 para. 27\(a\)](#)
- s. 52(4A)(c) and word repealed by [2014 c. 21 Sch. 5 para. 27\(b\)](#)
- s. 55(1A)(b) words repealed by [2014 c. 21 Sch. 5 para. 28](#)
- s. 63AC(4) words repealed by [2014 c. 21 Sch. 5 para. 29](#)
- s. 66A(2) repealed by [2014 c. 21 Sch. 5 para. 30\(2\)](#)
- s. 66A(5)(a) words repealed by [2014 c. 21 Sch. 5 para. 30\(3\)\(a\)](#)
- s. 66A(5)(b) repealed by [2014 c. 21 Sch. 5 para. 30\(3\)\(b\)](#)
- s. 66A(7)(a) words repealed by [2014 c. 21 Sch. 5 para. 30\(4\)](#)
- s. 66A(7)(a) words repealed by [2014 c. 21 Sch. 5 para. 31\(5\)](#)
- s. 66A(9)(c) words repealed by [2014 c. 21 Sch. 5 para. 30\(5\)](#)
- s. 66B(2) repealed by [2014 c. 21 Sch. 5 para. 32\(2\)](#)
- s. 66B(3) repealed by [2014 c. 21 Sch. 5 para. 32\(2\)](#)
- s. 66B(4)(a) words repealed by [2014 c. 21 Sch. 5 para. 32\(3\)\(a\)](#)
- s. 66B(4)(b) repealed by [2014 c. 21 Sch. 5 para. 32\(3\)\(b\)](#)
- s. 66B(4)(c) repealed by [2014 c. 21 Sch. 5 para. 32\(3\)\(b\)](#)
- s. 66B(4)(d) words substituted by [2014 c. 21 Sch. 5 para. 32\(3\)\(c\)](#)
- s. 66B(6)(a) words repealed by [2014 c. 21 Sch. 5 para. 32\(4\)](#)
- s. 66B(7) repealed by [2014 c. 21 Sch. 5 para. 32\(5\)](#)
- s. 66B(8) repealed by [2014 c. 21 Sch. 5 para. 32\(5\)](#)
- s. 66B(9) words repealed by [2014 c. 21 Sch. 5 para. 32\(6\)](#)
- s. 66B(10)(b) repealed by [2014 c. 21 Sch. 5 para. 32\(7\)](#)
- s. 66C(1) words repealed by [2014 c. 21 Sch. 5 para. 33\(2\)](#)
- s. 66C(2)-(4) repealed by [2014 c. 21 Sch. 5 para. 33\(3\)](#)
- s. 66C(5) words repealed by [2014 c. 21 Sch. 5 para. 33\(4\)](#)
- s. 66C(6)(a) words repealed by [2014 c. 21 Sch. 5 para. 33\(5\)](#)
- s. 66C(7) words repealed by [2014 c. 21 Sch. 5 para. 33\(6\)](#)
- s. 66C(9)(a) words repealed by [2014 c. 21 Sch. 5 para. 33\(7\)](#)
- s. 66C(11) words repealed by [2014 c. 21 Sch. 5 para. 33\(8\)](#)
- s. 66E(3) words repealed by [2014 c. 21 Sch. 5 para. 34](#)
- s. 66G(11)(b) and word repealed by [2014 c. 21 Sch. 5 para. 36](#)
- s. 66H(11)(b) and word repealed by [2014 c. 21 Sch. 5 para. 37](#)

- s. 66AA(2) repealed by 2014 c. 21 Sch. 5 para. 31(2)
- s. 66AA(3)(a) words repealed by 2014 c. 21 Sch. 5 para. 31(3)
- s. 66AA(5)(a) words repealed by 2014 c. 21 Sch. 5 para. 31(4)(a)
- s. 66AA(5)(b) words repealed by 2014 c. 21 Sch. 5 para. 31(4)(b)
- s. 66EA(1)(a) words repealed by 2014 c. 21 Sch. 5 para. 35
- s. 68(1A)(a) words repealed by 2014 c. 21 Sch. 5 para. 38(2)(a)
- s. 68(1A)(b) words repealed by 2014 c. 21 Sch. 5 para. 38(2)(b)
- s. 68(1A)(b) words substituted by 2014 c. 21 Sch. 7 para. 67(3)(c)
- s. 68(6) words repealed by 2014 c. 21 Sch. 5 para. 38(3)
- s. 95ZA(1) word substituted by 2014 c. 21 Sch. 5 para. 39(2)(a)
- s. 95ZA(1)(b)(i) word substituted by 2014 c. 21 Sch. 5 para. 39(2)(b)
- s. 95ZA(2) word substituted by 2014 c. 21 Sch. 5 para. 39(2)(c)
- s. 95ZA(2) word substituted by 2014 c. 21 Sch. 5 para. 39(3)
- s. 104(9) repealed by 2014 c. 21 Sch. 7 para. 91
- s. 106 applied by S.I. 2020/1297 art. 13(2) (This amendment not applied to legislation.gov.uk. S.I. 2020/1297 was withdrawn following a request from the Department of Transport dated 9th August 2021 which followed the decision of the High Court of Justice to quash this Order in the judgement dated 2nd August 2021 (High Court of Justice — Planning Court — The Queen (on the application of Save Stonehenge World Heritage Site) v. Secretary of State for Transport — Case No. CO/4844/2020))
- s. 117G(4) modified by 2014 c. 21 Sch. 5 para. 41(5)
- s. 117L(3) words substituted by 2014 c. 21 Sch. 5 para. 43(2)
- s. 117L(4) words substituted by 2014 c. 21 Sch. 5 para. 43(2)
- s. 117L(5)(b) words substituted by 2014 c. 21 Sch. 5 para. 43(2)
- s. 117M(3) words substituted by 2014 c. 21 Sch. 5 para. 44(2)
- s. 117M(7) words substituted by 2014 c. 21 Sch. 5 para. 44(3)
- s. 117P(1) words repealed by 2014 c. 21 Sch. 5 para. 47
- s. 117Q(1) words repealed by 2014 c. 21 Sch. 5 para. 48
- s. 121(6) words inserted by 2003 c. 37 s. 89(2)(b)
- s. 138(2)-(4) repealed by 1999 c. 24 Sch. 3
- s. 138(5) repealed by 2003 c. 37 s. 88(3)Sch. 9 Pt. 3
- s. 139 substituted by 2003 c. 37 s. 88(1)
- s. 141(1) words inserted by 2003 c. 37 s. 88(4)
- s. 158(7)(a) words repealed by 2014 c. 21 Sch. 5 para. 50(a)
- s. 158(7)(a) words repealed by 2014 c. 21 Sch. 5 para. 50(b)
- s. 158(7)(a) words substituted by 2014 c. 21 Sch. 7 para. 104
- s. 171(3) words inserted by 2003 c. 37 s. 88(5)
- s. 195(3AA) words inserted by 2014 c. 21 Sch. 5 para. 51
- s. 206(3)(a) words repealed by 1999 c. 24 Sch. 3
- s. 206(4)(a) words repealed by 1999 c. 24 Sch. 3
- s. 206(9) words repealed by 2003 c. 44 Sch. 37 Pt. 9
- s. 213(1) word inserted by 2014 c. 21 Sch. 7 para. 119(2)(c)
- s. 213(1) words repealed by 2014 c. 21 Sch. 7 para. 119(2)(a)
- s. 213(1) words repealed by 2014 c. 21 Sch. 7 para. 119(2)(b)
- Sch. 2A para. 1 repealed by 2014 c. 21 Sch. 5 para. 54(2)
- Sch. 2A para. 2 repealed by 2014 c. 21 Sch. 5 para. 54(2)
- Sch. 2A para. 6-8 repealed by 2014 c. 21 Sch. 5 para. 54(3)
- Sch. 2A para. 9 words substituted by 2014 c. 21 Sch. 5 para. 54(4)
- Sch. 2A para. 10 words substituted by 2014 c. 21 Sch. 5 para. 54(5)
- Sch. 4A para. 13(2)(a) by 2000 c. 43 Sch. 7 para. 114
- Sch. 4A para. 16 words omitted by 2012 c. 7 Sch. 14 para. 56
- Sch. 6 para. 5(5) words repealed by 2003 c. 44 Sch. 37 Pt. 9
- Sch. 6 para. 5(4) words substituted for para. (a)(b) by 2003 c. 44 Sch. 32 para. 159

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 3 Ch. 2B inserted by 2014 c. 21 s. 12
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by S.I. 2019/1245 reg. 21 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by 2014 c. 21 Sch. 5 para. 4(2)(c)
- s. 17A(d) repealed by 2014 c. 21 Sch. 5 para. 4(2)(c)
- s. 17A(2)(ba) and word inserted by 2014 c. 21 Sch. 5 para. 4(2)(b)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by S.I. 2019/1245 reg. 21 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by 2014 c. 21 Sch. 5 para. 5(2)
- s. 17BA(5A) inserted by 2014 c. 21 Sch. 5 para. 7(3)
- s. 17HA(9)(b)(ia) inserted by 2014 c. 21 Sch. 5 para. 16(2)
- s. 23(2AA) inserted by 2014 c. 21 Sch. 7 para. 35(4)
- s. 23(8)(9) inserted by 2014 c. 21 Sch. 7 para. 35(10)
- s. 39E-39H inserted by 2021 c. 30 s. 78(7)
- s. 87(7C)-(7F) inserted by 2012 c. 7 s. 35(6)
- s. 94A-94E inserted by 2021 c. 30 s. 79
- s. 95ZA(6) inserted by 2014 c. 21 Sch. 5 para. 39(4)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by 2014 c. 21 Sch. 5 para. 40
- s. 106B(3A) inserted by 2014 c. 21 Sch. 7 para. 94
- s. 117G(2)(aa) inserted by 2014 c. 21 Sch. 5 para. 41(2)
- s. 117G(4)-(4D) substituted for s. 117(4) by 2014 c. 21 Sch. 5 para. 41(3)
- s. 117G(6)(aa) inserted by 2014 c. 21 Sch. 5 para. 41(4)
- s. 117K(2)(aa) inserted by 2014 c. 21 Sch. 5 para. 42(2)
- s. 117K(5)(5A) substituted for s. 117(5) by 2014 c. 21 Sch. 5 para. 42(3)
- s. 117L(9) inserted by 2014 c. 21 Sch. 5 para. 43(3)
- s. 117N(4)(aa) inserted by 2014 c. 21 Sch. 5 para. 45(2)
- s. 117N(8)(aa) inserted by 2014 c. 21 Sch. 5 para. 45(3)
- s. 117N(11)(aa) inserted by 2014 c. 21 Sch. 5 para. 45(4)
- s. 117O(4)(aa) inserted by 2014 c. 21 Sch. 5 para. 46(2)
- s. 117O(8)(aa) inserted by 2014 c. 21 Sch. 5 para. 46(3)
- s. 117S(7)-(9) inserted by 2014 c. 21 Sch. 5 para. 49
- s. 119(2)(ab) inserted by 2003 c. 37 s. 89(1)(a)
- s. 119(3) inserted by 2003 c. 37 s. 89(1)(b)
- s. 121(1)(ba) inserted by 2003 c. 37 s. 89(2)(a)
- s. 141DA inserted by 2021 c. 30 s. 81
- s. 141DC inserted by 2021 c. 30 s. 83
- s. 177K(7)(aa) inserted by 2014 c. 21 Sch. 5 para. 42(4)
- s. 207D and cross-heading inserted by 2014 c. 21 s. 39
- s. 207D(5) word repealed by 2014 c. 21 Sch. 5 para. 52(a)
- s. 207D(5) words inserted by 2014 c. 21 Sch. 5 para. 52(b)
- s. 213(1ZA) inserted by 2014 c. 21 Sch. 7 para. 119(3)
- s. 213(1ZA) repealed by 2014 c. 21 Sch. 5 para. 53

Raymond, Sarah

From: Raymond, Sarah
Sent: 11 August 2023 10:35
To: Maria Woods
Cc: Mark.McAree@jacobs.com; Wager, Tommy; Daniel, Naomi
Subject: Credible Scenario and Secondary Containment

Hello Maria,

Following on from the meeting that Thames Water requested in relation to Maple Lodge we would like to clarify our position on 'credible scenarios' for use in containment proposals.

Guidance Best Available Techniques (BAT) Reference Document for Waste Treatment (https://eippcb.jrc.ec.europa.eu/sites/default/files/2019-11/JRC113018_WT_Bref.pdf) BAT conclusion 19 requires that "in order to optimise water consumption, to reduce the volume of waste water generated and to prevent or, where that is not practicable, to reduce emissions to soil and water, BAT is to use an appropriate combination of the techniques given below.". Technique C identifies Impermeable surfacing, and technique D identifies techniques to reduce the likelihood and impact of overflows and failures from tanks and vessels which includes providing suitable secondary containment for tanks containing liquids.

Section 4.2.1 of CIRIA 736 is clear that;

"Where two or more tanks are installed within the same bund, the recommended capacity of the bund is the greater of:

- 1) 110 per cent of the capacity of the largest tank within the bund*
- 2) 25 per cent of the total capacity of all the tanks within the bund, except where tanks are hydraulically linked in which case they should be treated as if they were a single tank"*

We note that CIRIA 736 provides that the total bund volume may be "based on risk assessment based on credible scenario for multi tank installation" which you raised at our meeting, and we would like to clarify our position on the use of 'credible scenarios'.

BAT is clear that you must provide secondary containment which we would expect to include impermeable surfacing and application of the 110% or 25% rule in line with CIRIA 736. Any deviation to this would be classed as an 'alternative approach' to BAT which you would need to demonstrate with detailed evidence in the determination of your application (not through an IC) that the 'alternative approach' proposed would provide the same level of environmental protection at the relevant BAT technique.

We would also highlight at this point that cost would not be a factor for an alternative approach as BAT is considered to be affordable across the industry sector as a whole for both newly built plant and a "typical" existing plant. A cost benefit analysis is only relevant in cases which qualify for a derogation from BAT and the derogation process only applies to associated emission levels (AELs) which are not applicable to containment as the relevant BAT technique requires that, "in order to optimise water consumption, to reduce the volume of waste water generated and to prevent or, where that is not practicable, to reduce emissions to soil and water, BAT is to use an appropriate combination of the techniques." Any deviation from identified BAT would require evidence to demonstrate either that:

- Any alternative technique would provide at least the same level of environmental protection that is equivalent to the BAT.
- There are specific and demonstrable reasons why the BAT should not apply in this case.
- There are specific and demonstrable reasons why a lower standard of environmental protection should be permitted.

In relation to evidence to be provided to support a 'credible scenario' / 'alternative BAT approach' we would expect the provision of your final containment proposal as part of your permit application to be provided with as a minimum, and information to be provided as per below.

- A written 'secondary containment improvement and implementation plan' including final detailed designs, specifications and an implementation schedule for the proposed secondary containment systems. The finalised designs and specifications must be produced by appropriate competent individuals (qualified civil or structural engineer), in accordance with the risk assessment methodology detailed within CIRIA C736 (2014) guidance. The plan shall include but not be limited to the following components:
 - An updated BAT assessment with specific regard to BAT 19 of the Waste Treatment BREF.
 - An assessment of the suitability of the proposals for providing containment when subjected to the dynamic and static loads caused by catastrophic tank failure.
 - Finalised designs and specifications of the proposed secondary containment proposals completed by appropriate competent individuals.
 - A program of works with timescales for the commissioning of the proposed secondary containment systems to comply with CIRIA C736 (2014) guidance, or equivalent.
 - An updated site and infrastructure plan.
 - A preventative maintenance and inspection regime.

- If the plan proposes containment volumes that do not comply with the requirements of section 4.2.1 of CIRIA C736 (2014) guidance, or an alternative approach to BAT, then the plan shall also include a written quantitative risk assessment undertaken by appropriate competent individuals (qualified civil or structural engineer) to demonstrate that the containment volume proposed will provide sufficient secondary containment in accordance with the risk assessment methodology detailed within CIRIA C736 (2014) guidance to protect the environment. The quantitative risk assessment shall include but not be limited to the following components:
 - A quantitative risk assessment of all scenarios for tank and pipework failure and multiple tank and pipework failure, to determine credible scenarios with supporting evidence for decision outcomes.
 - An assessment of the capability of adjacent tanks and pipework to withstand the hydrostatic and hydrodynamic pressures from the material released in the event of a single tank failure.
 - Integrity testing results of all relevant tanks and pipework.

Should this not be provided at the 'Duly making' stage we will be unable to 'Duly make' any application where you are proposing an 'alternative approach' to BAT for secondary containment as we will not have sufficient evidence to assess in relation to compliance with BAT.

We hope the above provides clarity on our approach.

Kind regards

Sarah Raymond

Senior Permitting Officer – Installations

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Working days: Monday to Friday



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