# Water Resources Act 1991

CHAPTER 57

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CHAPTER 57

**[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.]**

## ARRANGEMENT OF SECTIONS


PART I

PRELIMINARY

CHAPTER I

THE NATIONAL RIVERS AUTHORITY

Section

1. The National Rivers Authority.
2. The Authority's functions.
3. Incidental functions of the Authority.
4. Incidental general powers of the Authority.
5. Ministerial directions to the Authority.

CHAPTER II

COMMITTEES WITH FUNCTIONS IN RELATION TO THE AUTHORITY

*Advisory committees*

6. The advisory committee for Wales.
7. Regional rivers advisory committees.
8. Regional and local fisheries advisory committees.

*Flood defence committees*

9. Continuance of regional flood defence committees.
10. Composition of regional flood defence committees.
11. Change of composition of regional flood defence committee.
12. Local flood defence schemes and local flood defence committees.
13. Composition of local flood defence committees.
14. Membership and proceedings of flood defence committees.

CHAPTER III

GENERAL DUTIES

15. General duties with respect to the water industry.
16. General environmental and recreational duties.

Section
17. Environmental duties with respect to sites of special interest.
18. Codes of practice with respect to environmental and recreational duties.

PART II

WATER RESOURCES MANAGEMENT

CHAPTER I

GENERAL MANAGEMENT FUNCTIONS

19. General management of resources by the Authority.
20. Water resources management schemes.
21. Minimum acceptable flows.
22. Directions to the Authority to consider minimum acceptable flow.
23. Minimum acceptable level or volume of inland waters.

CHAPTER II

ABSTRACTION AND IMPOUNDING

*Restrictions on abstraction and impounding*

24. Restrictions on abstraction.
25. Restrictions on impounding.

*Rights to abstract or impound*

26. Rights of navigation, harbour and conservancy authorities.
27. Rights to abstract small quantities.
28. Curtailment of rights under section 27.
29. Rights to abstract for drainage purposes etc.
30. Notices with respect to borings not requiring licences.
31. Appeals against conservation notices under section 30.
32. Miscellaneous rights to abstract.
33. Power to provide for further rights to abstract.

*Applications for a licence*

34. Regulations with respect to applications.
35. Restrictions on persons who may make applications for abstraction licences.
36. Application for combined abstraction and impounding licence.
37. Publication of application for licence.

*Consideration of licence applications*

38. General consideration of applications.
39. Obligation to have regard to existing rights and privileges.
40. Obligation to take river flow etc. into account.

*Call-in of applications*

41. Secretary of State's power to call in applications
42. Consideration of called-in applications.

*Appeals with respect to decisions on licence applications*

43. Appeals to the Secretary of State.

Section
44. Determination of appeals.
45. Regulations with respect to appeals.

*Form, contents and effect of licences*

46. Form and contents of licences.
47. Holders of licence.
48. General effect of licence.

*Succession to licences*

49. Succession to licences to abstract where person ceases to occupy the relevant land.
50. Succession where person becomes occupier of part of the relevant land.

*Modification of licences*

51. Modification on application of licence holder.
52. Proposals for modification at instance of the Authority or Secretary of State.
53. Modification in pursuance of proposals under section 52.
54. Reference of modification proposals to the Secretary of State.
55. Application for modification of licence by owner of fishing rights.
56. Determination of application under section 55.
57. Emergency variation of licences for spray irrigation purposes.
58. Revocation of licence for non-payment of charges.
59. Regulations with respect to modification applications.

*Remedies and compensation in respect of infringement of protected rights etc.*

60. Liability of the Authority for derogation from protected right.
61. Compensation where licence modified on direction of the Secretary of State.
62. Compensation for owner of fishing rights applying under section 55.
63. Secretary of State to indemnify Authority in certain cases.

*Supplemental provisions of Chapter II*

64. Abstracting and impounding by the Authority.
65. Licences of right.
66. Inland waters owned or managed by British Waterways Board.
67. Ecclesiastical property.
68. Provision for appeals and references to tribunal.
69. Validity of decisions of Secretary of State and related proceedings.
70. Civil liability under Chapter II.
71. Modification of local enactments.
72. Interpretation of Chapter II.

CHAPTER III

DROUGHT

73. Power to make ordinary and emergency drought orders.
74. Provisions and duration of ordinary drought order.
75. Provisions and duration of emergency drought order.

Section
76. Provisions of drought order restricting use of water.
77. Provisions of drought order with respect to abstractions and discharges.
78. Works under drought orders.
79. Compensation and charges where drought order made.
80. Offences against drought order.
81. Interpretation of Chapter III.

PART III

CONTROL OF POLLUTION OF WATER RESOURCES

CHAPTER I

QUALITY OBJECTIVES

82. Classification of quality of waters.
83. Water quality objectives.
84. General duties to achieve and maintain objectives etc.

CHAPTER II

POLLUTION OFFENCES

*Principal offences*

85. Offences of polluting controlled waters.
86. Prohibition of certain discharges by notice or regulations.
87. Discharges into and from public sewers etc.
88. Defence to principal offences in respect of authorised discharges.
89. Other defences to principal offences.

*Offences in connection with deposits and vegetation in rivers*

90. Offences in connection with deposits and vegetation in rivers.

*Appeals in respect of consents under Chapter II*

91. Appeals in respect of consents under Chapter II.

CHAPTER III

POWERS TO PREVENT AND CONTROL POLLUTION

92. Requirements to take precautions against pollution.
93. Water protection zones.
94. Nitrate sensitive areas.
95. Agreements in nitrate sensitive areas.
96. Regulations with respect to consents required by virtue of section 93 or 94.
97. Codes of good agricultural practice.

CHAPTER IV

SUPPLEMENTAL PROVISIONS WITH RESPECT TO WATER POLLUTION

98. Radioactive substances.
99. Consents required by the Authority.
100. Civil liability in respect of pollution and savings.
101. Limitation for summary offences under Part III.
102. Power to give effect to international obligations.

Section
103. Transitional pollution provisions.
104. Meaning of "controlled waters" etc. in Part III.

PART IV

FLOOD DEFENCE

*General*

105. General functions with respect to flood defence.
106. Obligation to carry out flood defence functions through committees.

*Main river functions*

107. Main river functions under the Land Drainage Act 1991.
108. Schemes for transfer to the Authority of functions in relation to main river.
109. Structures in, over or under a main river.
110. Applications for consents and approvals under section 109.

*Arrangements with certain authorities*

111. Arrangements with navigation and conservancy authorities.

*Supplemental*

112. Flood defence regulations.
113. Interpretation of Part IV.

PART V

GENERAL CONTROL OF FISHERIES

114. General fisheries duty of the Authority.
115. Fisheries orders.
116. Power to give effect to international obligations.

PART VI

FINANCIAL PROVISIONS IN RELATION TO THE AUTHORITY

CHAPTER I

GENERAL FINANCIAL PROVISIONS

117. General financial duties.
118. Special duties with respect to flood defence revenue.
119. Duties with respect to certain funds raised under local enactments.
120. Contributions between the Authority and certain other authorities.
121. Accounts of the Authority.
122. Audit.

CHAPTER II

REVENUE PROVISIONS

*Water resources charges*

123. Power to make scheme imposing water resources charges.
124. Approval of scheme under section 123.

Section
125. Specific exemptions from water resources charges.
126. Agreements containing exemptions from charges.
127. Special charges in respect of spray irrigation.
128. Duration of agreement under section 127.
129. Directions and appeals with respect to exercise of powers under sections 127 and 128.
130. Charges in respect of abstraction from waters of British Waterways Board.

*Charges in connection with control of pollution*

131. Power to make scheme of charges.
132. Approval of scheme under section 131.

*Levies by the Authority on local authorities*

133. Power to authorise the Authority to issue levies.

*General drainage charges*

134. Raising of general drainage charges.
135. Amount, assessment etc. of general drainage charge.
136. Determination of the relevant quotient.

*Special drainage charges*

137. Special drainage charges in interests of agriculture.
138. Levying and amount of special drainage charge.

*Revenue from internal drainage boards*

139. Contributions from internal drainage boards.
140. Appeals in respect of resolutions under section 139.
141. Precepts for recovery of contributions from internal drainage boards.

*Fisheries contributions*

142. Fisheries contributions.

*Navigation tolls*

143. Power of Authority to levy navigation tolls.

*Incidental power of the Authority to impose charges*

144. Incidental power of the Authority to impose charges.

*Interpretation of Chapter II*

145. Interpretation of Chapter II.

CHAPTER III

GRANTS AND LOANS

*Grants to the Authority*

146. Revenue grants.
147. Grants for drainage works.

Section
148. Grants towards cost of flood warning systems.
149. Other grants in respect of exercise of powers under Part VII for drainage purposes.
150. Grants for national security purposes.

*Borrowing by the Authority*

151. Borrowing powers of the Authority.
152. Loans to the Authority.
153. Treasury guarantees of the Authority's borrowing.

PART VII

LAND AND WORKS POWERS

CHAPTER I

POWERS OF THE AUTHORITY

*Provisions in relation to land*

154. Compulsory purchase etc.
155. Accretions of land resulting from drainage works.
156. Acquisition of land etc. for fisheries purposes.
157. Restriction on disposals of compulsorily acquired land.

*Works agreements for water resources purposes*

158. Works agreements for water resources purposes.

*General pipe-laying powers*

159. Powers to lay pipes in streets.
160. Power to lay pipes in other land.

*Anti-pollution works*

161. Anti-pollution works and operations.
162. Other powers to deal with foul water and pollution.

*Powers to discharge water*

163. Discharges for works purposes.
164. Consents for certain discharges under section 163.

*Flood defence and drainage works*

165. General powers to carry out flood defence and drainage works.
166. Power to carry out works for purpose of providing flood warning system.
167. Power to dispose of spoil in connection with flood defence works.

*Compulsory works orders*

168. Compulsory works orders.

CHAPTER II

POWERS OF ENTRY

169. Powers of entry for enforcement purposes.

Section
170. Power of entry for certain works purposes.
171. Power to carry out surveys and to search for water.
172. Powers of entry for other purposes.
173. Powers of entry: supplemental provisions.
174. Impersonation of persons exercising powers of entry.

CHAPTER III

PROVISIONS SUPPLEMENTAL TO LAND AND WORKS POWERS

*Vesting of pipes in the Authority*

175. Vesting of pipes in the Authority.

*Offence of interference with works etc.*

176. Offence of interference with works etc.

*Compensation etc. in respect of exercise of works powers*

177. Compensation etc. in respect of exercise of works powers.

*Protective provisions*

178. Protection for particular undertakings.
179. Protective provisions in respect of flood defence works and watercourses etc.
180. Power of navigation authorities etc to divert the Authority's watercourses.
181. Works in tidal lands etc.
182. Mineral rights.
183. Saving for planning controls etc.
184. Duties to make recreational facilities available when building reservoirs in Wales.

*Savings in respect of existing drainage obligations*

185. Savings in respect of existing drainage obligations.

*Interpretation of Part VII*

186. Interpretation of Part VII.

PART VIII

INFORMATION PROVISIONS

*Annual report and publication of information*

187. Annual report of the Authority.
188. Duty of Authority to publish certain information.

*Registers etc. to be kept by the Authority*

189. Register of abstraction and impounding licences.
190. Pollution control register.

Section
191. Register for the purposes of works discharges.
192. Maps of freshwater limits.
193. Main river maps.
194. Amendment of main river maps.
195. Maps of waterworks.

*Provision and acquisition of information etc.*

196. Provision of information by the Authority to the Ministers.
197. Provision of information about water flow etc.
198. Information about underground water.
199. Notice etc. of mining operations which may affect water conservation.
200. Gauges and records kept by other persons.
201. Power to require information with respect to abstraction.
202. Information and assistance required in connection with the control of pollution.
203. Exchange of information with respect to pollution incidents etc.

*Restriction on disclosure of information*

204. Restriction on disclosure of information.
205. Confidentiality of information relating to underground water etc.

*Making of false statements etc.*

206. Making of false statements etc.

PART IX

MISCELLANEOUS AND SUPPLEMENTAL

*Miscellaneous*

207. Directions in the interests of national security etc.
208. Civil liability of the Authority for escapes of water etc.
209. Evidence of samples and abstractions.

*Byelaws*

210. Byelaw-making powers of the Authority.
211. Enforcement of byelaws.
212. Compensation in respect of certain fisheries byelaws.

*Local inquiries*

213. General powers to hold local inquiries.
214. Power to hold inquiries for flood defence purposes etc.

Section
215. Procedure at local inquiries.

*Offences etc.*

216. Enforcement: powers and duties.
217. Criminal liabilities of directors and other third parties.

*Judicial disqualification*

218. Judicial disqualification.

*Powers to make regulations*

219. Powers to make regulations.

*Construction of Act*

220. Provisions relating to service of documents.
221. General interpretation.

*Other supplemental provisions*

222. Crown application.
223. Exemption for visiting forces.
224. Application to Isles of Scilly.
225. Short title, commencement and extent.

SCHEDULES:

Schedule 1—The National Rivers Authority.
Schedule 2—Orders and Agreements for transfer of Navigation, Harbour and Conservancy Functions.
Schedule 3—Boundaries of Regional Flood Defence Areas.
Schedule 4—Membership and Proceedings of Regional and Local Flood Defence Committees.
Part I—Membership of Flood Defence Committees.
Part II—Proceedings of Flood Defence Committees.
Schedule 5—Procedure relating to Statements on Minimum Acceptable Flow.
Schedule 6—Orders providing for Exemption from Restrictions on Abstraction.
Schedule 7—Licences of Right.
Schedule 8—Proceedings on Applications for Drought Orders.
Schedule 9—Compensation in respect of Drought Orders.
Schedule 10—Discharge Consents.
Schedule 11—Water Protection Zone Orders.
Schedule 12—Nitrate Sensitive Area Orders.
Part I—Applications by the Authority for Designation Orders.
Part II—Orders containing Mandatory Provisions.
Schedule 13—Transitional Water Pollution Provisions.
Schedule 14—Orders transferring Main River Functions to the Authority.
Schedule 15—Supplemental provisions with respect to Drainage Charges.
Schedule 16—Schemes imposing Special Drainage Charges.
Schedule 17—Orders with respect to Navigation Tolls.

Schedule 18—Modification of Compensation Provisions etc. in relation to the Creation of New Rights.
Schedule 19—Orders conferring Compulsory Works Powers.
Schedule 20—Supplemental Provisions with respect to Powers of Entry.
Schedule 21—Compensation etc. in respect of certain works powers.
Schedule 22—Protection for particular Undertakings.
Schedule 23—Mineral Rights.
Schedule 24—Disclosure of Information.
Part I—Persons in respect of whose Functions Disclosure may be made.
Part II—Enactments etc. in respect of which Disclosure may be made.
Schedule 25—Byelaw-making powers of the Authority.
Schedule 26—Procedure relating to Byelaws made by the Authority.

# 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:—

### PART I

### PRELIMINARY

### CHAPTER I

### THE NATIONAL RIVERS AUTHORITY

The National Rivers Authority.

**1.**—(1) There shall continue to be a body corporate, known as the National Rivers Authority, for the purpose of carrying out the functions specified in section 2 below.

(2) The Authority shall consist of not less than eight nor more than fifteen members of whom—

(a) two shall be appointed by the Minister; and

(b) the others shall be appointed by the Secretary of State.

(3) The Secretary of State shall designate one of the members appointed by him as the chairman of the Authority and may, if he thinks fit, designate another member of the Authority (whether or not appointed by him) as the deputy chairman of the Authority.

(4) In appointing a person to be a member of the Authority, the Secretary of State or, as the case may be, the Minister shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the Authority.

PART I

(5) The Authority shall not be regarded—

(a) as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or

(b) by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local;

and the Authority's property shall not be regarded as property of, or property held on behalf of, the Crown.

(6) The provisions of Schedule 1 to this Act shall have effect with respect to the Authority.

The Authority's functions.

2.—(1) The functions of the Authority are—

(a) its functions with respect to water resources by virtue of Part II of this Act;

(b) its functions with respect to water pollution by virtue of Part III of this Act;

(c) its functions with respect to flood defence and land drainage by virtue of Part IV of this Act and the Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the 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);

1991 c. 59.

1989 c. 15.

(d) its functions with respect to fisheries by virtue of Part V of this Act, the Diseases of Fish Act 1937, the Sea Fisheries Regulation Act 1966, the Salmon and Freshwater Fisheries Act 1975 and other enactments relating to fisheries;

1937 c. 33.
1966 c. 38.
1975 c. 51.

(e) the functions as a navigation authority, harbour authority or conservancy authority which were transferred to the Authority by virtue of Chapter V of Part III of the Water Act 1989 or paragraph 23(3) of Schedule 13 to that Act or which are transferred to the Authority by any order or agreement under Schedule 2 to this Act; and

(f) the functions assigned to the Authority by any other enactment.

(2) Without prejudice to its duties under section 16 below, it shall be the duty of the Authority, to such extent as it considers desirable, generally to promote—

(a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;

(b) the conservation of flora and fauna which are dependent on an aquatic environment; and

(c) the use of such waters and land for recreational purposes;

and it shall be the duty of the Authority, in determining what steps to take in performance of the duty imposed by virtue of paragraph (c) above, to take into account the needs of persons who are chronically sick or disabled.

(3) It shall be the duty of the Authority to make arrangements for the carrying out of research and related activities (whether by the Authority or others) in respect of matters to which the functions of the Authority relate.

(4) The provisions of this Act relating to the functions of the Authority under Chapter II of Part II of this Act, and the related water resources provisions so far as they relate to other functions of the Authority, shall not apply to so much of any inland waters as—

(a) are part of the River Tweed;

(b) are part of the River Esk or River Sark at a point where either of the banks of the river is in Scotland; or

(c) are part of any tributary stream of the River Esk or the River Sark at a point where either of the banks of the tributary stream is in Scotland.

(5) The functions of the Authority specified in subsection (1)(c) above extend to the territorial sea adjacent to England and Wales in so far as—

(a) the area of any regional flood defence committee includes any area of that territorial sea; or

(b) section 165(2) or (3) below provides for the exercise of any power in the territorial sea.

(6) The area in respect of which the Authority shall carry out its functions relating to fisheries shall be the whole of England and Wales, together with—

(a) such part of the territorial sea adjacent to England and Wales as extends for six miles from the baselines from which the breadth of that sea is measured; and

(b) in the case of Part V of this Act, the Diseases of Fish Act 1937 and the Salmon and Freshwater Fisheries Act 1975, so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland,

1937 c. 33.
1975 c. 51.

but, in the case of Part V of this Act and those Acts, excluding the River Tweed.

(7) In this section—

"miles" means international nautical miles of 1,852 metres; and

"the River Tweed" means "the river" within the meaning of the Tweed Fisheries Amendment Act 1859, as amended by byelaws.

1859 c. lxx.

**Incidental functions of the Authority.**

**3.**—(1) This section has effect, without prejudice to section 2 above, for the purposes of section 4(1) below and the construction of any other enactment which, by reference to the functions of the Authority, confers any power on or in relation to the Authority.

(2) For the purposes to which this section applies the functions of the Authority shall be taken to include the protection against pollution—

(a) of any waters, whether on the surface or underground, which belong to the Authority or any water undertaker or from which the Authority 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 Authority or any water undertaker or which the Authority or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and

PART I

(c) of any underground strata from which the Authority 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.

(3) For the purposes to which this section applies the functions of the Authority 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 Water Act 1989 on the Authority or on relevant undertakers.

1989 c. 15.

(4) For the purposes to which this section applies the functions of the Authority shall be taken to include joining with or acting on behalf of one or more relevant undertakers for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of—

(a) any function of that undertaker under any enactment; or

(b) any function which is taken to be a function of that undertaker for the purposes to which section 217 of the Water Industry Act 1991 applies.

1991 c. 56.

(5) For the purposes to which this section applies the functions of the Authority 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 the Authority.

(6) For the purposes to which this section applies the functions of the Authority shall be taken to include the provision of houses and other buildings for the use of persons employed by the Authority and the provision of recreation grounds for persons so employed.

(7) In this section—

"the other consolidation Acts" means the Water Industry Act 1991, the Statutory Water Companies Act 1991, the Land Drainage Act 1991 and the Water Consolidation (Consequential Provisions) Act 1991;

1991 c. 58.
1991 c. 59.
1991 c. 60.

"relevant undertaker" means a water undertaker or sewerage undertaker; and

"supply of water in bulk" means a supply of water for distribution by a water undertaker taking the supply.

Incidental general powers of the Authority.

4.—(1) The Authority—

(a) shall have power to do anything which, in the opinion of the Authority, is calculated to facilitate, or is conducive or incidental to, the carrying out of the Authority's functions; and

(b) without prejudice to the generality of that power, shall have power, for the purposes of, or in connection with, the carrying out of those functions, to institute criminal proceedings, to acquire and dispose of land and other property and to carry out such engineering or building operations at such places as the Authority considers appropriate.

PART I

(2) Subject to subsection (3) below, the Authority may provide for any person outside the United Kingdom advice or assistance, including training facilities, as respects any matter in which the Authority has skill or experience.

(3) Without prejudice to any power of the Authority apart from subsection (2) above to provide advice or assistance of the kind mentioned in that subsection, the power conferred by that subsection shall not be exercised except—

(a) with the consent in writing of the Secretary of State; and

(b) if the exercise of that power involves capital expenditure by the Authority, or the guaranteeing by the Authority of any liability, with that consent given with the approval of the Treasury;

and a consent under this subsection may be given subject to such conditions as the Secretary of State thinks fit.

(4) Without prejudice to subsection (1) above, the powers conferred by section 1 of the Local Authorities (Goods and Services) Act 1970 shall be exercisable by the Authority as if the Authority were a public body within the meaning of that section. 1970 c. 39.

(5) Nothing in this section with respect to the carrying out of works shall be construed as conferring any power to do anything otherwise than for the purpose of giving the Authority capacity as a corporation to do that thing; and, accordingly, without prejudice to the provisions of Part VII of this Act, this section shall be disregarded for the purpose of determining whether the Authority is liable, on grounds other than an incapacity by virtue of its constitution, for any act or omission in exercise of a power to carry out works conferred by this section.

Ministerial directions to the Authority.

**5.**—(1) Directions of a general or specific character may be given to the Authority—

(a) with respect to the carrying out of the Authority's functions mentioned in paragraphs (a), (b) and (e) of subsection (1) of section 2 above (other than its functions in connection with the making of applications for orders under section 94 below), by the Secretary of State;

(b) with respect to the making of applications for orders under section 94 below or with respect to the carrying out of its functions mentioned in paragraphs (c) and (d) of that subsection, by either of the Ministers; and

(c) with respect to anything not falling within paragraph (a) or (b) above which is connected with the carrying on of the Authority's activities generally, by the Ministers.

(2) Without prejudice to the generality of the power conferred by subsection (1) above, directions under that subsection may include such directions as the Secretary of State, the Minister or, as the case may be, both of them consider appropriate in order to enable Her Majesty's Government in the United Kingdom to give effect—

(a) to any Community obligations; or

(b) to any international agreement to which the United Kingdom is for the time being a party.

PART I

(3) The power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the Authority.

(4) Any power of the Secretary of State or the Minister otherwise than by virtue of this section to give directions to the Authority shall be without prejudice to the power conferred by this section.

(5) It shall be the duty of the Authority to comply with any direction which is given to the Authority, under this section or any of the other provisions of this Act, by either or both of the Ministers.

## CHAPTER II

## COMMITTEES WITH FUNCTIONS IN RELATION TO THE AUTHORITY

### *Advisory committees*

**The advisory committee for Wales.** 1989 c. 15.

**6.**—(1) The Secretary of State shall continue to maintain the committee established under section 3 of the Water Act 1989 for advising him with respect to matters affecting or otherwise connected with the carrying out in Wales of the Authority's functions.

(2) The committee maintained under this section shall consist of such persons as may, from time to time, be appointed by the Secretary of State.

(3) The committee maintained under this section shall meet at least once a year.

(4) The Secretary of State shall pay to the members of the committee maintained under this section such sums reimbursing them for loss of remuneration, for travelling expenses and for other out-of-pocket expenses as he may, with the consent of the Treasury, determine.

**Regional rivers advisory committees.**

**7.**—(1) It shall be the duty of the Authority—

(a) to establish and maintain advisory committees, consisting of persons who are not members of the Authority, for the different regions of England and Wales;

(b) to consult the advisory committee for any region as to any proposals of the Authority relating generally to the manner in which the Authority carries out its functions in that region; and

(c) to consider any representations made to it by the advisory committee for any region (whether in response to consultation under paragraph (b) above or otherwise) as to the manner in which the Authority carries out its functions in that region.

(2) The duty to establish and maintain advisory committees imposed by subsection (1) above is a duty—

(a) to establish and maintain an advisory committee for each area which the Authority considers it appropriate for the time being to regard as a region of England and Wales for the purposes of this section; and

(b) to ensure that the persons appointed by the Authority to each such committee are persons who appear to the Authority to have an interest in matters likely to be affected by the manner in which the Authority carries out any of its functions in the region in question;

and it shall be the duty of the Authority in determining the regions for which advisory committees are established and maintained under this section to ensure that one of those regions consists wholly or mainly of, or of most of, Wales.

(3) There shall be paid by the Authority—

(a) to the chairman of an advisory committee established and maintained under this section such remuneration and such travelling and other allowances; and

(b) to any other members of that committee such sums reimbursing them for loss of remuneration, for travelling expenses or for any other out-of-pocket expenses,

as may, with the consent of the Treasury, be determined by the Secretary of State.

(4) For the purposes of this section functions of the Authority which are carried out in any area of Scotland or of the territorial sea which is adjacent to any region for which an advisory committee is maintained shall be regarded as carried out in that region.

Regional and local fisheries advisory committees.

**8.**—(1) It shall be the duty of the Authority—

(a) to establish and maintain advisory committees of persons who are not members of the Authority but appear to it to be interested in salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries in the different parts of the controlled area; and

(b) to consult those committees as to the manner in which the Authority is to perform its duty under section 114 below.

(2) The duty to establish and maintain advisory committees imposed by subsection (1) above is a duty to establish and maintain—

(a) a regional advisory committee for each such region of the controlled area as the Authority considers it appropriate for the time being to regard as a region of that area for the purposes of this section; and

(b) such local advisory committees as the Authority considers necessary to represent the interests referred to in paragraph (a) of that subsection in the different parts of each such region;

and it shall be the duty of the Authority in determining the regions for which regional advisory committees are established and maintained under this section to ensure that one of those regions consists (apart from territorial waters) wholly or mainly of, or of most of, Wales.

(3) There shall be paid by the Authority—

(a) to the chairman of an advisory committee established and maintained under this section such remuneration and such travelling and other allowances; and

PART I

(b) to any other members of that committee such sums reimbursing them for loss of remuneration, for travelling expenses or for any other out-of-pocket expenses,

as may, with the consent of the Treasury, be determined by one of the Ministers.

(4) In this section "the controlled area" means the area specified in section 2(6) above in respect of which the Authority carries out functions under Part V of this Act.

*Flood defence committees*

Continuance of regional flood defence committees.

**9.**—(1) There shall continue to be committees, known as regional flood defence committees, for the purpose of carrying out the functions which fall to be carried out by such committees by virtue of this Act.

(2) Subject to Schedule 3 to this Act (which makes provision for the alteration of the boundaries of and the amalgamation of the areas of regional flood defence committees)—

(a) each regional flood defence committee shall have the same area as immediately before the coming into force of this section; but

(b) where under section 165(2) or (3) below any function of the Authority falls to be carried out at a place beyond the seaward boundaries of the area of any regional flood defence committee, that place shall be assumed for the purposes of this Act to be within the area of the regional flood defence committee to whose area the area of sea where that place is situated is adjacent.

(3) The Authority shall maintain a principal office for the area of each regional flood defence committee.

Composition of regional flood defence committees.

**10.**—(1) Subject to subsection (2) below, a regional flood defence committee shall consist of the following, none of whom shall be a member of the Authority, that is to say—

(a) a chairman and a number of other members appointed by the relevant Minister;

(b) two members appointed by the Authority;

(c) a number of members appointed by or on behalf of the constituent councils.

(2) Subject to section 11 below and to any order under Schedule 3 to this Act amalgamating the areas of any two or more regional flood defence committees—

(a) the total number of members of the regional flood defence committee for any area shall be the same as immediately before the coming into force of this section; and

(b) the number of members to be appointed to a regional flood defence committee for any area by or on behalf of each of the constituent councils or, as the case may be, jointly by or on behalf of more than one of them shall be the same number as fell to be so appointed immediately before the coming into force of this section.

(3) Where—

(a) the appointment of one or more members of a regional flood defence committee is (by virtue of subsection (2) above or an order under section 11(5) below), to be made jointly by more than one constituent council; and

(b) the councils by whom that appointment is to be made are unable to agree on an appointment,

the member or members in question shall be appointed by the relevant Minister on behalf of those councils.

(4) In appointing a person to be the chairman or a member of a regional flood defence committee under subsection (1)(a) or (c) or (3) above the relevant Minister or, as the case may be, a constituent council shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.

(5) The councils of every county, metropolitan district or London borough any part of which is in the area of a regional flood defence committee shall be the constituent councils for the regional flood defence committee for that area, and the Common Council of the City of London shall be a constituent council for the regional flood defence committee for any area which comprises any part of the City.

(6) In this section "the relevant Minister"—

(a) in relation to the regional flood defence committee for an area the whole or the greater part of which is in Wales, means the Secretary of State; and

(b) in relation to any other regional flood defence committee, means the Minister.

Change of composition of regional flood defence committee.

**11.**—(1) The Authority may, in accordance with the following provisions of this section, from time to time make a determination varying the total number of members of a regional flood defence committee.

(2) The Authority shall submit any determination under subsection (1) above to the relevant Minister.

(3) For the purposes of this section—

(a) the total number of members of a regional flood defence committee shall not be less than eleven; and

(b) any determination by the Authority under subsection (1) above that a regional flood defence committee should consist of more than seventeen members shall be provisional and shall take effect only if the relevant Minister makes an order under subsection (4) below.

(4) If the Authority submits a provisional determination to the relevant Minister with respect to any regional flood defence committee and he considers that the committee should consist of more than seventeen members, he may by order made by statutory instrument—

(a) confirm it; or

(b) substitute for the number of members determined by the Authority some other number not less than seventeen.

PART I

(5) Subject to the following provisions of this section, whenever—

(a) the total number of members of a regional flood defence committee is varied under this section; or

(b) the relevant Minister considers it necessary to make an order under this subsection in consequence of—

(i) the effect in relation to the whole or any part of the area of any regional flood defence committee of any rules or regulations made for the purposes of paragraphs 4 to 6 of Schedule 12A to the Local Government Finance Act 1988 (definition of relevant population); or

1988 c. 41.

(ii) the alteration of the boundaries of the area of a regional flood defence committee,

the relevant Minister shall by order made by statutory instrument specify, in relation to times after the coming into force of the variation, rules or regulations or alteration, the number of members to be appointed to the committee by each of the constituent councils.

(6) An order under subsection (5) above shall be so framed that the total number of members appointed under section 10(1)(a) and (b) above is one less than the number of those appointed by or on behalf of constituent councils.

(7) For the purpose of determining for the purposes of subsection (5) above the number of persons to be appointed to a regional flood defence committee by or on behalf of each constituent council, the relevant Minister—

(a) shall have regard to the relevant population of any relevant area of that council; and

(b) where, having regard to the proportion which that population bears to the aggregate of the relevant populations of the relevant areas of all the constituent councils—

(i) he considers it to be inappropriate that that council should appoint a member of the committee; or

(ii) he considers that one or more members should be appointed jointly by that council and one or more other constituent councils,

may include provision to that effect in the order.

(8) In this section—

"member", in relation to a regional flood defence committee, includes the chairman of the committee;

"relevant area", in relation to a council which is a constituent council in relation to any regional flood defence committee, means so much of the council's area as is included in the area of the committee;

"the relevant Minister" has the same meaning as in section 10 above;

"relevant population" has the same meaning as it has for the purposes of section 69 of the Local Government Finance Act 1988 (precepted authorities).

Local flood defence schemes and local flood defence committees.

12.—(1) A scheme, known as a local flood defence scheme, may be made by the Authority, in accordance with the following provisions of this section—

(a) for the creation in the area of a regional flood defence committee of one or more districts, to be known as local flood defence districts; and

(b) for the constitution, membership, functions and procedure of a committee for each such district, to be known as the local flood defence committee for that district.

(2) A regional flood defence committee may at any time submit to the Authority—

(a) a local flood defence scheme for any part of their area for which there is then no such scheme in force; or

(b) a scheme varying a local flood defence scheme or revoking such a scheme and, if the committee think fit, replacing it with another such scheme;

and references in the following provisions of this section and in section 13 below to local flood defence schemes are references to schemes under either of paragraphs (a) and (b) above.

(3) Before submitting a scheme to the Authority under subsection (2) above, a regional flood defence committee shall consult—

(a) every local authority any part of whose area will fall within the area to which the scheme is proposed to relate; and

(b) such organisations representative of persons interested in flood defence (within the meaning of Part IV of this Act) or agriculture as the regional flood defence committee consider to be appropriate.

(4) It shall be the duty of the Authority to send any scheme submitted to it under subsection (2) above to one of the Ministers.

(5) A local flood defence scheme may define a local flood defence district—

(a) by reference to the districts which were local land drainage districts immediately before 1st September 1989;

(b) by reference to the area of the regional flood defence committee in which that district is situated;

(c) by reference to a map;

or partly by one of those means and partly by another or the others.

(6) A local flood defence scheme may contain incidental, consequential and supplementary provisions.

(7) Either of the Ministers may approve a local flood defence scheme with or without modifications; and any scheme approved under this subsection shall come into force on a date fixed by the Minister approving it.

Composition of local flood defence committees.

**13.**—(1) Subject to subsections (2) and (3) below, a local flood defence scheme shall provide that any local flood defence committee to which it relates shall consist of not less than eleven and not more than fifteen members.

PART I

(2) A regional flood defence committee may include in a local flood defence scheme which they submit to the Authority a recommendation that a committee to which the scheme relates should consist of a number of members greater than fifteen; and a scheme so submitted shall be taken to provide for the number of members of a committee if it contains a recommendation under this subsection relating to that committee.

(3) The power conferred on each of the Ministers by section 12(7) above shall include power to direct that a committee to which a recommendation under subsection (2) above relates shall consist either of the recommended number of members or of some other number of members greater than fifteen.

(4) A local flood defence committee shall consist of—

(a) a chairman appointed from among their own members by the regional flood defence committee;

(b) other members appointed by that committee; and

(c) members appointed, in accordance with and subject to the terms of the local flood defence scheme, by or on behalf of constituent councils.

(5) The number of members appointed to a local flood defence committee by or on behalf of constituent councils shall be one more than the total number of members appointed by the regional flood defence committee.

(6) In appointing a person to be a member of a local flood defence committee, the regional flood defence committee shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee to which he is appointed.

(7) The councils of every county, metropolitan district or London borough any part of which is in a local flood defence district shall be the constituent councils for the local flood defence committee for that district, and the Common Council of the City of London shall be a constituent council for the local flood defence committee of any local flood defence district which comprises any part of the City.

Membership and proceedings of flood defence committees.

**14.** Schedule 4 to this Act shall have effect in relation to regional flood defence committees and local flood defence committees.

## CHAPTER III

## GENERAL DUTIES

General duties with respect to the water industry. 1991 c. 56.

**15.**—(1) It shall be the duty of the Authority, in exercising any of its powers under any enactment, to have particular regard to the duties imposed, by virtue of the provisions of Parts II to IV of the Water Industry Act 1991, on any water undertaker or sewerage undertaker which appears to the Authority 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 this Act, the Land Drainage Act 1991, the Water Industry Act 1991 or the Water Act 1989 in relation to, or to decisions of, the Authority; or

1991 c. 59.
1989 c. 15.

(b) any power which, but for any direction given by one of the Ministers, would fall to be exercised by the Authority,

to take into account the duty imposed on the Authority by subsection (1) above.

General environmental and recreational duties.

**16.**—(1) It shall be the duty of each of the Ministers and of the Authority, in formulating or considering any proposals relating to any functions of the Authority—

(a) so far as may be consistent—

(i) with the purposes of any enactment relating to the functions of the Authority; and

(ii) in the case of the Secretary of State, with his duties under section 2 of the Water Industry Act 1991, 1991 c. 56.

so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and

(c) 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.

(2) Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Authority, in formulating or considering any proposals relating to the functions of the Authority—

(a) 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) 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) 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.

(3) Subsections (1) and (2) above shall apply so as to impose duties on the Authority in relation to-

(a) any proposals relating to the functions of a water undertaker or sewerage undertaker;

(b) any proposals relating to the management, by the 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 water undertaker or sewerage undertaker); and

PART I

1991 c. 56.

(c) any proposal which by virtue of section 156(7) of the Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,

as they apply in relation to proposals relating to the Authority's own functions but as if, for that purpose, the reference in subsection (1)(a) above to enactments relating to the functions of the Authority were a reference to enactments relating to that to which the proposal relates.

(4) 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 the Authority to take such steps as are—

(a) reasonably practicable; and

(b) consistent with the purposes of the enactments relating to the functions of the Authority,

for securing, so long as the Authority 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.

(5) It shall be the duty of the Authority, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.

(6) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by the Authority to be made available free of charge.

(7) In this section "building" includes structure.

**Environmental duties with respect to sites of special interest.**

**17.**—(1) Where the Nature Conservancy Council for England or the Countryside Council for Wales 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 the Authority or by an authorisation given by the Authority,

that Council shall notify the fact that the land is of special interest for that reason to the Authority.

(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 sections 2(2) and 16 above have effect are of particular importance; and

(b) may at any time be affected by schemes, works, operations or activities of the Authority or by an authorisation given by the Authority,

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 the Authority.

(3) Where the Authority has received a notification under subsection (1) or (2) above with respect to any land, it shall consult the notifying body before carrying out or authorising any works, operations or activities which appear to the Authority to be likely—

(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 the Nature Conservancy Council for England, the Countryside Council for Wales, 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) In this section—

"the Broads" has the same meaning as in the Norfolk and Suffolk Broads Act 1988; and 1988 c. 4.

"National Park authority" means a National Park Committee or a joint or special planning board for a National Park.

Codes of practice with respect to environmental and recreational duties.

**18.**—(1) Each of the Ministers shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—

(a) giving practical guidance to the Authority with respect to any of the matters for the purposes of which sections 2(2), 16 and 17 above have effect; and

(b) promoting what appear to him to be desirable practices by the Authority 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.

(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 2(2), 16 or 17 above or give rise to any criminal or civil liability; but each of the Ministers shall 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 the Authority by virtue of this Act, the Land Drainage Act 1991, the Water Industry Act 1991 or the Water Act 1989. 1991 c. 59. 1991 c. 56. 1989 c. 15.

(3) 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.

PART I

(4) Neither of the Ministers shall make an order under this section unless he has first consulted—

(a) the Authority;

(b) the Countryside Commission, the Nature Conservancy Council for England and the Countryside Council for Wales;

(c) the Historic Buildings and Monuments Commission for England;

(d) the Sports Council and the Sports Council for Wales; and

(e) such water undertakers, sewerage undertakers and other persons as he considers it appropriate to consult.

## PART II

## WATER RESOURCES MANAGEMENT

### CHAPTER I

### GENERAL MANAGEMENT FUNCTIONS

General management of resources by the Authority.

**19.**—(1) It shall be the duty of the Authority 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 Water Industry Act 1991 (general duty to maintain water supply system).

1991 c. 56.

Water resources management schemes.

**20.**—(1) It shall be the duty of the Authority 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 Authority from time to time considers appropriate for the purpose of carrying out its functions under section 19(1) above.

(2) Without prejudice to the power of the Authority 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 Authority to the undertaker; and

(c) require the reference to and determination by the Secretary of State or the Director General of Water Services of questions arising under the arrangements.

(3) The Authority 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 Water Industry Act 1991 (enforcement orders) by the Secretary of State. 1991 c. 56

**21.**—(1) The Authority 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— Minimum acceptable flows.

(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 Authority shall consult—

(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 or any 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; and

(f) any person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity. 1989 c. 29.

PART II

(4) In determining the flow to be specified in relation to any inland waters under subsection (2)(c) above, the Authority 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 sections 2(2), 16 and 17 above, 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 Authority, 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 Authority, 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 Authority 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 Authority 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;

and in that subsection the reference to land drainage includes a reference to defence against water (including sea water), irrigation other than spray irrigation, warping and the provision of flood warning systems.

Directions to the Authority to consider minimum acceptable flow.

**22.**—(1) If the Authority 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 Authority 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 Authority 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.

Minimum acceptable level or volume of inland waters.

**23.**—(1) Where it appears to the Authority, 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 Authority 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 Authority 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.

PART II

## CHAPTER II

### ABSTRACTION AND IMPOUNDING

*Restrictions on abstraction and impounding*

Restrictions on abstraction.

24.—(1) Subject to the following provisions of this Chapter and to any drought order 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 Authority 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—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) 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 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.

1963 c. 38.

PART II
Restrictions on impounding.

**25.**—(1) Subject to the following provisions of this Chapter and to any drought order under Chapter III of this Part, no person shall 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 unless—

(a) a licence under this Chapter granted by the Authority 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 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 requirements 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, 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.

(3) 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.

(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 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. 1963 c. 38.

(5) Subject to subsection (6) below, the restriction on impounding works shall not apply to the construction or alteration of any impounding works, if—

(a) the construction or alteration of those works; or

(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 Water Act 1989 or Schedule 2 to the Water Industry Act 1991; or 1989 c. 15. 1991 c. 56.

PART II

(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.

*Rights to abstract or impound*

**Rights of navigation, harbour and conservancy authorities.**

**26.**—(1) The restriction on abstraction shall not apply to any transfer of water from one area of inland waters to another in the course of, or resulting 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.

(2) The restriction on impounding works shall not apply to the construction or alteration 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.

**Rights to abstract small quantities.**

**27.**—(1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding five cubic metres if it 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 five cubic metres is abstracted.

(2) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres if the abstraction—

(a) 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; and

(b) is with the consent of the Authority.

(3) The restriction on abstraction shall not apply to so much of any abstraction from any inland waters by or on behalf of an occupier of contiguous land as falls within subsection (4) below, unless the abstraction is such that the quantity of water abstracted from the inland waters by or on behalf of the occupier by virtue of this subsection exceeds twenty cubic metres, in aggregate, in any period of twenty-four hours.

(4) Subject to section 28 below, an abstraction of water falls within this subsection in so far as the water—

(a) is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and

(b) is abstracted for use on that holding for either or both of the following purposes, that is to say—

(i) the domestic purposes of the occupier's household;

(ii) agricultural purposes other than spray irrigation.

(5) The restriction on abstraction shall not apply to the abstraction of water from underground strata, in so far as the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household, unless the abstraction is such that the quantity of water abstracted from the strata by or on behalf of that individual by virtue of this subsection exceeds twenty cubic metres, in aggregate, in any period of twenty-four hours.

(6) For the purposes of this Chapter a person who is in a position to abstract water in such circumstances that, by virtue of subsection (3) or (5) above, the restriction on abstraction does not apply shall be taken to have a right to abstract water to the extent specified in that subsection.

(7) In the case of any abstraction of water from underground strata which falls within subsection (5) 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.

(8) In this section "contiguous land", in relation to the abstraction of any water from inland waters, means land contiguous to those waters at the place where the abstraction is effected.

Curtailment of rights under section 27.

**28.**—(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 Authority 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 Authority may serve on him a notice specifying the relevant part of the holding; and

PART II

(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,

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 Authority'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.

**Rights to abstract for drainage purposes etc.**

**29.**—(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.

(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) above) is necessary—

(a) to prevent interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface); or

(b) to prevent damage to works resulting from any such operations.

(3) Where—

(a) water is abstracted, in the course of any such operations as are mentioned in subsection (2) above, from any excavation into underground strata in a case in which the level of water in the underground strata depends wholly or mainly on water entering it from those strata; and

(b) the abstraction is necessary as mentioned in that subsection,

the exemption conferred by that subsection shall apply notwithstanding that the water is used for the purposes of the operations.

(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.

(5) In this section, "land drainage" includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea, and also includes warping and irrigation other than spray irrigation.

Notices with respect to borings not requiring licences.

30.—(1) Where any person—

(a) proposes to construct a well, borehole or other work which is to be used solely for the purpose of abstracting, to the extent necessary to prevent interference with the carrying out or operation of any underground works, water contained in underground strata; or

(b) proposes to extend any such well, borehole or other work,

he shall, before he begins to construct or extend the work, give to the Authority a notice of his intention in the prescribed form.

(2) Where a notice under subsection (1) above is given to the Authority by any person, the Authority may (subject to section 31 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.

(3) The measures that may be specified in a notice under subsection (2) above shall be measures which, in the opinion of the Authority, will not interfere with the protection of the underground works in question.

(4) Any person who contravenes subsection (1) above or fails to comply with a 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.

Appeals against conservation notices under section 30.

31.—(1) The person on whom a notice under section 30(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;

PART II

(b) that those measures would interfere with the protection of the underground works in question.

(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 Authority 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 Authority to be heard with respect to the 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.

(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.

Miscellaneous rights to abstract.

**32.**—(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—

1947 c. 41.

(a) for fire-fighting purposes (within the meaning of the Fire Services Act 1947); or

(b) for the purpose of testing apparatus used for 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 Authority and in compliance with any conditions imposed by the Authority.

(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.

Power to provide for further rights to abstract.

**33.**—(1) Any of the relevant authorities, after consultation with the other relevant authorities (if any), may apply to the Secretary of State for an order excepting any one or more sources of supply from the restriction on abstraction, on the grounds that that restriction is not needed in relation to that source of supply or, as the case may be, those sources of supply.

(2) An application under this section may be made in respect of—

(a) any one or more areas of inland waters specified in the application or any class of inland waters so specified; or

(b) any underground strata described in the application, whether by reference to their formation or their location in relation to the surface of the land or in relation to other strata subjacent to that surface or partly in one way and partly in another;

and an order may be made under this section accordingly.

(3) For the purposes of this section—

(a) the Authority is a relevant authority in relation to every source of supply; and

(b) a navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters is a relevant authority in relation to those inland waters.

(4) If, in the case of any source of supply—

(a) it appears to the Secretary of State, after consultation with the Authority, that the question whether the restriction on abstraction is needed in relation to that source of supply ought to be determined; but

(b) no application for an order under this section has been made,

the Secretary of State may direct the Authority to make an application under this section in respect to that source of supply.

(5) Schedule 6 to this Act shall have effect with respect to applications for orders under this section and with respect to the making of such orders; and the power to make any such order shall be exercisable by statutory instrument.

(6) On the coming into force of an order under this section—

(a) the restriction on abstraction and, in the case of any underground strata, the restriction imposed by subsection (2) of section 24 above shall cease to apply to any source of supply to which the order relates; and

(b) any licence granted under this Chapter which is for the time being in force shall cease to have effect in so far as it authorises abstraction from any such source of supply.

PART II *Applications for a licence*

Regulations with respect to applications.

**34.**—(1) Any application for a licence under this Chapter shall be made in such manner as may be prescribed, and shall include such particulars, 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.

(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 planning authorities)—

(a) notice of any such application will be given to such one or more National Park planning authorities as may be determined in accordance with the regulations; and

(b) the matters to which the Authority 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 planning 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.

(5) In this section "National Park planning authority" means a local planning authority whose area consists of, or includes, the whole or any part of a National Park.

Restrictions on persons who may make applications for abstraction licences.

**35.**—(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.

(2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, at the place (or, if more than one, at each of the places) at which the proposed abstractions are to be effected, either—

(a) he is the occupier of land contiguous to the inland waters; or

(b) he satisfies the Authority that he has, or at the time when the proposed licence is to take effect will have, a right of access to such land.

(3) In relation to abstractions from underground strata, a person shall be entitled to make the application if either—

(a) he is the occupier of land consisting of or comprising those underground strata; or

(b) the following two conditions are satisfied, that is to say—

(i) the case is one in which water contained in an excavation into underground strata is to be treated as water contained in those strata by virtue of the level of water in the excavation depending wholly or mainly on water entering it from those strata; and

(ii) that person satisfies the Authority that 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.

(4) Any reference in this section to a person who is the occupier of land of any description—

(a) includes a reference to a person who satisfies the Authority 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 occupy 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 Authority that by virtue of any enactment, the 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.

Application for combined abstraction and impounding licence.

**36.** Where a licence under this Chapter is required by virtue of section 25 above for constructing or altering impounding works at a point in any inland waters, for the purpose of abstracting water from those waters at or near that point—

(a) an application may be made to the Authority for a combined licence under this Chapter to obstruct or impede the flow of those inland waters by means of impounding works at that point and to abstract the water; and

(b) the Authority shall have power (subject to the provisions of this Chapter as to procedure and as to the matters to be taken into account in dealing with applications for licences) to grant such a licence accordingly.

PART II
Publication of application for licence.

37.—(1) The Authority shall not entertain an application for a licence under this Chapter to abstract water or to obstruct or impede the flow of any inland waters by means of impounding works or for a combined licence, unless the application is accompanied—

(a) by a copy of a notice in the prescribed form; and

(b) by the prescribed evidence that the necessary notices of the application have been given.

(2) Subject to subsection (3) below, the necessary notices of an application have been given for the purposes of subsection (1) above if—

(a) the notice mentioned in paragraph (a) of that subsection has been published—

(i) in the London Gazette; and

(ii) at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality;

and

(b) a copy of that notice has been served, not later than the date on which it was first published as mentioned in paragraph (a)(ii) above—

(i) on any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at a proposed point of abstraction or impounding;

(ii) on the drainage board for any internal drainage district within which any such proposed point is situated; and

(iii) on any water undertaker within whose area any such proposed point is situated.

(3) Where 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, the giving of the necessary notices shall not for the purposes of subsection (1) above require the service of any copy of the notice mentioned in paragraph (a) of that subsection on any navigation authority, harbour authority, conservancy authority or drainage board.

(4) A notice for the purposes of the preceding provisions of this section, in addition to containing any other matters required to be contained in that notice, shall—

(a) name a place within the relevant locality where a copy of the application, and of any map, plan or other document submitted with it, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (5) below; and

(b) state that any person may make representations in writing to the Authority with respect to the application at any time before the end of that period.

(5) The period specified in a notice for the purposes of the preceding provisions of this section shall be a period which—

(a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and

(b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.

(6) Where—

(a) an application for a licence under this Chapter to abstract water is made to the Authority; and

(b) the application proposes that the quantity of water abstracted in pursuance of the licence should not in any period of twenty-four hours exceed, in aggregate, twenty cubic metres or any lesser amount specified in the application,

the Authority may dispense with the requirements imposed by virtue of the preceding provisions of this section if and to the extent that it appears to the Authority appropriate to do so.

(7) In this section—

"proposed point of abstraction or impounding", in relation to any application for a licence under this Chapter, means a place where a licence, if granted in accordance with the application, would authorise water to be abstracted or, as the case may be, would authorise inland waters to be obstructed or impeded by means of impounding works; and

"relevant locality", in relation to an application for a licence under this Act, means the locality in which any proposed point of abstraction or impounding is situated.

*Consideration of licence applications*

General consideration of applications.

**38** .—(1) The Authority shall not determine any application for a licence under this Chapter before the end of the period specified for the purposes of the application in accordance with section 37(5) above.

(2) Subject to the following provisions of this Chapter, on any application to the Authority for a licence under this Chapter, the Authority—

(a) may grant a licence containing such provisions as the Authority considers appropriate; or

(b) if, having regard to the provisions of this Chapter, the Authority considers it necessary or expedient to do so, may refuse to grant a licence.

(3) Without prejudice to section 39(1) below, the Authority, in dealing with any application for a licence under this Chapter, shall have regard to—

(a) any representations in writing relating to the application which are received by the Authority 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 Authority to be reasonable requirements.

Obligation to have regard to existing rights and privileges.

**39**.—(1) The Authority shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—

(a) the abstraction of water; or

PART II

(b) 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 Authority, are protected rights for the purposes of this Chapter.

(2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the Authority, 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.

(3) For the purposes of this Chapter a right is a protected right if it is such a right as a person is taken to have by virtue of section 27(6) above or section 48(1) below; and any reference in this Chapter to the person entitled to such a right shall be construed accordingly.

(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—

(a) abstracting water; or

(b) so obstructing or impeding the flow of any such waters,

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 section 27(6) above or, as the case may be, section 48(1) below.

(5) For the purposes of subsection (2) above the Authority 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.

Obligation to take river flow etc. into account.

**40.**—(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 Authority, 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 Authority, 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

(b) it appears to the Authority that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor waters comprised in an order under section 33 above,

subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

*Call-in of applications*

Secretary of State's power to call in applications

**41.**—(1) The Secretary of State may give directions to the Authority requiring applications for licences under this Chapter to be referred to him, instead of being dealt with by the Authority.

(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.

Consideration of called-in applications.

**42.**—(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 Authority 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 Authority 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 Authority, except the references in sections 37(4)(b) and (6)(a) and 38(3)(a), were a reference to the Secretary of State; and

PART II

(b) any reference to section 39(1) above were a reference to subsection (4) below.

(4) 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.

(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 Authority 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.

*Appeals with respect to decisions on licence applications*

Appeals to the Secretary of State.

**43.**—(1) Where an application has been made to the Authority 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 Authority on the application; or

(b) the Authority fails within the period specified in subsection (2) below to give to the applicant either—

(i) notice of the Authority'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.

(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 Authority, 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 Authority.

(5) Where any representations in writing with respect to an application were made within the period specified for the purposes of the application in accordance with section 37(5) above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the Authority to serve a copy of the notice of appeal on each of the persons who made those representations.

Determination of appeals.

**44.**—(1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—

(a) may allow or dismiss the appeal or reverse or vary any part of the decision of the Authority, 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 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—

(a) cause a local inquiry to be held; or

(b) afford to the applicant and the Authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

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 Authority 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—

(a) any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and

(b) the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.

(4) 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—

(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.

PART II

(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 Authority, 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 Authority, 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.

Regulations with respect to appeals.

**45.**—(1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions 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 planning authorities)—

(a) notice of any appeal against the decision on such an application, will be served on any National Park planning authority who made representations falling within paragraph (b) of section 34(3) above; and

(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.

(3) Subsections (4) and (5) of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

*Form, contents and effect of licences*

Form and contents of licences.

**46.**—(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) Every licence under this Chapter to abstract water shall 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.

(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 specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.

(4) Every licence under this Chapter to abstract water, except a licence granted to the Authority, to a water undertaker or sewerage undertaker or to any person (not being a water undertaker) who proposes to abstract the water for the purpose of supplying it to others shall also specify the land on which, and 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 whether the licence is to remain in force until revoked or is to expire at a time specified in the licence.

(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 or by different means.

Holders of licence.

**47.**—(1) Every licence under this Chapter to abstract water shall specify the person to whom the licence is granted.

(2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters and, in the case of a licence to obstruct or impede any inland waters, no other person is the holder of the licence for the purposes of this Act.

(3) This section has effect subject to sections 49, 50 and 67 below and to any power under this Chapter to vary licences.

General effect of licence.

**48.**—(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.

PART II

(2) In any action brought against a person in respect of the abstraction of water from a source of supply, 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.

*Succession to licences*

Succession to licences to abstract where person ceases to occupy the relevant land.

**49.**—(1) This section applies to a case where the holder of a licence under this Chapter to abstract water ("the prior holder") is the occupier of the whole of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used ("the relevant land").

(2) If—

(a) the prior holder dies or, by reason of any other act or event, ceases to be the occupier of the whole of the relevant land and does not continue to be the occupier of any part of that land; and

(b) either immediately after the death of the prior holder or the occurrence of that other act or event or subsequently, another person ("the successor") becomes the occupier of the whole of the relevant land,

the prior holder shall cease (if he would not otherwise do so) to be the holder of the licence and the successor shall become the holder of the licence.

(3) Where the successor becomes the holder of a licence under subsection (2) above, he shall cease to be the holder of the licence at the end of the period of fifteen months beginning with the date on which he became the occupier of the relevant land unless before the end of that period he has given to the Authority notice of the change in the occupation of the relevant land.

(4) Where any person who becomes the holder of a licence by virtue of the provisions of this section gives notice to the Authority in accordance with those provisions, the Authority shall vary the licence accordingly.

(5) Where, by virtue of the provisions of this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.

(6) The preceding provisions of this section shall have effect without prejudice to any power to revoke or vary licences under this Chapter or to the powers conferred by section 50 below.

Succession where person becomes occupier of part of the relevant land.

**50.**—(1) The Secretary of State may by regulations make provision, in relation to cases to which section 49 above applies, for conferring succession rights, in such circumstances as may be specified in the regulations, on a person who becomes the occupier of part of the relevant land after—

(a) the death of the prior holder; or

(b) the occurrence of any other act or event whereby the prior holder ceases to be the occupier of the relevant land or of part of that land.

(2) For the purposes of subsection (1) above succession rights are—

(a) a right to become the holder of the licence, subject to provisions corresponding to subsection (3) of section 49 above; or

(b) a right to apply for, and to the grant of, a new licence containing provisions (as to quantities of water and otherwise) determined, in accordance with the regulations made by the Secretary of State, by reference to the provisions of the original licence.

(3) The Secretary of State may by regulations make provision for conferring on the prior holder, where he—

(a) continues to be the occupier of part of the relevant land; but

(b) ceases to be the occupier of another part of that land,

a right, in such circumstances as may be specified in the regulations, to apply for, and to the grant of, a new licence containing such provisions as are mentioned in subsection (2)(b) above.

(4) Regulations under this section may provide that the provisions of this Chapter shall have effect in relation—

(a) to an application for a licence made by virtue of the regulations; or

(b) to a person entitled to make such an application,

subject to such modifications as may be specified in the regulations.

(5) Where any person who becomes the holder of a licence by virtue of the provisions of any regulations under this section gives notice to the Authority in accordance with those provisions, the Authority shall vary the licence accordingly.

(6) Where, by virtue of the provisions of any regulations under this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.

(7) The preceding provisions of this section shall have effect without prejudice to the exercise of any power to revoke or vary licences under this Chapter.

*Modification of licences*

Modification on application of licence holder.

**51.**—(1) The holder of a licence under this Chapter may apply to the Authority to revoke the licence and, on any such application, the Authority shall revoke the licence accordingly.

PART II

(2) The holder of a licence under this Chapter may apply to the Authority to vary the licence.

(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.

**Proposals for modification at instance of the Authority or Secretary of State.**

**52.**—(1) Where it appears to the Authority that a licence under this Chapter should be revoked or varied, the Authority may formulate proposals for revoking or varying 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 Authority under subsection (1) above,

the Secretary of State may, as he may consider appropriate in the circumstances, give the Authority a direction under subsection (3) below.

(3) A direction under this subsection may—

(a) direct the Authority to formulate proposals for revoking the licence in question; or

(b) direct the Authority 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

(b) be published in the London Gazette and, at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality.

(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 otherwise than in the London Gazette, 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.

(6) A notice for the purposes of subsection (4) above, in addition to any other matters required to be contained in that notice, shall—

(a) name a place within the relevant locality where a copy of the proposals, and of any map, plan or other document prepared in connection with them, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (7) below; and

(b) state that, at any time before the end of that period—

(i) the holder of the licence may give notice in writing to the Authority objecting to the proposals; and

(ii) any other person may make representations in writing to the Authority with respect to the proposals.

(7) The period specified in a notice for the purposes of subsection (6) above shall be a period which—

(a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and

(b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.

(8) In this section "the relevant locality" means the locality in which the place or places where the licence authorises water to be abstracted or impounded is or are situated.

Modification in pursuance of proposals under section 52.

**53.**—(1) Subject to the following provisions of this section, where the Authority 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 Authority 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.

(3) If no notice under subsection (4) below is given to the Authority before the end of the period mentioned in subsection (2) above, the Authority may proceed with the proposals.

(4) If the holder of the licence gives notice to the Authority objecting to the proposals before the end of the period mentioned in subsection (2) above, the Authority shall refer the proposals to the Secretary of State, with a copy of the notice of objection.

(5) Where the Authority 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 Authority in proceeding with the proposals as they apply to the action of the Authority in dealing with an application for a licence.

PART II

**Reference of modification proposals to the Secretary of State.**

**54.**—(1) Where any proposals of the Authority 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 Authority 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 Authority 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 Authority to be heard with respect to the proposals.

(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 Authority 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 Authority 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.

PART II

Application for modification of licence by owner of fishing rights.

**55.**—(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 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 Authority 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.

Determination of application under section 55.

**56.**—(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 Authority 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

PART II

(b) afford to the applicant, the holder of the licence and the Authority 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, the holder of the licence or the Authority 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 Authority.

(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 Authority 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.

Emergency variation of licences for spray irrigation purposes.

57.—(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

(b) by reason of exceptional shortage of rain or other emergency, it appears to the Authority 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 Authority 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 Authority shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the Authority that such abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor inland waters comprised in an order under section 33 above.

(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 Authority, are not far distant from each other—

(a) the Authority 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 Authority 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.

Revocation of licence for non-payment of charges.

**58.**—(1) If the charges payable in respect of a licence under this Chapter are not paid within twenty-eight days after notice demanding them has been served on the holder of the licence, the Authority may revoke the licence by the service of a notice of revocation on the holder of the licence.

(2) A notice demanding the payment of any charges which is served for the purposes of subsection (1) above shall—

(a) state that the licence in question may be revoked if the charges are not paid within twenty-eight days after the service of the notice;

(b) set out the effect of revocation; and

(c) state that no compensation is payable in respect of a revocation under this section.

(3) Revocation of a licence under this section—

(a) shall take effect at such time, not being a time before the end of the period of twenty-eight days after notice of revocation is served on the holder of the licence, as may be specified in that notice; and

(b) shall so take effect only if the charges in question are not paid before that time.

(4) A notice of revocation served under this section shall—

(a) set out the reason for the revocation; and

(b) state that the revocation will take effect only if the charges in question are not paid before the time specified in the notice.

PART II
Regulations with respect to modification applications.

**59.**—(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.

*Remedies and compensation in respect of infringement of protected rights etc.*

Liability of the Authority for derogation from protected right.

**60.**—(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 Authority.

(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 Authority for damages for breach of statutory duty.

(3) Where under any provision of this Chapter, the Authority 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 Authority and the person entitled to those rights, have effect as a breach on the part of the Authority 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 Authority, 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 Authority in pursuance of this section it shall be a defence for the Authority 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 Authority, 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 Authority.

(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.

**Compensation where licence modified on direction of the Secretary of State.**

**61.**—(1) Where a licence is revoked or varied in pursuance of a direction under section 54 or 55 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 Authority shall pay him compensation in respect of that expenditure, loss or damage.

(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 seven 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.

(5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications. 1961 c. 33.

(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;

PART II

(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.

Compensation for owner of fishing rights applying under section 55.

**62.**—(1) Where a licence is revoked or varied on an application under section 55 above, the applicant shall be entitled to compensation from the Authority 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 Authority; or

(b) an offer has been made by the Authority 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 Authority.

(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 Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.

1961 c. 33.

(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 Authority.

(7) Where—

(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 Authority 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.

**Secretary of State to indemnify Authority in certain cases.**

63.—(1) Where—

(a) the Authority 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 Authority 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 Authority 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 Authority, 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 Authority under section 61 above,

the Secretary of State may, if he thinks fit, pay to the Authority the whole or such part as he considers appropriate of the relevant amount.

PART II

(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 Authority under section 62 above,

the Secretary of State may, if he thinks fit, pay to the Authority 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 Authority and, if an action has been brought against the Authority in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the Authority in connection with the action (including any costs of the plaintiff which the Authority 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 Lands Tribunal, the amount of any costs reasonably incurred by the Authority in connection with that reference (including any costs of the claimant which the Authority is required to pay).

*Supplemental provisions of Chapter II*

Abstracting and impounding by the Authority.

**64.**—(1) The provisions of this Chapter shall have effect—

(a) in relation to the abstraction of water by the Authority from sources of supply; and

(b) in relation to the construction or alteration by the Authority 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 Authority in relation to the matters mentioned in subsection (1) above shall be granted (or be deemed to be granted) by the Secretary of State, and not be granted by the Authority;

(b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the Authority 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 Authority; and

(c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the Authority 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.

Licences of right.

**65.** 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 Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the Water Act 1989.

1963 c. 38.
1989 c. 15.

Inland waters owned or managed by British Waterways Board.

**66.**—(1) This section applies to all inland waters owned or managed by the British Waterways Board ("the Board"), 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—

(a) no person other than the Board or a person authorised for the purpose by the Board may be given a consent for the purposes of section 27(2) above;

(b) no person other than the Board shall be entitled to apply for a licence under this Chapter;

(c) in relation to any application by the Board for a licence under this Chapter—

(i) section 35 above shall not apply; and

(ii) section 37 above shall apply as if subsection (1) of that section did not require the service of any copy of the notice mentioned in paragraph (a) of that subsection on any navigation authority, harbour authority, conservancy authority or drainage board.

(3) Before making an order under subsection (1) above, the Secretary of State shall consult the Board and the Authority.

Ecclesiastical property.

**67.**—(1) Where the relevant land belongs to a benefice—

(a) an application for a licence under this Chapter may be made by the Church Commissioners 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 Church Commissioners; 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 belongs to a benefice, 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.

PART II

(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 Church Commissioners at any time when the benefice in question is vacant.

(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 Church Commissioners) to them, instead of to the person in whom the fee simple is vested.

(5) Any sums paid under subsection (4) above to the Church Commissioners with reference to any land shall—

(a) if the land is not consecrated, be applied by them 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 them in such manner as they may determine.

(6) Where—

(a) the Church Commissioners are 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 Commissioners to the incumbent of the benefice in question or subsequently become so payable,

the Commissioners 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 Church Commissioners.

(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

PART II

"the relevant land", in relation to a licence under this Chapter or an application for such a licence, means—

(a) the land on which water abstracted in pursuance of the licence is to be, or is proposed to be, used; 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 is to be, or is proposed to be, constructed; or

(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.

Provision for appeals and references to tribunal.

**68.**—(1) The Secretary of State may by order make provision for securing that, in such cases or classes of cases as may be specified in or determined under the order, appeals and references which in accordance with the provisions of this Chapter would, apart from the order, be appeals or references to the Secretary of State shall lie to a tribunal established in accordance with the provisions of the order, instead of being appeals or references to the Secretary of State.

(2) An order under this section shall not apply to references in pursuance of directions under section 41 above.

(3) The provisions of this Chapter relating to appeals or references to which an order under this section applies shall have effect, subject to such modifications as may be specified in the order, as they would have effect in relation to the like appeals or references if made to the Secretary of State.

(4) Provision may be made by an order under this section for appeals or references to the tribunal to be heard and determined by one or more members of the tribunal.

(5) If a tribunal is established in accordance with this section, the Secretary of State may pay to the members of the tribunal such remuneration, whether by way of salaries or by way of fees, and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as the Treasury may determine.

(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.

Validity of decisions of Secretary of State and related proceedings.

**69.**—(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.

(2) If, in the case of any such appeal or reference, the Authority 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

PART II

(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 Authority 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.

(5) If an order is made establishing a tribunal under section 68 above, the preceding provisions of this section shall have effect in relation to any appeal or reference to that tribunal as they have effect in relation to an appeal or reference to the Secretary of State.

(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.

Civil liability under Chapter II. 1978 c. 30.

**70.** Except in so far as this Act otherwise expressly provides and subject to the provisions of section 18 of the Interpretation Act 1978 (which relates to offences under two or more laws), the restrictions imposed by sections 24, 25 and 30 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;

(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.

PART II
Modification of local enactments.

**71.**—(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 33, 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 Water Resources Act 1963. 1963 c. 38.

(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.

Interpretation of Chapter II.

**72.**—(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;

"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 section 39(3) 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 25(1) above;

PART II

"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).

(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 Commission for the New Towns or a development corporation for a new town;

1888 c. 25.

(iv) a harbour board within the meaning of the 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.

(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.

## CHAPTER III

## DROUGHT

Power to make ordinary and emergency drought orders.

**73.**—(1) If the Secretary of State 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 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 except where an application is made to the Secretary of State—

(a) by the Authority; or

(b) 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.

Provisions and duration of ordinary drought order.

**74.**—(1) An ordinary drought order made on the application of the Authority may contain any of the following provisions, that is to say—

(a) provision authorising the Authority (or persons authorised to do so by the Authority) to take water from any source specified in the order subject to any conditions or restrictions so specified;

(b) provision authorising the Authority (or persons authorised to do so by the Authority) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;

(c) provision authorising the Authority to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the Authority is satisfied that the taking of water from that source seriously affects the supplies available to the Authority, 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 Authority, any water undertaker or sewerage undertaker or any other person is subject as respects—

PART II

(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 Authority to suspend or vary, or attach conditions to, any consent 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 Authority to prohibit or limit the taking by any person of water from a source specified in the order if the Authority 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 Authority 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 Authority to suspend or vary, or attach conditions to, any consent 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.

**Provisions and duration of emergency drought order.**

**75.**—(1) An emergency drought order made on the application of the Authority 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 Authority.

(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.

PART II

(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 Water Industry Act 1991 by the Secretary of State.

1991 c. 56.

(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—

(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.

Provisions of drought order restricting use of water.

**76.**—(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.

**Provisions of drought order with respect to abstractions and discharges.**

77.—(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 Authority—

(a) to prohibit or limit the taking of water from any source; or

(b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,

the Authority 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.

(4) For the purposes of sections 125 to 129 below any water authorised by a drought order to be abstracted from a source of supply shall be treated as if it had been authorised to be so abstracted by a licence granted under Chapter II of this Part, whether the water undertaker to which the order relates is the holder of such a licence or not.

PART II

(5) Where—

(a) any drought order confers power on the Authority to suspend or vary, or attach conditions to, any consent for the discharge of any effluent; and

(b) the Authority 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 Authority 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

"inland navigation" includes any canal or navigable river.

**Works under drought orders.**

**78.**—(1) A drought order may authorise the Authority 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 Authority or a water undertaker to carry out any works—

(a) may authorise the Authority 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

1991 c. 56.

(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 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 Authority or a water undertaker to enter any land provisions requiring the Authority 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. 1991 c. 22.

(6) Until the coming into force of section 52 of the 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 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). 1950 c. 39.

Compensation and charges where drought order made.

**79.**—(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 Authority 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 Authority, 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 Authority or that undertaker if there had been no such interruption or diminution.

Offences against drought order.

**80.**—(1) If any person—

(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 so imposed; 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; or

(b) fails to allow some person authorised for the purpose by or under any such order 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;

PART II

(b) on conviction on indictment, to a fine.

Interpretation of Chapter III.

**81.** 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.

## PART III

## CONTROL OF POLLUTION OF WATER RESOURCES

### CHAPTER I

### QUALITY OBJECTIVES

Classification of quality of waters.

**82.**—(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.

Water quality objectives.

**83.**—(1) For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may, by serving a notice on the Authority 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 Authority, 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 Authority.

(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 Authority.

General duties to achieve and maintain objectives etc.

**84.**—(1) It shall be the duty of the Secretary of State and of the Authority 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) 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 Control of Pollution Act 1974 (which makes corresponding provision for Scotland), 1974 c. 40.

are achieved at all times.

(2) It shall be the duty of the Authority, for the purposes of the carrying out of its functions under the water pollution provisions of this Act—

(a) to monitor the extent of pollution in controlled waters; and

PART III

(b) to consult, in such cases as it may consider appropriate, with river purification authorities in Scotland.

## CHAPTER II

## POLLUTION OFFENCES

### *Principal offences*

Offences of polluting controlled waters.

**85.**—(1) A person contravenes this section if he causes or knowingly permits any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters.

(2) A person contravenes this section if he causes or knowingly permits any matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a drain or sewer in contravention of a prohibition imposed under section 86 below.

(3) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged—

(a) into any controlled waters; or

(b) from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters.

(4) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged, in contravention of any prohibition imposed under section 86 below, from a building or from any fixed plant—

(a) on to or into any land; or

(b) into any waters of a lake or pond which are not inland freshwaters.

(5) A person contravenes this section if he causes or knowingly permits any matter whatever to enter any inland freshwaters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of—

(a) pollution due to other causes; or

(b) the consequences of such pollution.

(6) Subject to the following provisions of this Chapter, a person who contravenes this section or the conditions of any consent given under this Chapter for the purposes of this section shall 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 £20,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Prohibition of certain discharges by notice or regulations.

**86.**—(1) For the purposes of section 85 above a discharge of any effluent or other matter is, in relation to any person, in contravention of a prohibition imposed under this section if, subject to the following provisions of this section—

(a) the Authority has given that person notice prohibiting him from making or, as the case may be, continuing the discharge; or

(b) the Authority has given that person notice prohibiting him from making or, as the case may be, continuing the discharge unless specified conditions are observed, and those conditions are not observed.

(2) For the purposes of section 85 above a discharge of any effluent or other matter is also in contravention of a prohibition imposed under this section if the effluent or matter discharged—

(a) contains a prescribed substance or a prescribed concentration of such a substance; or

(b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(3) Nothing in subsection (1) above shall authorise the giving of a notice for the purposes of that subsection in respect of discharges from a vessel; and nothing in any regulations made by virtue of subsection (2) above shall require any discharge from a vessel to be treated as a discharge in contravention of a prohibition imposed under this section.

(4) A notice given for the purposes of subsection (1) above shall expire at such time as may be specified in the notice.

(5) The time specified for the purposes of subsection (4) above shall not be before the end of the period of three months beginning with the day on which the notice is given, except in a case where the Authority is satisfied that there is an emergency which requires the prohibition in question to come into force at such time before the end of that period as may be so specified.

(6) Where, in the case of such a notice for the purposes of subsection (1) above as (but for this subsection) would expire at a time at or after the end of the said period of three months, an application is made before that time for a consent under this Chapter in respect of the discharge to which the notice relates, that notice shall be deemed not to expire until the result of the application becomes final—

(a) on the grant or withdrawal of the application;

(b) on the expiration, without the bringing of an appeal with respect to the decision on the application, of any period prescribed as the period within which any such appeal must be brought; or

(c) on the withdrawal or determination of any such appeal.

Discharges into and from public sewers etc.

**87.**—(1) For the purposes of section 85 above where—

(a) any sewage effluent is discharged as mentioned in subsection (3) or (4) of that section from any sewer or works vested in a sewerage undertaker; and

(b) the undertaker did not cause or knowingly permit the discharge but was bound (either unconditionally or subject to conditions which were observed) to receive into the sewer or works matter included in the discharge,

the undertaker shall be deemed to have caused the discharge.

(2) A sewerage undertaker shall not be guilty of an offence under section 85 above by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—

PART III

(a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works;

(b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and

(c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

(3) A person shall not be guilty of an offence under section 85 above in respect of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

Defence to principal offences in respect of authorised discharges.

**88.**—(1) Subject to the following provisions of this section, a person shall not be guilty of an offence under section 85 above in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with—

(a) a consent given under this Chapter or under Part II of the 1974 c. 40. Control of Pollution Act 1974 (which makes corresponding provision for Scotland);

(b) an authorisation for a prescribed process designated for central 1990 c. 43. control granted under Part I of the Environmental Protection Act 1990;

(c) a waste management or disposal licence;

1985 c. 48. (d) a licence granted under Part II of the Food and Environment Protection Act 1985;

1991 c. 56. (e) section 163 below or section 165 of the Water Industry Act 1991 (discharges for works purposes);

(f) any local statutory provision or statutory order which expressly confers power to discharge effluent into water; or

(g) any prescribed enactment.

(2) Schedule 10 to this Act shall have effect, subject to section 91 below, with respect to the making of applications for consents under this Chapter for the purposes of subsection (1)(a) above and with respect to the giving, revocation and modification of such consents.

(3) Nothing in any disposal licence shall be treated for the purposes of subsection (1) above as authorising—

(a) any such entry or discharge as is mentioned in subsections (2) to (4) of section 85 above; or

(b) any act or omission so far as it results in any such entry or discharge.

(4) In this section—

"disposal licence" means a licence issued in pursuance of section 5 of the Control of Pollution Act 1974;

"statutory order" means—

(a) any order under section 168 below or section 167 of the Water Industry Act 1991 (compulsory works orders); or

(b) any order, byelaw, scheme or award made under any other enactment, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;

and

"waste management licence" means such a licence granted under Part II of the the Environmental Protection Act 1990. 1990 c. 43.

Other defences to principal offences.

**89.**—(1) A person shall not be guilty of an offence under section 85 above in respect of the entry of any matter into any waters or any discharge if—

(a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health;

(b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and

(c) particulars of the entry or discharge are furnished to the Authority as soon as reasonably practicable after the entry occurs.

(2) A person shall not be guilty of an offence under section 85 above by reason of his causing or permitting any discharge of trade or sewage effluent from a vessel.

(3) A person shall not be guilty of an offence under section 85 above by reason only of his permitting water from an abandoned mine to enter controlled waters.

(4) A person shall not, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters, be guilty of an offence under section 85 above by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland freshwaters if—

(a) he deposits the refuse on the land with the consent of the Authority;

(b) no other site for the deposit is reasonably practicable; and

(c) he takes all reasonably practicable steps to prevent the refuse from entering those inland freshwaters.

(5) A highway authority or other person entitled to keep open a drain by virtue of section 100 of the Highways Act 1980 shall not be guilty of an offence under section 85 above by reason of his causing or permitting any discharge to be made from a drain kept open by virtue of that section unless the discharge is made in contravention of a prohibition imposed under section 86 above. 1980 c. 66.

(6) In this section "mine" and "quarry" have the same meanings as in the Mines and Quarries Act 1954. 1954 c. 70.

*Offences in connection with deposits and vegetation in rivers*

Offences in connection with deposits and vegetation in rivers.

**90.**—(1) A person shall be guilty of an offence under this section if, without the consent of the Authority, he—

(a) removes from any part of the bottom, channel or bed of any inland freshwaters a deposit accumulated by reason of any dam, weir or sluice holding back the waters; and

PART III

(b) does so by causing the deposit to be carried away in suspension in the waters.

(2) A person shall be guilty of an offence under this section if, without the consent of the Authority, he—

(a) causes or permits a substantial amount of vegetation to be cut or uprooted in any inland freshwaters, or to be cut or uprooted so near to any such waters that it falls into them; and

(b) fails to take all reasonable steps to remove the vegetation from those waters.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(4) Nothing in subsection (1) above applies to anything done in the exercise of any power conferred by or under any enactment relating to land drainage, flood prevention or navigation.

(5) In giving a consent for the purposes of this section the Authority may make the consent subject to such conditions as it considers appropriate.

(6) The Secretary of State may by regulations provide that any reference to inland freshwaters in subsection (1) or (2) above shall be construed as including a reference to such coastal waters as may be prescribed.

*Appeals in respect of consents under Chapter II*

Appeals in respect of consents under Chapter II.

**91.**—(1) This section applies where the Authority, otherwise than in pursuance of a direction of the Secretary of State—

(a) on an application for a consent under this Chapter for the purposes of section 88(1)(a) above, has refused a consent for any discharges;

(b) in giving a discharge consent, has made that consent subject to conditions;

(c) has revoked a discharge consent, modified the conditions of any such consent or provided that any such consent which was unconditional shall be subject to conditions;

(d) has, for the purposes of paragraph 7(1) or (2) of Schedule 10 to this Act, specified a period in relation to a discharge consent without the agreement of the person who proposes to make, or makes, discharges in pursuance of that consent;

(e) has refused a consent for the purposes of section 89(4)(a) above for any deposit; or

(f) has refused a consent for the purposes of section 90 above for the doing of anything by any person or, in giving any such consent, made that consent subject to conditions.

(2) The person, if any, who applied for the consent in question, or any person whose deposits, discharges or other conduct is or would be authorised by the consent may appeal against the decision to the Secretary of State.

(3) The Secretary of State may by regulations provide for the conduct and disposal of appeals under this section.

(4) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under that subsection may, with prescribed modifications, apply any provision of paragraphs 1(3) to (6), 2(1) and 4(4) to (6) of Schedule 10 to this Act in relation to appeals under this section.

(5) If, on an appeal under this section the Secretary of State is of the opinion that the decision of the Authority should be modified or reversed, he may give the Authority such directions as he thinks appropriate for requiring it—

(a) to give a consent, either unconditionally or, in the case of a discharge consent or a consent for the purposes of section 90 above, subject to such conditions as may be specified in the direction;

(b) to modify the conditions of any discharge consent or any consent for the purposes of section 90 above or to provide that any discharge consent which is unconditional shall be subject to such conditions as may be specified in the direction;

(c) to modify in accordance with the direction any provision specifying a period for the purposes of paragraph 7 of Schedule 10 to this Act.

(6) In complying with a direction under subsection (5) above to give a consent the Authority shall not be required to comply with any requirement imposed by paragraph 3 of Schedule 10 to this Act.

(7) Nothing in any direction under subsection (5) above or in anything done in pursuance of any such direction shall be taken to affect the lawfulness or validity of anything which was done—

(a) in pursuance of any decision of the Authority which is to be modified or reversed under the direction; and

(b) before the direction is complied with.

(8) In this section "discharge consent" means such a consent under this Chapter for any discharges or description of discharges as is given for the purposes of section 88(1)(a) above either on an application for a consent or, by virtue of paragraph 5 of Schedule 10 to this Act, without such an application having been made.

## CHAPTER III

## POWERS TO PREVENT AND CONTROL POLLUTION

Requirements to take precautions against pollution.

**92.**—(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.

PART III

(2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may—

(a) confer power on the Authority—

(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 Authority in pursuance of provision made by virtue of paragraph (a) above; and

(c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above.

Water protection zones.

**93.**—(1) Where the Secretary of State considers, after consultation (in the case of an area wholly or partly in England) with the Minister, that subsection (2) below is satisfied in relation to any area, he may by order make provision—

(a) designating that area as a water protection zone; and

(b) prohibiting or restricting the carrying on in the designated area of such activities as may be specified or described in the order.

(2) For the purposes of subsection (1) above this subsection is satisfied in relation to any area if (subject to subsection (3) below) 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 Secretary of State considers are likely to result in the pollution of any such waters.

(3) The reference in subsection (2) above to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes

(4) Without prejudice to the generality of the power conferred by virtue of subsection (1) above, an order under this section may—

(a) confer power on the Authority to determine for the purposes of the order the circumstances in which the carrying on of any activities is prohibited or restricted and to determine the activities to which any such prohibition or restriction 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 Authority or in contravention of any conditions subject to which any such consent is given;

(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 shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above;

(d) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by the Authority 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 Secretary of State considers appropriate.

(5) 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; but the Secretary of State shall not make such an order except on an application made by the Authority in accordance with Schedule 11 to this Act and otherwise in accordance with that Schedule.

Nitrate sensitive areas.

**94.**—(1) Where the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose specified in subsection (2) below in relation to any land, he may by order make provision designating that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.

(2) The purpose mentioned in subsection (1) above is preventing or controlling the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use for agricultural purposes of any land.

(3) Where it appears to the relevant Minister, in relation to any area which is or is to be designated by an order under this section as a nitrate sensitive area, that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in section 95 below), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—

(a) with a view to achieving the purpose specified in subsection (2) above, require, prohibit or restrict the carrying on, either on or in relation to any agricultural land in that area, of such activities as may be specified or described in the order; and

(b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by one of the Ministers, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.

(4) Without prejudice to the generality of subsection (3) above, provision contained in an order under this section by virtue of that subsection may—

(a) confer power on either of the Ministers to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;

PART III

(b) provide for any requirement to carry on any activity not to apply in cases where one of the Ministers has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;

(c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of one of the Ministers or in contravention of any conditions subject to which any such consent is given;

(d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above;

(e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances, and with such interest, as may be specified in or determined under the order; and

(f) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.

(5) 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 relevant Minister considers appropriate.

(6) The power of the relevant Minister 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; but the relevant Minister shall not make such an order except in accordance with any applicable provisions of Schedule 12 to this Act.

(7) In this section and in Schedule 12 to this Act "the relevant Minister"—

(a) in relation to the making of an order in relation to an area which is wholly in England or which is partly in England and partly in Wales, means the Ministers; and

(b) in relation to the making of an order in relation to an area which is wholly in Wales, means the Secretary of State.

Agreements in nitrate sensitive areas.

**95.**—(1) Where—

(a) any area has been designated as a nitrate sensitive area by an order under section 94 above; and

(b) the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (2) of that section,

he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement falling within subsection (2) below.

(2) An agreement falls within this subsection if it is one under which, in consideration of payments to be made by the relevant Minister—

(a) the owner of the freehold interest in any agricultural land in a nitrate sensitive area; or

(b) where the owner of the freehold interest in any such land has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,

accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.

(3) An agreement such as is mentioned in subsection (2) above between the relevant Minister and a person having an interest in any land shall bind all persons deriving title from or under that person to the extent that the agreement is expressed to bind that land in relation to those persons.

(4) In this section "the relevant Minister"—

(a) in relation to an agreement with respect to land which is wholly in England, means the Minister;

(b) in relation to an agreement with respect to land which is wholly in Wales, means the Secretary of State; and

(c) in relation to an agreement with respect to land which is partly in England and partly in Wales, means either of the Ministers.

Regulations with respect to consents required by virtue of section 93 or 94.

**96.**—(1) The Secretary of State may, for the purposes of any orders under section 93 above which require the consent of the Authority 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 Authority 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.

(2) The Ministers may, for the purposes of any orders under section 94 above which require the consent of either of those Ministers to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—

(a) applications for any such consent;

(b) the conditions of any such consent;

(c) the revocation or variation of any such consent;

(d) the reference to arbitration of disputes about determinations on any such application;

PART III

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

(f) the registration of any such application or consent.

(3) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, regulations under subsection (1) above may apply (with or without modifications) any enactment having effect in relation to consents under Chapter II of this Part.

Codes of good agricultural practice.

**97.**—(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

(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 Authority shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise—

(a) its power, by giving a notice under subsection (1) of section 86 above, to impose a prohibition under that section; and

(b) any powers conferred on the Authority by regulations under section 92 above.

(3) The Ministers shall not make an order under this section unless they have first consulted the Authority.

## CHAPTER IV

## SUPPLEMENTAL PROVISIONS WITH RESPECT TO WATER POLLUTION

Radioactive substances. 1960 c. 34.

**98.**—(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 the Radioactive Substances Act 1960.

(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 the said Act of 1960 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.

PART III
Consents required by the Authority.

**99.**—(1) The Secretary of State may by regulations—

(a) make provision modifying the water pollution provisions of this Act in relation to cases in which consents under Chapter II of this Part are required by the Authority; and

(b) for the purposes of the application of the provisions of this Part in relation to discharges by the Authority, make such other modifications of those provisions as may be prescribed.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide for such consents as are mentioned in paragraph (a) of that subsection to be required to be given by the Secretary of State (instead of by the Authority) and, in prescribed cases, to be deemed to have been so given.

Civil liability in respect of pollution and savings.
1978 c. 30.

**100.** Except in so far as this Part expressly otherwise provides and subject to the provisions of section 18 of the 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, 1989 c. 15. whether public, local or private.

Limitation for summary offences under Part III.
1980 c. 43.

**101.** Notwithstanding anything in section 127 of the 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.

Power to give effect to international obligations.

**102.** 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 enabling Her Majesty's Government in the United Kingdom to give effect—

(a) to any Community obligations; or

(b) to any international agreement to which the United Kingdom is for the time being a party.

Transitional pollution provisions.
1989 c. 15.

**103.** The provisions of this Part shall have effect subject to the provisions of Schedule 13 to this Act (which reproduce transitional provision originally made in connection with the coming into force of provisions of the Water Act 1989).

Meaning of "controlled waters" etc. in Part III.

**104.**—(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;

PART III

(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—

"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.

## PART IV

## FLOOD DEFENCE

### *General*

General functions with respect to flood defence.

**105.**—(1) Subject to section 106 below, the Authority shall in relation to England and Wales exercise a general supervision over all matters relating to flood defence.

(2) For the purpose of carrying out its flood defence functions the Authority 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 Salmon and Freshwater Fisheries Act 1975 or any right, power or duty conferred or imposed by that Part or that Act. 1975 c. 51.

Obligation to carry out flood defence functions through committees. 1991 c. 59.

**106.**—(1) Without prejudice to any scheme for the appointment of local flood defence committees and subject to subsection (2) below, the Authority shall arrange for all its functions relating to flood defence under the following provisions of this Act and the Land Drainage Act 1991 to be carried out by regional flood defence committees, so that those functions of the Authority are carried out—

(a) in relation to the area of each regional flood defence committee, by the committee for that area; and

(b) in cases involving the areas of more than one regional flood defence committee, by such committee, or jointly by such committees, as may be determined in accordance with arrangements made by the Authority.

(2) The Authority shall not make arrangements for the carrying out by any other body, or by any committee, of any of its functions with respect to—

(a) the issuing of levies (within the meaning of the Local Government Finance Act 1988); or 1988 c. 41.

(b) the making of drainage charges under Chapter II of Part VI of this Act;

and nothing in this section shall enable the Authority to authorise any such other body or any committee to borrow money for purposes connected with the Authority's functions relating to flood defence.

PART IV

(3) The Authority may give a regional flood defence committee a direction of a general or specific character as to the carrying out of any function relating to flood defence, other than one of its internal drainage functions, so far as the carrying out of that function appears to the Authority likely to affect materially the Authority's management of water for purposes other than flood defence.

(4) It shall be the duty of a regional flood defence committee to comply with any direction under subsection (3) above.

(5) In subsection (3) above "internal drainage functions" means the functions of the Authority under sections 108, 139 and 140 below and the following provisions of the Land Drainage Act 1991, that is to say— 1991 c. 59.

(a) sections 2 to 9 (transfer to the Authority and supervision by the Authority of the functions of internal drainage boards);

(b) sections 38, 39 and 47 (differential drainage rates and exemptions from such rates);

(c) sections 57 and 58(1) (provisions with respect to contributions by the Authority to the expenses of internal drainage boards and the expenses of the Authority as such a board).

*Main river functions*

Main river functions under the Land Drainage Act 1991.

**107.**—(1) This section has effect for conferring functions in relation to main rivers on the Authority 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 Authority 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 Authority 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 Authority 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 Authority by virtue of this section are in addition to the functions of the Authority which by virtue of the provisions of the Land Drainage Act 1991 are exercisable by the Authority concurrently with an internal drainage board. 1991 c. 59.

Schemes for transfer to the Authority of functions in relation to main river.

**108.**—(1) The Authority may at any time prepare and submit to either of the Ministers for confirmation a scheme making provision for the transfer to the Authority 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 Authority 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 Authority under this section, liabilities incurred in connection with drainage works are transferred to the Authority from a local authority, the Authority may require the local authority to make contributions to the Authority 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 Authority 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.

PART IV

(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 Authority to any officer or other employee of a drainage body who 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.

Structures in, over or under a main river.

**109.**—(1) No person shall erect any structure in, over or under a watercourse which is part of a main river except with the consent of and in accordance with plans and sections approved by the Authority.

(2) No person shall, without the consent of the Authority, carry out any work of alteration or repair on any structure in, over or under a watercourse which is part of a main river if the work is likely to affect the flow of water in the watercourse or to impede any drainage work.

(3) No person shall erect or alter any structure designed to contain or divert the floodwaters of any part of a main river except with the consent of and in accordance with plans and sections approved by the Authority.

(4) If any person carries out any work in contravention of this section the Authority may—

(a) remove, alter, or pull down the work; and

(b) recover from that person the expenses incurred in doing so.

(5) Subsections (1) and (2) above shall not apply to any work carried out in an emergency; but a person carrying out any work excepted from those subsections by this subsection shall inform the Authority in writing as soon as practicable—

(a) of the carrying out of the work; and

(b) of the circumstances in which it was carried out.

(6) Nothing in this section shall be taken to affect any enactment requiring the consent of any government department for the erection of a bridge or any powers exercisable by any government department in relation to a bridge.

PART IV
Applications for consents and approvals under section 109.

**110.**—(1) The Authority may require the payment of an application fee by a person who applies to it for its consent under section 109 above; and the amount of that fee shall be £50 or such other sum as may be specified by order made by the Ministers.

(2) A consent or approval required under section 109 above—

(a) shall not be unreasonably withheld;

(b) shall be deemed to have been given if it is neither given nor refused within the relevant period; and

(c) in the case of a consent, may be given subject to any reasonable condition as to the time at which and the manner in which any work is to be carried out.

(3) For the purposes of subsection (2)(b) above the relevant period is—

(a) in the case of a consent, the period of two months after whichever is the later of—

(i) the day on which application for the consent is made; and

(ii) if at the time when that application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged;

and

(b) in the case of an approval, the period of two months after application for the approval is made.

(4) If any question arises under this section whether any consent or approval is unreasonably withheld or whether any condition imposed is reasonable, the question shall—

(a) if the parties agree to arbitration, 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; and

(b) if the parties do not agree to arbitration, be referred to and determined by the Ministers or the Secretary of State, according to whether the determination falls to be made in relation to England or Wales.

(5) The power of the Ministers to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Arrangements with certain authorities*

Arrangements with navigation and conservancy authorities.

**111.**—(1) Subject to subsection (2) below, the Authority, 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 Authority of—

(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;

PART IV

(b) the alteration or improvement by the Authority of any of the works of the navigation authority or conservancy authority;

(c) the making of payments by the Authority to the navigation authority or conservancy authority or by that authority to the Authority in respect of any matter for which provision is made by the arrangement.

(2) The exercise by the Authority of its power to enter into an arrangement under this section shall require the approval of the Ministers.

(3) Where the Authority 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 Authority 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.

*Supplemental*

Flood defence regulations.

**112.** 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.

Interpretation of Part IV.

**113.**—(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; and

(c) warping;

"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 a main river map 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 Authority under any local Act, as they existed immediately before the coming into force of this Act.

## PART V

## GENERAL CONTROL OF FISHERIES

General fisheries duty of the Authority.

**114.** It shall be the duty of the Authority to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.

Fisheries orders.

**115.**—(1) Subject to the following provisions of this section, each of the Ministers shall have power, on an application made to him by the Authority, 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 Salmon and Freshwater Fisheries Act 1975 relating to the regulation of fisheries; 1975 c. 51.

(b) of section 156 below; 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 Authority a copy of the draft order; and

(b) notify the Authority of the time within which, and the manner in which, objections to the draft order may be made to him.

PART V

(4) Neither of the Ministers shall make an order under this section unless the Authority 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,

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; 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.

Power to give effect to international obligations.

**116.** 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 Authority 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 enabling Her Majesty's Government in the United Kingdom to give effect—

(a) to any Community obligations; or

(b) to any international agreement to which the United Kingdom is for the time being a party.

## PART VI

## FINANCIAL PROVISIONS IN RELATION TO THE AUTHORITY

### CHAPTER I

### GENERAL FINANCIAL PROVISIONS

General financial duties.

**117.**—(1) Subject to section 118 below, the Ministers may, after consultation with the Authority and with the Treasury's approval, determine the financial duties of the Authority, and different determinations may be made for different functions and activities of the Authority.

(2) The Ministers shall give the Authority notice of every determination under this section, and such a determination may—

(a) relate to a period beginning before the date on which it is made;

(b) contain supplemental provisions; and

(c) be varied by a subsequent determination.

(3) Subject to sections 118(1) and 119(2) below, where it appears to the Secretary of State that the Authority has a surplus, whether on capital or revenue account, the Secretary of State may, after consultation with the Treasury and the Authority, direct the Authority to pay to him such amount not exceeding the amount of that surplus as may be specified in the direction.

(4) Any sum received by the Secretary of State under subsection (3) above shall be paid into the Consolidated Fund.

Special duties with respect to flood defence revenue.

**118.**—(1) Revenue raised by the Authority 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 Authority's flood defence functions in or for the benefit of the local flood defence district in which it is raised; and

(b) shall be disregarded in determining the amount of any surplus for the purposes of section 117(3) above.

PART VI

(2) The revenue referred to in subsection (1) above is revenue raised by the Authority in a local flood defence district—

1988 c. 41.

(a) by virtue of any regulations under section 74 of the Local Government Finance Act 1988 (power to issue levies);

(b) by general drainage charges under sections 134 to 136 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 Authority considers it appropriate—

(a) to set aside towards research or related activities or towards meeting the Authority's administrative expenses; or

(b) to be paid by way of contribution towards expenses incurred by the Authority or any regional flood defence committee under arrangements made for the purposes of section 106(1)(b) above.

(4) Any amount specified in a resolution under section 58(1)(b) of the 1991 c. 59. Land Drainage Act 1991 in relation to any local flood defence district (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 Authority by virtue of any transfer of property, rights or liabilities from a water authority in 1989 c. 15. accordance with a scheme under Schedule 2 to the Water Act 1989, in so far as those sums represent amounts which the water authority was required by virtue of paragraph 31 of Schedule 3 1973 c. 37. to the 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 Authority in a flood defence district by 1976 c. 70. virtue of a precept issued under section 46 of the Land Drainage Act 1976,

shall be treated as revenue raised by the Authority as mentioned in subsection (2) above in the corresponding local flood defence district or, as the case may be, in that local flood defence district.

(6) For the purposes of this section so much of the area of a regional flood defence committee as is an area in relation to which no local flood defence scheme is in force shall be treated as a single local flood defence district.

**Duties with respect to certain funds raised under local enactments.** 1963 c. 38.

**119.**—(1) The funds which the Authority is required at the coming into force of this section under subsection (1) of section 88 of the Water Resources Act 1963 (funds held for particular purposes under local statutory provisions) to use only for particular purposes and any interest in any such funds shall not be used except for the purposes for which they could be used by virtue of that subsection.

(2) Any funds to which subsection (1) above applies shall be disregarded in determining the amount of any surplus under section 117(3) above.

PART VI
Contributions between the Authority and certain other authorities.

**120.**—(1) Where, on the application of a navigation authority, harbour authority or conservancy authority, it appears to the Authority 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 Authority's water resources functions, the Authority 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 Authority, it appears to a navigation authority, harbour authority or conservancy authority that any works constructed or maintained by the Authority 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 Authority towards the expenditure incurred or to be incurred by the Authority 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 Authority and the other authority concerned may agree to be appropriate.

(4) If on any application under this section—

(a) the Authority or, as the case may be, the other authority to whom the application is made refuses to make a contribution; or

(b) the Authority 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 Authority 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 the authority in

PART VI

performing the functions in respect of which it is claimed by the Authority 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 Authority are references to the functions of the Authority 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.

Accounts of the Authority.

**121.**—(1) It shall be the duty of the Authority—

(a) to keep proper accounts and proper records in relation to the accounts; and

(b) to prepare in respect of each accounting year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Authority.

(2) Every statement of accounts prepared by the Authority in accordance with this section shall comply with any requirement which the Ministers have, with the consent of the Treasury, notified in writing to the Authority and which relates to any of the following matters, namely—

(a) the information to be contained in the statement;

(b) the manner in which that information is to be presented;

(c) the methods and principles according to which the statement is to be prepared.

(3) Subject to subsection (4) below, in this section and section 122 below "accounting year", in relation to the Authority, means a financial year.

(4) If the Secretary of State so directs in relation to any accounting year of the Authority, that accounting year shall end with such date other than the next 31st March as may be specified in the direction; and, where the Secretary of State has given such a direction, the following accounting year shall begin with the day after the date so specified and, subject to any further direction under this subsection, shall end with the next 31st March.

Audit.

**122.**—(1) The accounts of the Authority shall be audited by auditors appointed for each accounting year by the Secretary of State.

(2) A person shall not be qualified for appointment for the purposes of subsection (1) above unless he is—

(a) a member of a body of accountants established in the United Kingdom and recognised for the purposes of section 389(1)(a) of the Companies Act 1985; or

1985 c. 6.

(b) a member of the Chartered Institute of Public Finance and Accountancy;

but a firm may be so appointed if each of its members is qualified to be so appointed.

(3) A copy of any accounts of the Authority which are audited under subsection (1) above and of the report made on those accounts by the auditors shall be sent to each of the Ministers as soon as reasonably practicable after the report is received by the Authority; and the Secretary of State shall lay a copy of any accounts or report sent to him under this subsection before Parliament.

(4) The Comptroller and Auditor General shall be entitled to inspect the contents of all books, papers and other records of the Authority relating to, or to matters dealt with in, the accounts required to be kept by virtue of section 121 above; and, accordingly, section 6 of the National Audit Act 1983 (examinations of economy, efficiency and effectiveness) shall apply to the Authority. 1983 c. 44.

(5) In this section "accounts", in relation to the Authority, includes any statement under section 121 above.

## CHAPTER II

## REVENUE PROVISIONS

### *Water resources charges*

**Power to make scheme imposing water resources charges.**

123.—(1) Where—

(a) an application is made for any licence under Chapter II of Part II of this Act or for the variation of, or of the conditions of, any such licence;

(b) a licence under that Chapter to abstract water is granted to any person or there is a variation of any such licence or of the conditions of any such licence; or

(c) a licence under that Chapter to abstract water is for the time being in force,

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

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

(a) in the case of a charge by virtue of subsection (1)(a) above, the person who makes the application; and

(b) in the case of a charge by virtue of subsection (1)(b) or (c) above, the person to whom the licence is granted or, as the case may be, the person holding the licence which is varied or is in force.

(3) Provision made by a scheme for the purposes of subsection (1)(c) above may impose a single charge in respect of the whole period for which a licence is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) The Authority shall not make a scheme under this section unless its provisions have been approved by the Secretary of State under section 124 below.

(5) A scheme under this section may—

(a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme;

(b) make different provision for different cases, including different provision in relation to different circumstances or localities; and

(c) contain supplemental, consequential and transitional provision for the purposes of the scheme;

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

PART VI

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

(7) A scheme under this section shall have effect subject to any provision made by or under section 58 above or sections 125 to 130 below.

**Approval of scheme under section 123.**

**124.**—(1) Before submitting a scheme under section 123 above to the Secretary of State for his approval the Authority shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—

(a) setting out its proposals; and

(b) specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State.

(2) Where any proposed scheme under section 123 above has been submitted to the Secretary of State for his approval, it shall be the duty of the Secretary of State, in determining whether or not to approve the scheme or to approve it subject to modifications—

(a) to consider any representations or objections duly made to him and not withdrawn; and

(b) to have regard to the matters specified in subsection (3) below.

(3) The matters mentioned in subsection (2) above are—

(a) the desirability of ensuring that the amounts recovered by the Authority by way of charges fixed by or under schemes under section 123 above are the amounts which, taking one year with another, are required by the Authority for recovering such amounts as the Secretary of State may consider it appropriate to attribute to the expenses incurred by the Authority in carrying out its functions under Part II of this Act; and

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

(4) For the purposes of subsection (3)(a) above—

(a) the Secretary of State shall take into account any determinations under section 117 above in determining the amounts which he considers it appropriate to attribute to the expenses incurred by the Authority in carrying out its functions under Part II of this Act; and

(b) those amounts may include amounts in respect of the depreciation of, and the provision of a return on, such of the Authority's assets as are held by it for purposes connected with the carrying out of those functions.

(5) The consent of the Treasury shall be required for the giving of an approval to a scheme under section 123 above.

PART VI

Specific exemptions from water resources charges.

**125.**—(1) No charges, other than those for the purpose of recovering administrative expenses attributable to the exercise by the Authority 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.

(2) No charges shall be levied in respect of water authorised by a licence to be abstracted from underground strata, in so far as—

(a) the water is authorised to be abstracted for use for agricultural purposes other than spray irrigation; and

(b) the quantity of water authorised to be abstracted from the strata in any period of twenty-four hours does not exceed twenty cubic metres in aggregate.

Agreements containing exemptions from charges.

**126.**—(1) The Authority may, on the application of any person who is liable to pay charges to the Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority refuses to make an agreement with the applicant as mentioned in subsection (1) above; or

(b) the applicant objects to the terms of such an agreement as proposed by the Authority and that objection is not withdrawn,

the applicant or the Authority 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 Authority was required to have regard in relation to the applicant; and

(b) may give directions to the Authority requiring it to make an agreement with the applicant in accordance with his decision.

PART VI

(6) Section 68 above shall have effect for the purposes of so much of this section as relates to a reference to the Secretary of State as if references in that section to Chapter II of Part II of this Act included references to this section.

(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.

**Special charges in respect of spray irrigation.**

**127.**—(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 Authority 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 Authority 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 Authority 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 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 Authority 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.

Duration of agreement under section 127.

**128.**—(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.

PART VI

(3) At any time while an agreement under section 127 above is in force, the applicant may apply to the Authority to terminate the agreement.

(4) If, on an application for the termination of an agreement under section 127 above, the Authority 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 Authority and the applicant may agree.

**Directions and appeals with respect to exercise of powers under sections 127 and 128.**

**129.**—(1) The Secretary of State may give directions as to the exercise by the Authority 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 Authority refuses to make or terminate an agreement under section 127 above; or

(b) the applicant objects to the proposals of the Authority—

(i) as to the terms of such an agreement; or

(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 Authority 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 Authority would be required to have regard in relation to the applicant on an application under that section; and

(b) may give directions to the Authority requiring it to make an agreement with the applicant in accordance with his decision.

(4) Section 68 above shall have effect for the purposes of so much of this section as relates to a reference to the Secretary of State as if references in that section to Chapter II of Part II of this Act included references to this section.

(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.

**Charges in respect of abstraction from waters of British Waterways Board.**

**130.**—(1) Where the British Waterways Board 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 the Board and the Authority may agree or, in default of such agreement, the Secretary of State may determine.

(2) Where—

(a) a person other than the British Waterways Board 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 Authority shall pay to the Board such proportion of those charges, subject to such conditions, as the Board and the Authority may agree, or, in default of such agreement, the Secretary of State may determine.

*Charges in connection with control of pollution*

Power to make scheme of charges.

**131.**—(1) Where—

(a) an application is made to the Authority for a Part III consent;

(b) the Authority gives a Part III consent otherwise than in a case where an application for a consent was made under paragraph 1 of Schedule 10 to this Act; or

(c) a Part III consent is for the time being in force,

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

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

(a) in the case of a charge by virtue of subsection (1)(a) above, the person who makes the application;

(b) in the case of a charge by virtue of subsection (1)(b) above, any person who is authorised to do anything by virtue of the consent and on whom the instrument giving the consent is served; and

(c) in the case of a charge by virtue of subsection (1)(c) above, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

(3) Provision made by a scheme for the purposes of subsection (2)(c) above may impose a single charge in respect of the whole period for which the consent is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(4) The Authority shall not make a scheme under this section unless its provisions have been approved by the Secretary of State under section 132 below.

(5) A scheme under this section may—

(a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme;

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

PART VI

(c) contain supplemental, consequential and transitional provision for the purposes of the scheme;

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

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

(7) In this section "a Part III consent" means a consent for the purposes of section 88(1)(a), 89(4)(a) or 90 above.

Approval of scheme under section 131.

**132.**—(1) Before submitting a scheme under section 131 above to the Secretary of State for his approval the Authority shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by it, publish a notice—

(a) setting out its proposals; and

(b) specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State.

(2) Where any proposed scheme under section 131 above has been submitted to the Secretary of State for his approval, it shall be the duty of the Secretary of State, in determining whether or not to approve the scheme or to approve it subject to modifications—

(a) to consider any representations or objections duly made to him and not withdrawn; and

(b) to have regard to the matters specified in subsection (3) below.

(3) The matters mentioned in subsection (2) above are—

(a) the desirability of ensuring that the amount recovered by the Authority by way of charges fixed by or under schemes under section 131 above does not exceed, taking one year with another, such amount as appears to the Secretary of State to be reasonably attributable to the expenses incurred by the Authority in carrying out its functions under the consent provisions and otherwise in relation to discharges into controlled waters; and

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

(4) The consent of the Treasury shall be required for the giving of the Secretary of State's approval to a scheme under section 131 above.

(5) In this section—

"the consent provisions" means the provisions of Schedule 10 to this Act, together with the provisions of section 91 above and of this section and section 131 above;

"controlled waters" has the same meaning as in Part III of this Act.

*Levies by the Authority on local authorities* PART VI

Power to authorise the Authority to issue levies. 1988 c. 41.

**133.** For the purposes of its flood defence functions the Authority shall be a levying body within the meaning of section 74 of the Local Government Finance Act 1988 (power to make regulations authorising a levying body to issue a levy); and that section shall have effect accordingly.

*General drainage charges*

Raising of general drainage charges.

**134.**—(1) Subject to subsection (2) below, the Authority may raise at an amount per hectare of chargeable land in a local flood defence district a charge to be known as a general drainage charge and to be levied in accordance with sections 135 and 136 below.

(2) The Authority shall not levy a general drainage charge in respect of any local flood defence district unless the regional flood defence committee for the area in which that district is situated have recommended that such a charge should be raised.

(3) For the purposes of this section and sections 135 and 136 below the area of a regional flood defence committee in relation to which no local flood defence scheme is in force shall be treated as a single local flood defence district; and any parts of such an area in relation to which no such scheme is in force shall be treated as included in a single such district.

Amount, assessment etc. of general drainage charge.

**135.**—(1) A general drainage charge raised by the Authority for a local flood defence district for any year shall be at a uniform amount per hectare of chargeable land in that district.

(2) The uniform amount referred to in subsection (1) above shall be ascertained, subject to subsection (3) below, by multiplying the relevant quotient determined in accordance with section 136 below 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 determined under section 136 below; and

(b) the aggregate amount which, if the chargeable land in the local flood defence district 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 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

PART VI

(b) to the general drainage charges proposed to be raised in any one or more local flood defence districts specified in the order;

and any such order applying to more than one local flood defence district may make different provision as respects the different districts 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.

**Determination of the relevant quotient.**

**136.**—(1) The relevant quotient for the purposes of section 135(2) above shall, in relation to any local flood defence district, be determined by the application of the following formula—

$$\left( \frac{A}{B} \times \frac{D}{E} \right) \div C = \text{relevant quotient}$$

where—

"A" means the aggregate amount demanded by the precepts issued in respect of that district under subsection (3) of section 46 of the Land Drainage Act 1976 in respect of the financial year beginning in 1989;

1976 c. 70.

"B" means the aggregate amount of the estimated penny rate products on the basis of which the aggregate amount so demanded was apportioned in pursuance of subsection (1) of that section in respect of that financial year;

"C" means the amount ascertained by dividing the aggregate amount so demanded by the number of the relevant population of that district for the financial year beginning in 1990;

"D" means the aggregate amount of the levies issued by the Authority in respect of that district under the National Rivers Authority (Levies) Regulations 1990 for the financial year in respect of which the drainage charge in question is raised; and

S.I. 1990/118.

"E" means the relevant population of that district for the financial year in respect of which that charge is raised.

(2) For the purposes of this section the relevant population of a local flood defence district for any financial year is the aggregate of—

(a) the relevant population for that year of the area of each charging authority the whole of whose area falls within that district; and

(b) the relevant population of such parts of the areas of any other charging authorities as fall within that district.

(3) For the purposes of subsection (2) above—

(a) the relevant population for any financial year of the area of an English charging authority shall be taken to be the relevant population of that area for that year as calculated under paragraph 4 of Schedule 12A to the Local Government Finance Act 1988;

1988 c. 41.

(b) the relevant population for any financial year of the area of a Welsh charging authority shall be taken to be the relevant population of that area for that year as calculated in accordance with rules for the time being effective (as regards that year) under regulations made under paragraph 5(1) of that Schedule;

(c) the relevant population for any financial year of any part of the area of a charging authority shall be taken to be the relevant population of that part of that area for that year as calculated in accordance with rules for the time being effective (as regards that year) under regulations made under paragraph 6(2) of that Schedule;

and, accordingly, any such regulations as are mentioned in paragraph (b) or (c) above shall have effect for the purposes of this section as they have effect for the purposes of section 69 of that Act.

(4) In this section "charging authority" has the same meaning as in the Local Government Finance Act 1988. 1988 c. 41.

*Special drainage charges*

Special drainage charges in interests of agriculture.

**137.**—(1) Where it appears to the Authority that the interests of agriculture require the carrying out, improvement or maintenance of drainage works in connection with any watercourses in the area of any regional flood defence committee, the Authority 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 the area of the regional flood defence committee as consists of land which, in the opinion of the Authority, 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 Land Drainage Act 1991 as part of a main river. 1991 c. 59.

(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.

PART VI

(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 Land Drainage Act 1991 as is fairly attributable to such expenses, shall be deemed to be expenses arising from those other drainage works; and

1991 c. 59.

(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.

**Levying and amount of special drainage charge.**

**138.**—(1) A special drainage charge shall be levied by the Authority 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 the regional flood defence committee for the area which includes the relevant chargeable land but shall exceed neither—

(a) 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 Authority; nor

(b) 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—

(a) consult with such of the associations and persons concerned as he considers appropriate;

(b) 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;

(c) 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

(d) 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—

(a) to special drainage charges in general; or

(b) to the special drainage charges proposed to be raised in respect of such areas of regional flood defence committees 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 more than one area of a regional flood defence committee, or authorised by more than one such scheme, may make different provision for the charges in respect of different areas 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 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. 1978 c. 30.

(7) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of special drainage charges.

*Revenue from internal drainage boards*

Contributions from internal drainage boards.

**139.**—(1) Subject to subsections (2) and (3) below, the Authority shall by resolution require every internal drainage board to make towards the expenses of the Authority such contribution as the Authority 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 Authority shall not require the drainage board for that district to make any contribution towards the expenses of the Authority 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 Authority, 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 Authority an amount equal to the aggregate of those contributions.

(4) If the Authority 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 Authority 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 Authority forthwith, notwithstanding that the time for bringing an appeal under that section has not expired or that an appeal so brought is pending.

PART VI

Appeals in respect of resolutions under section 139.

**140.**—(1) If—

(a) an internal drainage board is aggrieved by a resolution of the Authority under section 139 above determining the amount of any contribution; or

(b) the council of any county 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 Authority 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 Authority 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.

(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.

Precepts for recovery of contributions from internal drainage boards.

**141.**—(1) The Authority 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 Authority 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 Authority 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 Authority 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. PART VI

*Fisheries contributions*

Fisheries contributions.

**142.**—(1) Each of the Ministers shall have power, on an application made to him by the Authority, 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 Authority, 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 Authority'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 (2) to (9) 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 Salmon and Freshwater Fisheries Act 1975. 1975 c. 51.

*Navigation tolls*

Power of Authority to levy navigation tolls.

**143.**—(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 the area of a regional flood defence committee,

are not subject to the control of any navigation authority, harbour authority or conservancy authority, the Authority 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 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 Authority; 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.

PART VI *Incidental power of the Authority to impose charges*

Incidental power of the Authority to impose charges.

**144.** Without prejudice to the generality of its powers by virtue of section 4(1)(a) above and subject to any such express provision with respect to charging by the Authority as is contained in the preceding provisions of this Chapter or any other enactment, the Authority shall have power to fix and recover charges for services and facilities provided in the course of carrying out its functions.

*Interpretation of Chapter II*

Interpretation of Chapter II.

**145.** In this Chapter—

"agricultural buildings" has the meaning provided by section 26(4) of the General Rate Act 1967 as amended by the Rating Act 1971;

1967 c. 9.
1971 c. 39.

"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 Allotments Act 1922,

1922 c. 51.

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 the area of a regional flood defence committee as does not fall within an internal drainage district, excluding rough grazing land and woodlands other than commercial woodlands;

"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;

"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.

CHAPTER III PART VI

GRANTS AND LOANS

*Grants to the Authority*

Revenue grants.

**146.**—(1) The Secretary of State may, with the approval of the Treasury, make grants to the Authority of such amounts as he thinks fit.

(2) The payment by the Secretary of State of a grant under this section shall be on such terms as he may, with the approval of the Treasury, provide.

(3) The Secretary of State shall—

(a) prepare in respect of each financial year an account of the sums paid by him to the Authority under this section; and

(b) before the end of September in the following financial year send that account to the Comptroller and Auditor General;

and the form of the account and the manner of preparing it shall be such as the Treasury may direct.

(4) The Comptroller and Auditor General shall examine, certify and report on each account sent to him under this section and shall lay copies of it and of his report before each House of Parliament.

Grants for drainage works.

**147.**—(1) Subject to subsection (2) below, the relevant Minister may make grants towards expenditure incurred by the Authority in—

(a) the improvement of existing drainage works; or

(b) the construction of new drainage works.

(2) Grants under subsection (1) above shall be—

(a) of such amounts as the Treasury may from time to time sanction; and

(b) subject to such conditions as may, with the approval of the Treasury, be prescribed by regulations made by the relevant Minister.

(3) No grant shall be made under subsection (1) above towards expenditure incurred in connection with any improvement or construction unless—

(a) the plans and sections for it have been approved by the relevant Minister; and

(b) the relevant Minister is satisfied that the work is being or has been properly carried out.

(4) The relevant Minister may, with the approval of the Treasury, make grants to the Authority in respect of expenditure properly incurred by it with a view to carrying out drainage works, being expenditure towards which, if the works had been properly carried out, a grant would have been payable under subsection (1) above.

(5) Where the Authority is about to incur—

(a) such expenditure in respect of any work as is expenditure towards which, if the work is properly carried out, a grant will be payable under subsection (1) above; or

PART VI

(b) expenditure in respect of which it appears to the relevant Minister that a grant will be payable under subsection (4) above,

the relevant Minister may, with the approval of the Treasury, make advances to the Authority on account of the expenditure.

(6) In this section "the relevant Minister"—

(a) in relation to Wales, means the Secretary of State; and

(b) in relation to England, means the Minister.

Grants towards cost of flood warning systems.

**148.**—(1) The relevant Minister may make grants, of such amounts as the Treasury may from time to time sanction, towards expenditure incurred by the Authority in providing or installing apparatus, or carrying out other engineering or building operations, for the purposes of a flood warning system.

(2) No grant shall be payable under this section towards expenditure incurred in connection with any work unless—

(a) the work has been approved by the relevant Minister; and

(b) the relevant Minister is satisfied that the work is being or has been properly carried out.

(3) Grants under this section shall be made subject to such conditions as may be imposed by the relevant Minister with the approval of the Treasury.

(4) Where any such expenditure as is mentioned in subsection (1) above is about to be incurred by the Authority, the relevant Minister may, with the approval of the Treasury, make advances to the Authority on account of the expenditure.

(5) 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 Authority 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; and

"the relevant Minister" has the same meaning as in section 147 above.

Other grants in respect of exercise of powers under Part VII for drainage purposes.

**149.**—(1) The relevant Minister may, with the approval of the Treasury, make to the Authority grants in respect of expenditure incurred by the Authority, and advances on account of expenditure to be incurred by the Authority, in connection with the Authority's functions by virtue of section 165(1)(b) or (c) below—

(a) in making payments arising from the exercise of any power of the Authority by virtue of this Act to acquire land by agreement or compulsorily;

(b) in providing housing accommodation for persons employed or to be employed by the Authority in controlling works of such a kind or so located that those persons are or will be required to reside in the vicinity of the works;

(c) for making payments by virtue of any provision having effect under section 177 below in respect of injury sustained by any person by reason of the exercise by the Authority of any powers under section 165 below;

(d) in paying compensation by virtue of any provision having effect under section 177 below in respect of injury sustained by reason of the exercise by the Authority of its powers under section 167 below.

(2) The relevant Minister may, with the approval of the Treasury, make to the Authority grants in respect of, or advances on account of, expenditure incurred or to be incurred in carrying out works for the rebuilding or repair of any bridge maintained by the Authority, other than works appearing to the relevant Minister to be maintenance works of a routine kind.

(3) The relevant Minister may, with the approval of the Treasury, make to the Authority grants in respect of the cost of any works executed by the Authority in pursuance of section 165(4) below.

(4) In this section "the relevant Minister" has the same meaning as in section 147 above.

Grants for national security purposes.

**150.**—(1) The Secretary of State may make grants to the Authority for the purpose of defraying or contributing towards any losses it may sustain by reason of compliance with directions given under section 207 below in the interests of national security.

(2) The approval of the Treasury shall be required for the making of grants under this section.

*Borrowing by the Authority*

Borrowing powers of the Authority.

**151.**—(1) The Authority shall be entitled to borrow in accordance with the following provisions of this section, but not otherwise.

(2) Subject to subsection (4) below, the Authority may, with the consent of either of the Ministers and with the approval of the Treasury, borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the Ministers, such sums as it may require for meeting its obligations and carrying out its functions.

PART VI

(3) Subject to subsection (4) below, the Authority may borrow, otherwise than by way of temporary loan, such sums in sterling from either of the Ministers as it may require for capital purposes in connection with the carrying out of its flood defence functions.

(4) The aggregate amount outstanding in respect of the principal of sums borrowed under this section by the Authority shall not at any time exceed £100 million or such greater sum, not exceeding £160 million, as the Ministers may specify by order made by statutory instrument.

(5) No order shall be made under subsection (4) above unless a draft of the order has been laid before the House of Commons and has been approved by a resolution of that House.

Loans to the Authority.

**152.**—(1) Each of the Ministers shall have power, with the approval of the Treasury, to lend any sums to the Authority which the Authority has power to borrow under section 151(3) above.

(2) Any loan made by one of the Ministers under this section shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such rates and at such times, as that Minister may with the approval of the Treasury from time to time determine.

(3) Any sums required by either of the Ministers for making a loan under this section shall be paid out of money provided by Parliament; and any sums received by either of them in pursuance of subsection (2) above shall be paid into the Consolidated Fund.

(4) Each of the Ministers shall-

(a) prepare in respect of each financial year an account of the sums lent by him to the Authority under this section; and

(b) before the end of September in the following financial year send that account to the Comptroller and Auditor General;

and the form of the account and the manner of preparing it shall be such as the Treasury may direct.

(5) The Comptroller and Auditor General shall examine, certify and report on each account sent to him under this section and shall lay copies of it and of his report before each House of Parliament.

Treasury guarantees of the Authority's borrowing.

**153.**—(1) Each of the Ministers shall have power, with the consent of the Treasury, to 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 the Authority borrows from any person.

(2) Immediately after a guarantee is given under this section the Minister who gave it shall lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is paid out for fulfilling a guarantee under this section the Minister who gave the guarantee shall, as soon as possible 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 either of the Ministers for fulfilling a guarantee under this section shall be paid out of money provided by Parliament.

(5) If any sums are paid out in fulfilment of a guarantee under this section, the Authority shall make to the Minister who gave the guarantee, at such times and in such manner as that Minister may from time to time direct—

(a) payments of such amounts as that Minister may so direct in or towards repayment of the sums so paid out; and

(b) payments of interest, at such rate as that Minister 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 either of the Ministers under subsection (5) above shall be paid into the Consolidated Fund.

## PART VII

## LAND AND WORKS POWERS

### CHAPTER I

### POWERS OF THE AUTHORITY

*Provisions in relation to land*

Compulsory purchase etc.

**154.**—(1) The Authority may be authorised by either of the Ministers to purchase compulsorily any land anywhere in England and Wales which is required by the Authority for the purposes of, or in connection with, the carrying out of its functions.

(2) The power of each of the Ministers 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 Authority of any rights over land which is to be or has been acquired by the Authority, to provide for the extinguishment of those rights.

(3) Without prejudice to the generality of subsection (1) above, the land which the Authority 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 Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment. 1981 c. 67.

(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 Authority; 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 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. 1965 c. 56.

PART VII

1965 c. 56.

(6) The provisions of Part I of the 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 (including section 4 above) or otherwise, on the Authority as if—

(a) any reference in those provisions to the acquiring authority were a reference to the Authority; and

(b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

**Accretions of land resulting from drainage works.**

**155.**—(1) If the relevant Minister certifies that, as the result of—

(a) any drainage works carried out or improved, or proposed to be carried out or improved, by the Authority in connection with the tidal waters of a main river; or

(b) any drainage works transferred from a drainage body to the Authority in pursuance of this Act or the Land Drainage Act 1991,

1991 c. 59.

there has been or is likely to be any accretion of land, the powers of the Authority by virtue of this Act, for the purpose of carrying out its 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—

(a) 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

(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 Authority 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 Authority 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 Authority 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 Authority shall—

(a) on being so required by the Crown Estate Commissioners; and

(b) on payment by the Commissioners to the Authority of the sum paid by the Authority in respect of the acquisition of the land or right, together with the amount of any costs incurred by the Authority in connection with the acquisition,

transfer the land or right to the Commissioners or to any person nominated by them.

(6) If the Authority, 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 Law of Property Act 1925. 1925 c. 20.

(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.

Acquisition of land etc. for fisheries purposes.

**156.**—(1) Without prejudice to section 4 above, the powers conferred on the Authority by that section 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 Salmon and Freshwater Fisheries Act 1975; and 1975 c. 51.

(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) Without prejudice to section 4 above, the Authority 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.

Restriction on disposals of compulsorily acquired land.

**157.**—(1) The Authority 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 Authority by the Minister who is giving the consent or authorisation; and

PART VII

1991 c. 56.

(b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 156 of the 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.

(6) In this section "compulsorily acquired land", in relation to the Authority, means any land of the Authority which—

(a) was acquired by the Authority compulsorily under the provisions of section 154 above or of an order under section 168 below;

(b) was acquired by the Authority at a time when it was authorised under those provisions to acquire the land compulsorily;

(c) being land which has been transferred to the Authority in accordance with a scheme under Schedule 2 to the 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

1989 c. 15.

(d) being land which has been so transferred, 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 paragraph (c) above.

*Works agreements for water resources purposes*

Works agreements for water resources purposes.

**158.**—(1) Without prejudice to the generality of the powers of the Authority by virtue of section 4 above 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 Authority considers necessary or expedient in connection with the carrying out of any of the Authority'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 Authority 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 Authority direct that, in such cases or classes of cases as are specified in the direction, the Authority 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 Authority 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 Land Charges Act 1972 as if it were a charge affecting land falling within paragraph (iii) of Class D; 1972 c. 61.

(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—

(a) notice of the agreement may be registered under section 59(2) of the Land Registration Act 1925 as if it were a land charge (other than a local land charge) within the meaning of that Act; 1925 c. 21.

(b) the provisions of that Act shall apply accordingly as if the agreement were such a land charge; and

(c) where notice of the agreement has been so registered, 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 Land Registration Act 1925; 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—

PART VII

(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.

*General pipe-laying powers*

Powers to lay pipes in streets.

**159.**—(1) Subject to the following provisions of this Part, the Authority 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.

(2) Without prejudice to the generality of subsection (1)(c) above, the Authority 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.

1991 c. 22.
1980 c. 66.

(4) Until the coming into force of its repeal by the New Roads and Street Works Act 1991 section 20 of the 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 Authority or any water undertaker or from which the Authority 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 Authority or any water undertaker or which the Authority 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 Authority 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.

Power to lay pipes in other land.

**160.**—(1) Subject to the following provisions of this Part, the Authority 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) 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 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.

*Anti-pollution works*

Anti-pollution works and operations.

**161.**—(1) Subject to subsection (2) below, where it appears to the Authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Authority shall be entitled to carry out the following works and operations, that is to say-

PART VII

(a) in a case where the matter appears likely to enter any controlled waters, works and operations for the purpose of preventing it from doing so; or

(b) in a case where the matter appears to be or to have been present in any controlled waters, works and operations for the purpose—

(i) of removing or disposing of the matter;

(ii) of remedying or mitigating any pollution caused by its presence in the waters; or

(iii) so far as it is reasonably practicable to do so, of restoring 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.

(2) Nothing in subsection (1) above shall entitle the Authority to impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.

(3) Where the Authority carries out any such works or operations as are mentioned in subsection (1) above, it shall, subject to subsection (4) below, be entitled to recover the expenses reasonably incurred in doing so from any person who, as the case may be—

(a) caused or knowingly permitted the matter in question to be present at the place from which it was likely, in the opinion of the Authority, to enter any controlled waters; or

(b) caused or knowingly permitted the matter in question to be present in any controlled waters.

(4) No such expenses shall be recoverable from a person for any works or operations in respect of water from an abandoned mine which that person permitted to reach such a place as is mentioned in subsection (3) above or to enter any controlled waters.

(5) Nothing in this section—

(a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this section; or

(b) affects any restriction imposed by or under any other enactment, whether public, local or private.

(6) In this section—

"controlled waters" has the same meaning as in Part III of this Act; and

1954 c. 70.

"mine" has the same meaning as in the Mines and Quarries Act 1954.

Other powers to deal with foul water and pollution.

**162.**—(1) Without prejudice to the powers conferred by section 161 above and subsections (2) and (3) below, the Authority shall have power, on any land—

(a) which belongs to the Authority; or

(b) over or in which the Authority 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 Authority 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 Authority 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 Authority, 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—

"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 Water Industry Act 1991; 1991 c. 56.

PART VII

"waterworks" includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

*Powers to discharge water*

Discharges for works purposes.

**163.**—(1) Subject to the following provisions of this section and to section 164 below, where the Authority—

(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 Authority 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 Authority 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 Authority 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, London Regional Transport 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.

Consents for certain discharges under section 163.

**164.**—(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 Authority 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 Authority shall serve a copy of the application, and of any consent given on that application, on every person who—

(i) is registered with the Authority 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 Authority, 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

(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 Authority 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 Authority shall, as soon as practicable after making the discharge, serve a notice which—

(a) states that the discharge has been made; and

PART VII

(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 Authority would have been required to serve the application for that consent or any copy of that application.

(8) If the Authority 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 Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

1945 c. 42.

*Flood defence and drainage works*

General powers to carry out flood defence and drainage works.

**165.**—(1) The Authority shall have power, in connection with a main river—

(a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or any drainage work;

(b) to improve any existing works, that is to say, to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;

(c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act (other than an act referred to in paragraph (a) or (b) above) required for the drainage of any land.

(2) The Authority shall also have power, irrespective of whether the works are in connection with a main river, 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 Authority 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.

(4) The Authority 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 the amount of any grant paid under section 149(3) above in respect of the works in question.

(5) The Authority 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 in connection with a main river which the Authority is authorised to carry out.

(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; and subsections (2) and (3) of section 113 above shall apply for the purposes of determining any question arising under this section as to—

(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,

as they apply for the purposes of that Part.

**Power to carry out works for purpose of providing flood warning system.**

**166.**—(1) Without prejudice to its other powers by virtue of section 4 above, Part IV of this Act and this Part, the Authority 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 Authority, 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 Authority by virtue of its constitution.

(3) The Authority 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 the areas of the regional flood defence committees whose areas are adjacent to Scotland were functions in relation to that area in Scotland; and

(b) that area in Scotland were included in the areas of each of those committees;

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 Flood Prevention (Scotland) Act 1961) for the area in Scotland in question. 1961 c. 41.

(4) In this section "flood warning system" has the same meaning as in section 148 above.

**Power to dispose of spoil in connection with flood defence works.**

**167.**—(1) Subject to subsection (2) below, the Authority 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

(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.

PART VII

(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 Environmental Protection Act 1990.

1990 c. 43.

(3) The Authority and the council of any district or London 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 Authority 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.

*Compulsory works orders*

Compulsory works orders.

**168.**—(1) Where the Authority 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 Authority 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 Authority of any rights over land which is to be or has been acquired by the Authority, 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 Authority 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 Authority; 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 the Authority 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 Authority where the Authority 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.

## CHAPTER II

## POWERS OF ENTRY

Powers of entry for enforcement purposes.

**169.**—(1) Any person designated in writing for the purpose by either of the Ministers or by the Authority 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 Authority 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 or the Authority—

(i) considers appropriate for the purpose mentioned in paragraph (a) above; and

(ii) has authorised that person to carry out or take away.

PART VII

(2) The powers which by virtue of subsection (1) above are conferred in relation to any premises for the purpose of enabling either of the Ministers or the Authority to determine whether any provision made by or under any of the water pollution provisions of this Act is being or has been contravened shall include power, in order to obtain the information on which that determination may be made—

(a) to carry out experimental borings or other works on those premises; and

(b) to install and keep monitoring and other apparatus there.

(3) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Authority carries out functions.

**Power of entry for certain works purposes.**

**170.**—(1) Any person designated in writing for the purpose by the Authority 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 Authority 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 Authority 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 Authority 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.

**Power to carry out surveys and to search for water.**

**171.**—(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 Authority 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—

(a) whether it would be appropriate for the Authority to acquire any land, or any interest or right in or over land, for purposes connected with the carrying out of its functions; or

(b) whether it would be appropriate for the Authority 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 Authority considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.

(4) The powers conferred by this section shall not be exercised 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.

Powers of entry for other purposes.

**172.**—(1) Any person designated in writing for the purpose by either of the Ministers or the Authority may enter any premises or vessel for the purpose of—

(a) determining whether, and if so in what manner, any power or duty conferred or imposed on either of the Ministers or on the Authority 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

(b) exercising or performing any power or duty which is so conferred or imposed.

PART VII

(2) Any person designated in writing for the purpose by either of the Ministers or the Authority may—

(a) 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

(b) take away such samples of water or effluent or of any land or articles,

as that Minister or the Authority considers appropriate for any purpose mentioned in subsection (1) above and has authorised that person to carry out or take away.

(3) 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 or the Authority 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—

(a) to carry out experimental borings or other works on those premises; and

(b) to install and keep monitoring and other apparatus there.

(4) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Authority carries out functions.

**Powers of entry: supplemental provisions.**

**173.** 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.

**Impersonation of persons exercising powers of entry.**

**174.**—(1) A person who, without having been designated or authorised for the purpose by the Authority, 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 the Authority.

## CHAPTER III

## PROVISIONS SUPPLEMENTAL TO LAND AND WORKS POWERS

### *Vesting of pipes in the Authority*

**Vesting of pipes in the Authority.**

**175.**—(1) Subject to any provision to the contrary contained in an agreement between the Authority 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 Authority,

shall vest in the Authority.

(2) Subsection (1) above is without prejudice to the vesting of anything in the Authority by virtue of the exercise by the Authority of any power to acquire property by agreement or compulsorily.

*Offence of interference with works etc.*

Offence of interference with works etc.

**176.**—(1) Subject to subsection (2) below, if any person without the consent of the Authority—

(a) intentionally or recklessly interferes with any resource main or other pipe vested in the Authority or with any structure, installation or apparatus belonging to the Authority; 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 Authority—

(a) attaches any pipe or apparatus to any resource main or other pipe vested in the Authority; 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 Authority; and any such breach of duty which causes the Authority to sustain loss or damage shall be actionable at the suit of the Authority.

PART VII

(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.

1991 c. 56.

(7) In this section "service pipe" and "stopcock" have the same meanings as in the Water Industry Act 1991, and "consumer" has the same meaning as in Part III of that Act.

*Compensation etc. in respect of exercise of works powers*

Compensation etc. in respect of exercise of works powers.

**177.** 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 Authority by sections 159 to 167 above and otherwise for minimising the damage caused by the exercise of those powers.

*Protective provisions*

Protection for particular undertakings.

**178.** 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 Authority.

Protective provisions in respect of flood defence works and watercourses etc.

**179.**—(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 Authority 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

(b) to construct or alter any works on or in any such inland waters,

the Authority 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.

PART VII

Power of navigation authorities etc to divert the Authority's watercourses.

**180.**—(1) Where any watercourses under the control of the Authority 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 Authority 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

"watercourse" has the same meaning as in Part IV of this Act.

Works in tidal lands etc.

**181.**—(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise the Authority 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 Authority by the service on the Authority of a notice containing the approval.

1975 c. 51.

(3) Section 38 of the 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.

1991 c. 59.

(4) Section 74 of the 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.

Mineral rights.

**182.** Schedule 23 to this Act (which makes provision with respect to the acquisition of mineral rights by the Authority 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

PART VII

acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

1981 c. 67.

**Saving for planning controls etc.**

**183.**—(1) Without prejudice to the operation of section 90 of the 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 Water Act 1989 relates to the functions of the Authority, 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.

1990 c. 8.
1989 c. 15.

(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 Ancient Monuments and Archaeological Areas Act 1979.

1979 c. 46.

**Duties to make recreational facilities available when building reservoirs in Wales.**

**184.**—(1) Where the Authority 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 the Authority to benefit the inhabitants of that or those communities,

it shall be the duty of the Authority 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 the Authority, 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 district in which any community affected is situated.

*Savings in respect of existing drainage obligations*

**Savings in respect of existing drainage obligations.**

**185.**—(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 Land Drainage Act 1991 applies.

1991 c. 59.

(2) The functions of the Authority 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.

*Interpretation of Part VII*

**Interpretation of Part VII.**

**186.**—(1) In this Part—

"discharge pipe" means a pipe from which discharges are or are to be made under section 163 above;

"resource main" means any pipe, not being a trunk main within the meaning of the Water Industry Act 1991, which is or is to be used for the purpose of—

1991 c. 56.

(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.

(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 Authority by any other enactment or by any agreement.

## PART VIII

## INFORMATION PROVISIONS

### *Annual report and publication of information*

Annual report of the Authority.

**187.**—(1) As soon as reasonably practicable after the end of each financial year the Authority shall prepare a report on its activities during that year and shall send a copy of that report to each of the Ministers.

(2) Every such report shall set out any directions under section 5 above which have been given to the Authority during the year to which the report relates.

(3) The Secretary of State shall lay a copy of every such report before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.

(4) The Authority's annual report shall be in such form and contain such information as may be specified in any direction given to the Authority by the Ministers.

Duty of Authority to publish certain information.

**188.** It shall be the duty of the Authority—

(a) to 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 Wales; and

(b) so far as it considers it appropriate to do so, to collaborate with others in collating and publishing any such information or any similar information in relation to places outside England and Wales.

### *Registers etc. to be kept by the Authority*

Register of abstraction and impounding licences.

**189.**—(1) The Authority 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

PART VIII

(b) to persons becoming the holders of such licences by virtue of section 49 above of this Act or regulations made under section 50 above.

(2) Every register kept by the Authority 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 Authority 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 Water Resources Act 1963.

1963 c. 38.

(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.

**Pollution control register.**

**190.**—(1) It shall be the duty of the Authority to maintain, in accordance with regulations made by the Secretary of State, registers containing prescribed particulars of—

(a) any notices of water quality objectives or other notices served under section 83 above;

(b) applications made for consents under Chapter II of Part III of this Act;

(c) consents given under that Chapter and the conditions to which the consents are subject;

(d) certificates issued under paragraph 1(7) of Schedule 10 to this Act;

(e) the following, that is to say—

(i) samples of water or effluent taken by the Authority 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 Authority from any person under arrangements made by the Authority 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;

and

(f) any matter about which particulars are required to be kept in any register under section 20 of the Environmental Protection Act 1990 (particulars about authorisations for prescribed processes etc.) by the chief inspector under Part I of that Act.

1990 c. 43.

(2) It shall be the duty of the Authority—

(a) to secure that the contents of registers maintained by the Authority 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 Authority, on payment of reasonable charges, copies of entries in any of the registers.

(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.

Register for the purposes of works discharges.

**191.**—(1) The Authority shall keep a register of persons and premises for the purposes of section 164 above.

(2) The Authority 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 Authority 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.

Maps of fresh-water limits.

**192.**—(1) The Secretary of State—

(a) shall deposit maps with the Authority 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 Authority 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.

Main river maps.

**193.**—(1) Subject to section 194 below, the Authority shall—

(a) keep the main river map for the area of a regional flood defence committee at the principal office of the Authority for that area; and

(b) provide reasonable facilities for inspecting that map and taking copies of and extracts from it;

and any local authority whose area is wholly or partly within the area of a regional flood defence committee shall, on application to the Authority, be entitled to be furnished with copies of the main river map for the area of that committee on payment of such sum as may be agreed between the Authority and that local authority.

PART VIII

(2) For the purposes of this Act a main river map is a map relating to the area of a regional flood defence committee which—

(a) shows by a distinctive colour the extent to which any watercourse in that area is to be treated as a main river, or part of a main river, for the purposes of this Act; and

(b) indicates (by a distinctive colour or otherwise) which (if any) of those watercourses are watercourses designated in a scheme made under section 137 above;

and, subject to section 194 below, references in this Act to a main river map, in relation to the area of a regional flood defence committee, include so much of any map as, by virtue of paragraph 38 of Schedule 26 to the Water Act 1989, has effect as such a map at the coming into force of this Act.

(3) A main river map—

(a) shall be conclusive evidence for all purposes as to what is a main river; and

1868 c. 37.

(b) shall be taken for the purposes of the Documentary Evidence Act 1868, as it applies to either of the Ministers, to be a document within the meaning of that Act and to have been issued by that Minister.

(4) In this section and section 194 below "watercourse" has the same meaning as in Part IV of this Act.

Amendment of main river maps.

**194.**—(1) Either of the Ministers may at any time send the Authority one or more new maps to be substituted for the whole or part of a main river map and containing a statement to that effect.

(2) A statement contained in a map in pursuance of subsection (1) above shall specify the date on which the substitution is to take effect and the substitution shall take effect in accordance with the statement.

(3) Where—

(a) the area of a regional flood defence committee is altered so as to affect any of the particulars shown on the main river map for that area; or

(b) one of the Ministers confirms a scheme under section 137 above; or

(c) the Authority applies to one of the Ministers for the variation of a main river map, so far as it shows the extent to which any watercourse is to be treated as a main river or part of a main river,

the Ministers shall each be under a duty to ensure that such action as he considers appropriate is taken under subsection (4) below.

(4) The action referred to in subsection (3) above is action by one of the Ministers—

(a) requiring the Authority to send him any part of the main river map in question, altering it and sending it back to the Authority; or

(b) preparing a new main river map and sending it to the Authority; or

(c) notifying the Authority that he does not intend to vary the main river map in question.

(5) Before one of the Ministers alters a map or prepares a new map by virtue of subsection (3)(c) above, he shall—

(a) give notice of his intention to do so in such manner as he thinks best adapted for informing persons affected; and

(b) consider any objections made to him within the time and in the manner specified in that notice;

and he may then alter or prepare the map either in accordance with the proposals contained in the notice or otherwise.

Maps of waterworks.

**195.**—(1) Subject to subsections (4) and (5) below, it shall be the duty of the Authority to keep records of the location of—

(a) every resource main or discharge pipe which is for the time being vested in the Authority; and

(b) any other underground works which are for the time being vested in the Authority.

(2) It shall be the duty of the Authority 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 Authority.

(3) Any information which is required under this section to be made available by the Authority 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) 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 the Authority, 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 Water Act 1945 (maps of underground works). 1945 c. 42.

(6) The reference in subsection (5) above to section 12 of Schedule 3 to the Water Act 1945 shall have effect, without prejudice to section 20(2) of the 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. 1978 c. 30.

(7) In this section—

"discharge pipe" and "resource main" have the same meanings as in Part VII of this Act;

PART VIII

1991 c. 56.

"underground works" does not include a service pipe within the meaning of the Water Industry Act 1991.

*Provision and acquisition of information etc.*

Provision of information by the Authority to the Ministers.

**196.**—(1) It shall be the duty of the Authority to furnish the Secretary of State or the Minister with all such information relating to—

(a) the Authority's property;

(b) the carrying out and proposed carrying out of its functions; and

(c) its responsibilities generally,

as he 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 or the Minister may reasonably require.

(3) The information which the Authority may be required to furnish to either of the Ministers under this section shall include information which, although it is not in the possession of the Authority or would not otherwise come into the possession of the Authority, is information which it is reasonable to require the Authority 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 or the Minister considers appropriate; and

(b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time.

(5) For the purposes of this section the Authority shall—

(a) permit any person authorised by one of the Ministers for the purpose to inspect and make copies of the contents of any accounts or other records of the Authority; and

(b) give such explanation of them as that person or the Secretary of State or the Minister may reasonably require.

Provision of information about water flow etc.

**197.**—(1) It shall be the duty of the Authority—

(a) to provide a water undertaker with all such information to which this section applies as is in the possession of the Authority 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 Authority 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 Authority with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the Authority 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 Authority 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 Authority 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 Authority 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 Authority may reasonably require; and the duties of the Authority under subsection (1) above shall extend to information provided to or obtained by the Authority under subsection (2) or (3) above.

(5) Information or facilities provided under subsection (1) or (2) above to the Authority, 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 Authority may determine.

(6) The duties of a water undertaker under subsection (2) above shall be enforceable under section 18 of the Water Industry Act 1991 by the Secretary of State. 1991 c. 56.

(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.

Information about underground water.

**198.**—(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 the Natural Environment Research Council 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 the Natural Environment Research Council;

(b) send to that Council particulars of any test made before completion or abandonment of the work of the flow of water;

(c) allow any person authorised by that Council 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.

PART VIII

(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 the Natural Environment Research Council 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.

(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 the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

Notice etc. of mining operations which may affect water conservation.

**199.**—(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 Authority a notice of his intention in the prescribed form.

(2) The provisions of subsections (2) and (3) of section 30 above and of section 31 above shall apply where a notice is served under subsection (1) above as they apply where a notice is served under subsection (1) of that section 30 but as if the references in subsection (3) of that section 30 and

in subsection (1) of that section 31 to interference with the protection of the underground works in question were a reference to interference with the winning of minerals.

(3) Sections 68 to 70 above shall apply for the purposes of subsection (2) above as they apply for the purposes of the provisions applied by that subsection.

(4) Any person who contravenes subsection (1) above or fails to comply with a conservation notice given by virtue of 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.

Gauges and records kept by other persons.

**200.**—(1) Subject to subsection (3) below, any person other than the Authority, 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 Authority 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 Authority 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 Authority 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.

Power to require information with respect to abstraction.

**201.**—(1) The Authority may give directions requiring any person who is abstracting water from a source of supply, at such times and in such form as may be specified in the directions, to give such information to the Authority as to the abstraction as may be so specified.

(2) Where—

(a) directions are given to any person under this section; and

(b) that person considers that they are unreasonable or unduly onerous,

he may make representations to the Secretary of State with respect to the directions.

PART VIII

(3) Subject to subsection (4) below, where representations are made to the Secretary of State under subsection (2) above, he may, if he thinks fit, give a direction under this section requiring the Authority to revoke or modify the direction.

(4) Subsection (3) above shall not apply to any directions in so far as they require the occupier of any land to give any prescribed particulars as to the quantity or quality of water abstracted by him or on his behalf from any source of supply.

(5) Any person who fails to comply with any directions given by the Authority under this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

**Information and assistance required in connection with the control of pollution.**

**202.**—(1) It shall be the duty of the Authority, 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 Authority 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 question or by the Authority 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 liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

1980 c. 43.

(5) Notwithstanding anything in section 127 of the Magistrates' Courts Act 1980 (time limit for summary proceedings), a magistrates' court may try any summary offence under this section if the information is laid not more than twelve months after the commission of the offence.

**Exchange of information with respect to pollution incidents etc.**

**203.**—(1) It shall be the duty of the Authority to provide a water undertaker with all such information to which this section applies as is in the possession of the Authority and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions.

(2) It shall be the duty of every water undertaker to provide the Authority with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the Authority for purposes connected with the carrying out of any of its functions.

(3) Information provided to a water undertaker or to the Authority 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 Authority may reasonably require.

(4) Information provided under subsection (1) or (2) above to a water undertaker or to the Authority shall be provided free of charge.

(5) The duties of a water undertaker under subsection (2) above shall be enforceable under section 18 of the Water Industry Act 1991 by the Secretary of State. 1991 c. 56.

(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 solid 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.

*Restriction on disclosure of information*

Restriction on disclosure of information.

**204.**—(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—

(a) for the purpose of facilitating the carrying out by either of the Ministers, the Authority, the Director General of Water Services, the Monopolies Commission 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 or the Water Act 1989; 1989 c. 15.

(b) for the purpose of facilitating the performance by a water undertaker or sewerage undertaker of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989;

(c) in pursuance of any duty imposed by section 197(1)(a) or (2) or 203(1) or (2) above or of any arrangements made by the Director General of Water Services under section 29(6) of the Water Industry Act 1991;

(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;

(e) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the Financial Services Act 1986 or by the enactments relating to companies, insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to carry out his functions; 1986 c. 60.

PART VIII

(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 Insolvency Act 1986 to carry out its functions as such;

1986 c. 45.

(g) for the purpose of facilitating the carrying out by the Health and Safety Commission or 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 Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;

1974 c. 37.

(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 Water Act 1989 or any of the enactments or instruments specified in Part II of Schedule 24 to this Act, or of any arbitration under this Act, any of the other consolidation Acts or that Act of 1989; or

1989 c. 15.

(k) in pursuance of a Community 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 Authority;

(ii) the Director General of Water Services;

(iii) a customer service committee maintained under the Water Industry Act 1991; or

1991 c. 56.

(iv) the Monopolies Commission,

under any provision of this Act or that Act of 1991;

(b) as limiting the matters which may be published under section 201 of that Act; 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 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.

(7) In this section "the other consolidation Acts" means the Water Industry Act 1991, the Statutory Water Companies Act 1991, the Land Drainage Act 1991 and the Water Consolidation (Consequential Provisions) Act 1991.

1991 c. 56.
1991 c. 58.
1991 c. 59.
1991 c. 60.

**Confidentiality of information relating to underground water etc.**

**205.**—(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 the Natural Environment Research Council require that Council 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, the Natural Environment Research Council 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 that Council 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 the Natural Environment Research Council 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 that Council from acting as if consent had been given; and

(b) that Council 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—

PART VIII

(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.

*Making of false statements etc.*

Making of false statements etc.

**206.**—(1) If, in furnishing any information or making any application under or for the purposes of any of the following provisions of this Act, that is to say, the provisions of—

(a) Part I, other than Schedule 2;

(b) sections 19 and 20 and Chapter III of Part II;

(c) Part III;

(d) Part VI, other than sections 133 to 143 and 147 to 149;

(e) Part VII, other than sections 155, 156, 158, 165 to 167 and the other provisions of that Part so far as they relate to those sections;

(f) this Part, other than sections 189, 193, 194, 198 to 201 and 205; and

(g) Part IX, except so far as it relates to a provision of this Act in relation to which this subsection does not apply,

any person 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 under this section.

(2) If—

(a) in giving any information which he is required to give under Chapter II of Part II of this Act or any of the related water resources provisions or under Schedule 2 to this Act, any person knowingly or recklessly makes a statement which is false in a material particular; or

(b) for the purpose of obtaining a licence under that Chapter, any person knowingly makes a statement which is false in a material particular,

that person shall be guilty of an offence under this section.

(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.

(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.

(5) 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 a fine;

and proceedings for an offence by virtue of subsection (1) above shall not be instituted except by or with the consent of one of the Ministers or the Director of Public Prosecutions.

(6) A person who is guilty of an offence under this section by virtue of subsection (2) or (3) above 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 two years or to a fine or to both.

(7) A person who is guilty of an offence under this section by virtue of subsection (4) above 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.

## PART IX

## MISCELLANEOUS AND SUPPLEMENTAL

### *Miscellaneous*

Directions in the interests of national security etc.

**207.**—(1) The Secretary of State may, after consultation with the Authority, give to the Authority 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 Authority, give to the Authority a direction requiring it to do, or not to do, a particular thing specified in the direction.

PART IX

(3) The duty of the Authority 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,

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.

1991 c. 56.

(8) In this section "sewerage services" has the same meaning as in the Water Industry Act 1991.

Civil liability of the Authority for escapes of water etc.

**208.**—(1) Where an escape of water, however caused, from a pipe vested in the Authority causes loss or damage, the Authority shall be liable, except as otherwise provided in this section, for the loss or damage.

(2) The Authority 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 Authority shall not incur any liability under subsection (1) above in respect of any loss or damage for which the Authority 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 Town and Country Planning Act 1990;

1990 c. 8.

1986 c. 44.
1989 c. 29.

(b) by any public gas supplier within the meaning of Part I of the Gas Act 1986 or the holder of a licence under section 6(1) of the 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 New Roads and Street Works Act 1991.

1991 c. 22.

1945 c. 28.
1976 c. 30.
1980 c. 58.

(4) The Law Reform (Contributory Negligence) Act 1945, the Fatal Accidents Act 1976 and the Limitation Act 1980 shall apply in relation to any loss or damage for which the Authority is liable under this section, but which is not due to the Authority's fault, as if it were due to its fault.

PART IX

(5) Nothing in subsection (1) above affects any entitlement which the Authority may have to recover contribution under the Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which the Authority is liable under that subsection shall be treated as if it were damage. 1978 c. 47.

(6) Where the Authority 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 Authority 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 Law Reform (Contributory Negligence) Act 1945. 1945 c. 28.

(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— 1991 c. 22.

"(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the Public Utilities Street Works Act 1950; or 1950 c. 39.

(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).

Evidence of samples and abstractions.

**209.**—(1) Subject to subsection (2) below, the result of the analysis of any sample taken on behalf of the Authority in exercise of any power conferred by this Act shall not be admissible in any legal proceedings in respect of any effluent passing from any land or vessel unless the person who took the sample—

(a) on taking the sample notified the occupier of the land or the owner or master of the vessel of his intention to have it analysed;

(b) there and then divided the sample into three parts and caused each part to be placed in a container which was sealed and marked; and

(c) delivered one part to the occupier of the land or the owner or master of the vessel and retained one part, apart from the one he submitted to be analysed, for future comparison.

(2) If it is not reasonably practicable for a person taking a sample to comply with the requirements of subsection (1) above on taking the sample, those requirements shall be treated as having been complied with if they were complied with as soon as reasonably practicable after the sample was taken.

(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

PART IX

(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.

(4) In relation to any proceedings in respect of effluent passing from a public sewer or other outfall belonging to a sewerage undertaker into any water, this section shall have effect as if the references to the occupier of the land were references to the sewerage undertaker in which the sewer or outfall is vested.

*Byelaws*

Byelaw-making powers of the Authority.

**210.**—(1) Schedule 25 to this Act shall have effect for conferring powers on the Authority 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 Authority, whether by virtue of subsection (1) above or by virtue of any other enactment.

Enforcement of byelaws.

**211.**—(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, to a fine not exceeding level 4 on the standard scale or, in the case of byelaws made by virtue of paragraph 4, such smaller sum as may be specified in the byelaws.

(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 Authority 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 Authority in taking any action under paragraph (a) or (b) above from the person in default.

(6) So much of the 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. 1975 c. 51.

(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.

Compensation in respect of certain fisheries byelaws.

**212.**—(1) Where—

(a) the owner or occupier of any fishery by notice to the Authority 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,

the claim and the amount of compensation to be paid, by way of annual payment or otherwise, for the damage (if any) to the fishery shall be determined, in default of agreement, by a single arbitrator appointed by one of the Ministers.

(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 salmon, trout, or freshwater fish of any instrument (not being a fixed engine) in such waters and at such times as are prescribed by the byelaw;

(b) specifying the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout, freshwater fish and eels 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.

(3) Where by virtue of this section any compensation is payable under any award by way of an annual payment—

(a) the Authority or the person entitled to the annual payment may at any time after the end of five years from the date of the award require it to be reviewed by a single arbitrator appointed by one of the Ministers; and

(b) the compensation to be paid after the review shall be such, if any, as may be determined by that arbitrator.

(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.

PART IX *Local inquiries*

**General powers to hold local inquiries.**

**213.**—(1) Without prejudice to any other provision of this Act by virtue of which a local inquiry is authorised or required to be held, each of the Ministers shall have power to cause a local inquiry to be held in any case where it appears to him expedient to do so—

(a) in connection with any matter arising under Chapter II of Part II of this Act or the related water resources provisions; or

(b) otherwise in connection with any of the Authority's functions.

(2) Without prejudice as aforesaid, the Secretary of State may cause a local inquiry to be held in any case in which he considers it appropriate for such an inquiry to be held—

(a) for the purposes of the establishment or review under section 83 above of any water quality objectives or otherwise in connection with any of the water pollution provisions of this Act;

(b) with a view to preventing or dealing with pollution of any controlled waters; or

(c) in relation to any other matter relevant to the quality of any such waters.

(3) In this section "controlled waters" has the same meaning as in Part III of this Act.

**Power to hold inquiries for flood defence purposes etc.**

**214.**—(1) Each of the Ministers shall have power to cause such inquiries to be held as he considers necessary or desirable for the purposes of the flood defence provisions of this Act.

(2) Subject to subsection (3) below, the person appointed to hold any inquiry under subsection (1) above or otherwise under the flood defence provisions of this Act may for the purposes of the inquiry—

(a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control relating to any matter in question at the inquiry; and

(b) take evidence on oath and for that purpose administer oaths.

(3) No person shall be required, in obedience to a summons under this section, to attend to give evidence or to produce any documents, unless the necessary expenses of his attendance are paid or tendered to him; and nothing in this section shall empower a person holding an inquiry to require the production of the title, or of any instrument relating to the title, of any land which is not the property of a local authority.

(4) Any person who—

(a) refuses or deliberately fails to attend in obedience to a summons under this section, or to give evidence; or

(b) deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for the purposes of this section,

shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale or to both.

(5) Where either of the Ministers causes an inquiry to be held under this section—

(a) the costs incurred by him in relation to the inquiry shall be paid by such authority or party to the inquiry as he may direct; and

(b) the Minister in question may cause the amount of the costs so incurred to be certified;

and any amount so certified and directed to be paid by any authority or person shall be recoverable from that authority or person by that Minister summarily as a civil debt.

(6) Where either of the Ministers causes an inquiry to be held under this section—

(a) he may make orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid; and

(b) every such order may be made a rule of the High Court on the application of any party named in the order.

(7) Section 42 of the Housing and Planning Act 1986 (recovery of Minister's costs in connection with inquiries) shall apply where either of the Ministers is authorised by virtue of subsection (5) above to recover costs incurred by him in relation to an inquiry as it applies where a Minister is so authorised by virtue of an enactment specified in subsection (1) of that section. 1986 c. 63.

Procedure at local inquiries. 1972 c. 70.

**215.**—(1) Subject to subsection (2) below, subsections (2) to (5) of section 250 of the 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 any provision of this Act, other than a provision in relation to which section 214 above has effect, as they apply to inquiries under that section of that Act of 1972.

(2) Subsection (4) of section 250 of that Act of 1972 shall apply in accordance with subsection (1) 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 the Authority as if the reference to a local authority in that subsection included a reference to the Authority.

*Offences etc.*

Enforcement: powers and duties.

**216.**—(1) Without prejudice to its powers of enforcement in relation to the other provisions of this Act, it shall be the duty of the Authority 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 Authority; 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.

Criminal liabilities of directors and other third parties.

**217.**—(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

PART IX

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.

*Judicial disqualification*

Judicial disqualification.

**218.** No judge of any court or justice of the peace shall be disqualified from acting in relation to any proceedings to which the Authority is a party by reason only that he is or may become liable to pay a charge to the Authority in respect of any services or facilities that are not the subject-matter of the proceedings.

*Powers to make regulations*

Powers to make regulations.

**219.**—(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 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) Subject to subsection (3) below, 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 Water Industry Act 1991 by the Secretary of State, by the Director or by either of them;

1991 c. 56.

(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 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.

(3) The powers to make regulations under any of the provisions of Chapter II of Part II, under any of the flood defence provisions of this Act or under section 189 or 199 above or paragraph 10 of Schedule 2 to this Act—

(a) shall not, except to the extent that they would do so apart from this section, include any of the powers conferred by subsection (2) above; but

(b) in the case of the powers conferred by section 108(7) above and paragraph 10 of Schedule 2 to this Act, shall include power to make different provision in relation to different classes of person.

*Construction of Act*

**Provisions relating to service of documents.**

**220.**—(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 or management of the partnership business.

1978 c. 30.

(2) For the purposes of this section and section 7 of the 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

PART IX

(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.

General interpretation.

**221.**—(1) In this Act, except in so far as the context otherwise requires—

"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 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 telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984) unless it—

1984 c. 12.

(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;

1991 c. 56.

and in this definition "stopcock" has the same meaning as in the Water Industry Act 1991;

1947 c. 48.

"agriculture" has the same meaning as in the 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;

"the Authority" means the National Rivers Authority;

"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;

"constituent council", in relation to regional flood defence committees and local flood defence committees, shall be construed in accordance with sections 10(5) and 13(7) above, respectively;

"contravention" includes a failure to comply, and cognate expressions shall be construed accordingly;

PART IX

"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"—

(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 Water Industry Act 1991; 1991 c. 56.

"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;

"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;

"flood defence functions", in relation to the Authority, means the functions of the Authority mentioned in section 2(1)(c) above and any other functions of the Authority under any of the flood defence provisions of this Act;

"flood defence provisions", in relation to this Act, means any of the following provisions of this Act, that is to say—

(a) Part IV;

(b) sections 133 to 141 (including Schedule 15), 143, 147 to 149, 155, 165 to 167, 180, 193, 194, 214, Schedule 4 and paragraph 5 of Schedule 25; and

PART IX

(c) any other provision so far as it relates to a provision falling within paragraph (a) or (b) above;

"harbour" has the same meaning for the purposes of the flood defence provisions of this Act as in the Merchant Shipping Act 1894; 1894 c. 60.

"harbour authority" (except in the flood defence provisions of this Act, in which it has the same meaning as in the Merchant Shipping Act 1894) means a person who is a harbour authority within the meaning of the Prevention of Oil Pollution Act 1971 and is not a navigation authority; 1971 c. 60.

"highway" has the same meaning as in the Highways Act 1980; 1980 c. 66.

"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 Town and Country Planning Act 1990; 1990 c. 8.

"local authority" means the council of any county, 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

(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;

"main river map" has, subject to section 194 above, the meaning given by section 193(2) above;

"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;

"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 Authority, 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 Water Act 1989, section 179 of or Schedule 2 to the Water Industry Act 1991 or otherwise; 1989 c. 15. 1991 c. 56.

"records" includes computer records and any other records kept otherwise than in a document;

"the related water resources provisions", in relation to Chapter II of Part II of this Act, means the provisions of sections 21 to 23 above (including Schedule 5), of sections 120, 123 to 130, 158, 189, 199 to 201, 206(2) and (3), 209(3), 211(1), 213(1), and 216 above and of paragraph 1 of Schedule 25 to this Act;

"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—

PART IX

(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 New Roads and Street Works 1991;

1991 c. 22.

1978 c. 30.

"subordinate legislation" has the same meaning as in the 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;

1968 c. 59.

"vessel" includes a hovercraft within the meaning of the Hovercraft Act 1968;

"watercourse" includes (subject to sections 72(2) and 113(1) 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 Authority 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, 190, 202, 203 and 213(2) 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.

(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.

PART IX

(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 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 Public Utilities Street Works Act 1950; but nothing in this section shall be taken— 1991 c. 22. 1950 c. 39.

(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.

(8) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the 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 Water Industry Act 1991 or the Land Drainage Act 1991 include 1991 c. 60. 1991 c. 56. 1991 c. 59.

PART IX

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.

1989 c. 15.
1991 c. 60.

(9) 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 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.

*Other supplemental provisions*

Crown application.

**222.**—(1) Subject to the following provisions of this section, the provisions of this Act shall have effect in relation to land in which there is a Crown or Duchy interest as they have effect in relation to land in which there is no such interest.

(2) Chapter II of Part II of this Act and the related water resources provisions shall not apply—

(a) to anything done by or on behalf of the Crown; or

(b) to any land which is in the occupation of a government department or any other land in which there is a Crown or Duchy interest and which is occupied in right of that interest.

(3) Nothing in this Act, as read with the other provisions of this section, shall be construed—

(a) as conferring any power of levying drainage charges in respect of lands below the high-water mark of ordinary spring tides; or

(b) as authorising the Authority to require the Crown to make any payment to the Authority in respect of any premises.

(4) Subject to subsection (2) and (3) above and to subsection (5) below, where a power is conferred in relation to land by or under any provision of this Act other than one of the flood defence provisions—

(a) that power shall be exercisable in relation to any land in which there is a Crown or Duchy interest only with the consent of the appropriate authority; and

(b) a consent for the purposes of this subsection may be given on such financial and other conditions as the appropriate authority giving the consent may consider appropriate.

(5) Subsection (4) above shall not require any consent to be given—

(a) for the exercise of any power in relation to any land in which there is a Crown or Duchy interest to the extent that that power would be so exercisable apart from subsection (1) above; or

(b) for the purposes of any provision having effect by virtue of so much of section 168 above and Schedule 19 to this Act as relates to the granting of authority for discharges of water.

(6) Section 74 of the 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 Authority's functions under those provisions and of other functions of the Authority. 1991 c. 59.

(7) In this section—

"the appropriate authority" has the same meaning as in section 293 of the Town and Country Planning Act 1990; and 1990 c. 8.

"Crown or Duchy interest" means an interest belonging 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.

(8) The provisions of subsection (3) of section 293 of the 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.

(9) Nothing in this section shall be construed as requiring any provision of this Act having effect otherwise than in relation to land to be construed as imposing any liability on the Crown to which the Crown would not be subject apart from this section.

Exemption for visiting forces.

**223.**—(1) Chapter II of Part II of this Act and the related water resources provisions shall not apply—

(a) to anything done by a member of a visiting force in his capacity as a member of that force; or

(b) to any land occupied by or for the purposes of a visiting force.

(2) In this section "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952. 1952 c. 67.

Application to Isles of Scilly.

**224.**—(1) Subject to the provisions of any order under this section, nothing in this Act shall require or authorise any function, duty or power to be carried out, performed or exercised in relation to the Isles of Scilly by the Authority; and references in the preceding provisions of this Act to England and Wales shall not include references to those Isles.

(2) The Secretary of State may, on the application of the Council of the Isles of Scilly, by order make provision with respect to the carrying out in those Isles of functions falling under this Act to be carried out in relation to other parts of England and Wales by the Authority.

(3) Without prejudice to the generality of the power conferred by subsection (2) above, an order under this section may apply any provision of this Act, of the Water Consolidation (Consequential Provisions) Act 1991 or of the Water Act 1989 in relation to the Isles of Scilly with or without modifications. 1991 c. 60. 1989 c. 15.

(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.

PART IX

(5) 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.

Short title, commencement and extent.

**225.**—(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 Authority to acquire any land in Scotland compulsorily.

# SCHEDULES

## SCHEDULE 1

Section 1.

THE NATIONAL RIVERS AUTHORITY

*Membership*

1.—(1) Subject to the following provisions of this paragraph, a member shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

(2) A member may at any time by notice to the appropriate Minister resign his office.

(3) The appropriate Minister may remove a member if he is satisfied—

(a) that that member has been absent from meetings of the Authority for a period of more than three consecutive months without the permission of the Authority;

(b) that that member has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors; or

(c) that that member is unable or unfit to carry out the functions of a member.

*Remuneration, pensions etc.*

2.—(1) The Authority shall pay to its members such remuneration, and such travelling and other allowances, as may be determined by the appropriate Minister.

(2) The Authority shall, if so required by the appropriate Minister—

(a) pay such pension, allowances or gratuities to or in respect of a person who has been or is a member; or

(b) make such payments towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person,

as may be determined by the appropriate Minister.

(3) If, when any member ceases to hold office, the appropriate Minister determines that there are special circumstances which make it right that that member should receive compensation, the Authority shall pay to him a sum by way of compensation of such amount as may be so determined.

(4) Without prejudice to the other provisions of this Schedule—

(a) the Authority may enter into a contract with any person under which, in consideration of payments made by the Authority by way of premium or otherwise, that person undertakes to pay to the Authority such sums as may be provided in the contract in the event of any member of the Authority or of any of its committees meeting with a personal accident, whether fatal or not, while he is engaged on the business of the Authority;

(b) any sum received by the Authority under any such contract shall, after deduction of any expenses incurred in the recovery of that sum, be paid by the Authority to, or to the personal representatives of, the person in respect of whose accident the sum is received;

and the provisions of the Life Assurance Act 1774 shall not apply to any such contract. 1774 c. 48.

(5) The approval of the Treasury shall be required for the making of a determination under this paragraph.

SCH. 1

*Staff*

3.—(1) The Authority may, with the approval of the Secretary of State as to terms and conditions of service, appoint such officers and employees as it may determine.

(2) No member or other person shall be appointed by the Authority to act as chief executive of the Authority unless the Secretary of State has consented to the appointment of that person.

(3) The Authority may—

(a) pay such pensions, allowances or gratuities to or in respect of any persons who have been or are its officers or employees as it may, with the approval of the Secretary of State, determine;

(b) make such payments as it may so determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such persons;

(c) provide and maintain such schemes as it may so determine (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of any such persons.

(4) Any reference in sub-paragraph (3) above to pensions, allowances or gratuities to or in respect of any such persons as are mentioned in that sub-paragraph includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the Authority's officers or employees who suffer loss of office or employment or loss or diminution of emoluments.

(5) If any person—

(a) on ceasing to be an officer or employee of the Authority, becomes a member; and

(b) was by reference to his office or employment with the Authority a participant in a pension scheme maintained by the Authority for the benefit of any of its officers or employees,

the Authority may, with the approval of the Secretary of State, make provision for him to continue to participate in that scheme, on such terms and conditions as it may with the consent of the Secretary of State determine, as if his service as a member were service as an officer or employee of the Authority.

(6) Provision made by virtue of sub-paragraph (5) above shall be without prejudice to paragraph 2 above.

(7) The consent of the Treasury shall be required for the giving of an approval under this paragraph.

*Proceedings of Authority*

4. Subject to the following provisions of this Schedule and to section 106 of this Act, the Authority may regulate its own procedure (including quorum).

*Delegation of powers*

5. Subject to section 106 of this Act, anything authorised or required by or under any enactment to be done by the Authority may be done—

(a) by any member, officer or employee of the Authority who has been authorised for the purpose, whether generally or specially, by the Authority; or

(b) by any committee or sub-committee of the Authority which has been so authorised.

*Interests of members* SCH. 1

6.—(1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Authority shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—

(a) the disclosure shall be recorded in the minutes of the meeting; and

(b) the member shall not take any part in any deliberation or decision of the Authority, or of any of its committees or sub-committees, with respect to that matter.

(2) For the purposes of sub-paragraph (1) above, a general notification given at a meeting of the Authority by a member to the effect that—

(a) he is a member of a specified company or firm; and

(b) is to be regarded as interested in any matter involving that company or firm,

shall be regarded as a sufficient disclosure of his interest in relation to any such matter.

(3) A member need not attend in person at a meeting of the Authority in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.

(4) The Secretary of State may, subject to such conditions as he considers appropriate, remove any disability imposed by virtue of this paragraph in any case where the number of members of the Authority disabled by virtue of this paragraph at any one time would be so great a proportion of the whole as to impede the transaction of business.

(5) The power of the Secretary of State under sub-paragraph (4) above includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Secretary of State.

(6) Nothing in this paragraph precludes any member from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the power conferred by sub-paragraph (4) above.

(7) In this paragraph references to a meeting of the Authority include references to a meeting of any of its committees or sub-committees.

*Vacancies and defective appointments*

7. The validity of any proceedings of the Authority shall not be affected by a vacancy amongst the members or by a defect in the appointment of a member.

*Minutes*

8.—(1) Minutes shall be kept of proceedings of the Authority, of its committees and of its sub-committees.

(2) Minutes of any such proceedings shall be evidence of those proceedings if they are signed by a person purporting to have acted as chairman of the proceedings to which the minutes relate or of any subsequent proceedings in the course of which the minutes were approved as a correct record.

(3) Where minutes of any such proceedings have been signed as mentioned in sub-paragraph (2) above, those proceedings shall, unless the contrary is shown, be deemed to have been regularly convened and constituted.

SCH. 1

*Application of seal and proof of instruments*

9.—(1) The application of the seal of the Authority shall be authenticated by the signature of any member, officer or employee of the Authority who has been authorised for the purpose, whether generally or specially, by the Authority.

(2) In this paragraph the reference to the signature of a person includes a reference to a facsimile of a signature by whatever process reproduced; and, in paragraph 10 below, the word "signed" shall be construed accordingly.

*Documents served etc. by or on the Authority*

10.—(1) Any document which the Authority is authorised or required by or under any enactment to serve, make or issue may be signed on behalf of the Authority by any member, officer or employee of the Authority who has been authorised for the purpose, whether generally or specially, by the Authority.

(2) Every document purporting to be an instrument made or issued by or on behalf of the Authority and to be duly executed under the seal of the Authority, or to be signed or executed by a person authorised by the Authority for the purpose, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

(3) Any notice which is required or authorised, by or under any enactment not contained in this Act, to be given, served or issued by or to the Authority shall be in writing.

*Interpretation*

11. In this Schedule—

"the appropriate Minister", in relation to any person who is or has been a member, means the Minister or the Secretary of State, according to whether that person was appointed as a member by the Minister or the Secretary of State; and

"member" means any member of the Authority, including the chairman and the deputy chairman.

Section 2.

## SCHEDULE 2

### ORDERS AND AGREEMENTS FOR TRANSFER OF NAVIGATION, HARBOUR AND CONSERVANCY FUNCTIONS

*Powers to transfer functions or property*

1.—(1) The Authority may at any time apply to the Ministers for an order under this Schedule transferring to the Authority 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 Authority and the other body concerned.

(4) Where, in accordance with this paragraph, the Authority 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

*Consultation with affected body* SCH. 2

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 Authority 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 Authority 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.

*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 Authority;

(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;

and, in making the order, the Ministers may make such modifications in the terms of the draft as appear to them desirable.

*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

SCH. 2

(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 Water Resources Act 1963.

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 Authority 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 Authority 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 Authority) 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.

*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 Statutory Orders (Special Procedure) Act 1945; and 1945 c. 18 (9 & 10 Geo 6).

(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.

*Effect of order or agreement*

8.—(1) Where, by virtue of an order or agreement under this Schedule, property is transferred to the Authority 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 Authority 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 Authority 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 Authority 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 Finance Act 1895 (which provides for charging stamp duty in the case of certain statutory transfers by way of sale). 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.

(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 Authority, 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.

SCH. 2

(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 Authority 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.

*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.

(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 Water Resources Act 1963.

1963 c. 38.

(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.

*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.

## SCHEDULE 3

Section 9.

### BOUNDARIES OF REGIONAL FLOOD DEFENCE AREAS

*Power to make order*

1.—(1) The relevant Minister may by order made by statutory instrument—

(a) alter the boundaries of the area of any regional flood defence committee; or

(b) provide for the amalgamation of any two or more such areas.

(2) Where an order under this Schedule makes provision by reference to anything shown on a main river map, that map shall be conclusive evidence for the purposes of the order of what is shown on the map.

(3) The power to make an order under this Schedule shall include power to make such supplemental, consequential and transitional provision as the relevant Minister considers appropriate.

(4) In the case of an order under this Schedule amalgamating the areas of any two or more regional flood defence committees, the provision made by virtue of sub-paragraph (3) above may include provision determining—

(a) the total number of members of the amalgamated committee; and

(b) the total number of such members to be appointed by the constituent councils of that committee;

and subsections (6) and (7) of section 11 of this Act shall apply in relation to so much of an order under this Schedule as is made by virtue of this sub-paragraph as they apply in relation to an order under subsection (5) of that section.

(5) In this paragraph and the following paragraphs of this Schedule "the relevant Minister" —

(a) in relation to any alteration of the boundaries of an area where the whole or any part of that area is in Wales, means the Ministers;

(b) in relation to the amalgamation of any two or more areas where the whole or any part of any one of those areas is in Wales, means the Ministers; and

(c) in any other case, means the Minister.

*Consultation and notice of intention to make order*

2.—(1) Before making an order under this Schedule, the relevant Minister shall—

(a) consult such persons or representative bodies as he considers it appropriate to consult at that stage;

(b) prepare a draft order;

(c) publish a notice complying with sub-paragraph (2) below in the London Gazette and in such other manner as he considers appropriate for bringing the draft order to the attention of persons likely to be affected by it if it is made.

(2) A notice for the purposes of sub-paragraph (1)(c) above with respect to a draft order shall—

(a) state the relevant Minister's intention to make the order and its general effect;

(b) specify the places where copies of the draft order and of any map to which it refers may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date on which the notice is first published otherwise than in the London Gazette; and

SCH. 3

(c) state that any person may within that period by notice in writing to the relevant Minister object to the making of the order.

(3) The relevant Minister shall also cause copies of the notice and of the draft order to be served on every person carrying out functions under any enactment who appears to him to be concerned.

*Objections to draft order and making of order*

3.—(1) Before making an order under this Schedule, the relevant Minister—

(a) shall consider any representations or objections which are duly made with respect to the draft order and are not withdrawn; and

(b) may, if he thinks fit, cause a local inquiry to be held with respect to any such representations or objections.

(2) Where notice of a draft order has been published and given in accordance with paragraph 2 above and any representations or objections considered under sub-paragraph (1) above, the relevant Minister may make the order either in the terms of the draft or in those terms as modified in such manner as he thinks fit, or may decide not to make the order.

(3) The relevant Minister shall not make a modification of a draft order in so far as the modification is such as to include in the area of any regional flood defence committee any tidal waters which, if the order had been made in the form of the draft, would have been outside the area of every regional flood defence committee.

*Procedure for making of order*

4.—(1) Where the relevant Minister makes an order under this Schedule, he shall serve notice of the making of the order on every person (if any) who—

(a) is a person on whom notice is required to have been served under paragraph 2(3) above; and

(b) has duly made an objection to the making of the order that has not been withdrawn.

(2) Where a notice is required to be served under sub-paragraph (1) above with respect to any order, the order shall not have effect before the end of a period of twenty-eight days from the date of service of the last notice served under that sub-paragraph.

(3) If before an order takes effect under sub-paragraph (2) above—

(a) any person who has been served with a notice under sub-paragraph (1) above with respect to that order serves notice objecting to the order on the Minister (or, in the case of an order made jointly by the Ministers, on either of them); and

(b) the objection is not withdrawn,

the order shall be subject to special parliamentary procedure.

(4) A statutory instrument containing an order under this Schedule which is not subject to special parliamentary procedure under sub-paragraph (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Notice after making of order*

5.—(1) Subject to sub-paragraph (2) below, after making an order under this Schedule, the relevant Minister shall publish in the London Gazette, and in such other manner as he considers appropriate for bringing the order to the attention of persons likely to be affected by it, a notice—

(a) stating that the order has been made; and

(b) naming the places where a copy of the order may be inspected at all reasonable times. SCH. 3

(2) In the case of an order to which sub-paragraph (2) of paragraph 4 above applies, the notice—

(a) shall not be published until the end of the period of twenty-eight days referred to in that sub-paragraph; and

(b) shall state whether or not the order is to be subject to special parliamentary procedure.

*Questioning of order in courts*

6.—(1) Subject to sub-paragraph (3) below, if any person desires to question the validity of an order under this Schedule 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,

he may, within six weeks after the date of the first publication of the notice required by paragraph 5 above, make an application for the purpose to the High Court.

(2) On an application under this paragraph the High 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 a failure to comply with any of the requirements of this Schedule,

may quash the order either generally or in so far as it affects the applicant.

(3) Sub-paragraph (1) above—

(a) shall not apply to any order which is confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945; and 1945 c. 18. (9 & 10 Geo. 6)

(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 the reference to the date of the first publication of the notice required by paragraph 5 above were 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.

## SCHEDULE 4

Section 14.

MEMBERSHIP AND PROCEEDINGS OF REGIONAL AND LOCAL FLOOD DEFENCE COMMITTEES

PART I

MEMBERSHIP OF FLOOD DEFENCE COMMITTEES

*Terms of membership*

1.—(1) Members of a flood defence committee (that is to say a regional flood defence committee or a local flood defence committee), other than those appointed by or on behalf of one or more constituent councils, shall hold and vacate office in accordance with the terms of their appointment.

SCH. 4

(2) The first members of a local flood defence committee appointed by or on behalf of any one or more constituent councils—

(a) shall come into office on the day on which the committee comes into existence or, in the case of a member who is for any reason appointed after that day, on the day on which the appointment is made; and

(b) subject to the following provisions of this Schedule, shall hold office until the end of May in such year as may be specified for the purposes of this paragraph in the scheme establishing the committee.

(3) Any members of a flood defence committee appointed by or on behalf of any one or more constituent councils who are not members to whom sub-paragraph (2) above applies—

(a) shall come into office at the beginning of the June next following the day on which they are appointed; and

(b) subject to the following provisions of this Schedule, shall hold office for a term of four years.

(4) If for any reason any such member as is mentioned in sub-paragraph (3) above is appointed on or after the day on which he ought to have come into office, he shall—

(a) come into office on the day on which he is appointed; and

(b) subject to the following provisions of this Schedule, hold office for the remainder of the term.

(5) References in this paragraph and the following provisions of this Schedule to a member of a flood defence committee include references to the chairman of such a committee.

*Membership of constituent council as qualification for membership of committee*

2.—(1) Members of a flood defence committee appointed by or on behalf of any one or more constituent councils may be members of that council, or one of those councils, or other persons.

(2) Any member of a flood defence committee appointed by or on behalf of a constituent council who at the time of his appointment was a member of that council shall, if he ceases to be a member of that council, also cease to be a member of the committee with whichever is the earlier of the following—

(a) the end of the period of three months beginning with the date when he ceases to be a member of the council; and

(b) the appointment of another person in his place.

(3) For the purposes of sub-paragraph (2) above a member of a council shall not be deemed to have ceased to be a member of the council by reason of retirement if he has been re-elected a member of the council not later than the date of his retirement.

*Disqualification for membership of committee*

3.—(1) Subject to the following provisions of this paragraph, a person shall be disqualified for appointment as a member of a flood defence committee if he—

(a) is a paid officer of the Authority; or

(b) is a person who has been adjudged bankrupt, or whose estate has been sequestrated or who has made a composition or arrangement with, or granted a trust deed for, his creditors; or

(c) within the period of five years before the day of his appointment, has been convicted, in the United Kingdom, the Channel Islands or the Isle of Man, of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or

(d) is disqualified for being elected or for being a member of a local authority under Part III of the Local Government Finance Act 1982 (accounts and audit) or Part III of the Representation of the People Act 1983 (legal proceedings). SCH. 4 1982 c. 32. 1983 c. 2.

(2) Where a person is disqualified under sub-paragraph (1) above by reason of having been adjudged bankrupt, the disqualification shall cease—

(a) unless the bankruptcy order made against that person is previously annulled, on his discharge from bankruptcy; and

(b) if the bankruptcy order is so annulled, on the date of the annulment.

(3) Where a person is disqualified under sub-paragraph (1) above by reason of having had his estate sequestrated, the disqualification shall cease—

(a) unless the sequestration is recalled or reduced, on the person's discharge under section 54 of the Bankruptcy (Scotland) Act 1985; and 1985 c. 66.

(b) if the sequestration is recalled or reduced, on the date of the recall or reduction.

(4) Where a person is disqualified under sub-paragraph (1) above by reason of his having made a composition or arrangement with, or having granted a trust deed for, his creditors, the disqualification shall cease—

(a) if he pays his debts in full, on the date on which the payment is completed; and

(b) in any other case, at the end of five years from the date on which the terms of the deed of composition or arrangement, or of the trust deed, are fulfilled.

(5) For the purposes of sub-paragraph (1)(c) above the date of the conviction shall be taken to be—

(a) the ordinary date on which the period allowed for making an appeal or application with respect to the conviction expires; or

(b) if such an appeal or application is made, the date on which it is finally disposed of or abandoned or fails by reason of non-prosecution.

(6) Section 92 of the Local Government Act 1972 (proceedings for disqualification) shall apply in relation to disqualification under this paragraph for appointment as a member of a flood defence committee as it applies in relation to disqualification for acting as a member of a local authority. 1972 c. 70.

*Vacation of office by disqualifying event*

4.—(1) The office of a member of a flood defence committee shall become vacant upon the fulfilment of any of the following conditions, that is to say—

(a) the person holding that office is adjudged bankrupt, is a person whose estate is sequestrated or makes a composition or arrangement with, or grants a trust deed for, his creditors;

(b) that person is convicted, in the United Kingdom, the Channel Islands or the Isle of Man, of any offence and has passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;

(c) that person is disqualified for being elected or for being a member of a local authority under Part III of the Local Government Finance Act 1982 (accounts and audit) or Part III of the Representation of the People Act 1983 (legal proceedings); or

(d) that person has, for a period of six consecutive months been absent from meetings of the committee, otherwise than by reason of illness or some other cause approved during the period by the committee.

SCH. 4

(2) For the purposes of sub-paragraph (1)(d) above, the attendance of a member of a flood defence committee—

(a) at a meeting of any sub-committee of the committee of which he is a member; or

(b) at any joint committee to which he has been appointed by that committee,

shall be treated as attendance at a meeting of the committee.

*Resignation of office by members of regional committee*

5.—(1) The chairman of a regional flood defence committee may resign his office at any time by giving notice to the chairman of the Authority and to one of the Ministers.

(2) Any other member of such a committee may resign his office at any time by giving notice to the chairman of the committee and also, if he was appointed by one of the Ministers, to that Minister.

*Resignation of office by members of local committee*

6.—(1) The chairman of a local flood defence committee may resign his office at any time by giving notice to the chairman of the regional flood defence committee.

(2) Any other member of a local flood defence committee may resign his office at any time by giving notice to the chairman of that local flood defence committee.

*Appointments to fill casual vacancies*

7.—(1) Where, for any reason whatsoever, the office of a member of a flood defence committee becomes vacant before the end of his term of office, the vacancy—

(a) shall, if the unexpired portion of the term of office of the vacating member is six months or more, be filled by the appointment of a new member; and

(b) may be so filled in any other case.

(2) A person appointed by virtue of sub-paragraph (1) above to fill a casual vacancy shall hold office for so long only as the former member would have held office.

*Eligibility of previous members for re-appointment*

8. Subject to the provisions of this Schedule, a member of a flood defence committee shall be eligible for reappointment.

*Appointment of deputies*

9.—(1) Subject to the following provisions of this paragraph, a person nominated by one or more constituent councils may act as deputy for a member of a flood defence committee appointed by or on behalf of that council or those councils and may, accordingly, attend and vote at a meeting of the committee, instead of that member.

(2) A person nominated under sub-paragraph (1) above as deputy for a member of a flood defence committee may, by virtue of that nomination, attend and vote at a meeting of a sub-committee of that committee which—

(a) has been appointed by that committee under Part II of this Schedule; and

(b) is a committee to which the member for whom he is a deputy belongs.

(3) A person acting as deputy for a member of a flood defence committee shall be treated for the purposes for which he is nominated as a member of that committee.

(4) A person shall not act as deputy for a member of a flood defence committee unless his nomination has been notified to such officer of the Authority as is appointed to receive such nominations.

(5) A nomination under this paragraph shall be in writing and may apply either to a particular meeting or to all meetings during a stated period or until the nomination is revoked.

(6) A person shall not act as deputy for more than one member of a flood defence committee.

(7) Nothing in this paragraph shall entitle a person to attend and vote at a meeting of a local flood defence committee by reason of his nomination as deputy of a member of a regional flood defence committee.

*Payments to past and present chairmen and to members*

10.—(1) The Authority shall pay to any person who is a chairman of a flood defence committee such remuneration and allowances as may be determined by the relevant Minister with the consent of the Treasury.

(2) If the relevant Minister so determines in the case of any person who is or has been chairman of a flood defence committee, the Authority shall pay or make arrangements for the payment of a pension in relation to that person in accordance with the determination.

(3) If a person ceases to be chairman of a flood defence committee and it appears to the relevant Minister that there are special circumstances which make it right that that person should receive compensation in respect of his ceasing to be chairman, the relevant Minister may require the Authority to pay to that person a sum of such amount as that Minister may determine with the consent of the Treasury.

(4) The Authority may pay to any person who is a member of a flood defence committee such allowances as may be determined by the relevant Minister with the consent of the Treasury.

(5) In this paragraph—

"pension", in relation to any person, means a pension (whether contributory or not) of any kind payable to or in respect of him, and includes an allowance, gratuity or lump sum so payable and a return of contributions with or without interest or any other addition; and

"the relevant Minister"—

(a) in relation to the regional flood defence committee for an area the whole or the greater part of which is in Wales and in relation to any local flood defence committee for any district comprised in the area of such a regional flood defence committee, means the Secretary of State; and

(b) in relation to any other flood defence committee, means the Minister.

PART II

PROCEEDINGS OF FLOOD DEFENCE COMMITTEES

*Appointment of sub-committees, joint sub-committees etc.*

11.—(1) For the purpose of carrying out any functions in pursuance of arrangements under paragraph 12 below—

(a) a flood defence committee may appoint a sub-committee of the committee;

SCH. 4

(b) two or more regional or two or more local flood defence committees may appoint a joint sub-committee of those committees;

(c) any sub-committee may appoint one or more committees of that sub-committee ("under sub-committees");

(2) The number of members of any sub-committee and their terms of office shall be fixed by the appointing committee or committees or, in the case of an under sub-committee, by the appointing sub-committee.

(3) A sub-committee appointed under this paragraph may include persons who are not members of the appointing committee or committees or, in the case of an under sub-committee, the committee or committees of whom they are an under sub-committee; but at least two thirds of the members appointed to any such sub-committee shall be members of that committee or those committees, as the case may be.

(4) A person who is disqualified for being a member of a flood defence committee shall be disqualified also for being a member of a sub-committee or under sub-committee appointed under this paragraph.

*Delegation of functions to sub-committees etc.*

12.—(1) Subject to section 106 of this Act and to any other express provision contained in any enactment, a flood defence committee may arrange for the carrying out of any of their functions—

(a) by a sub-committee, or an under sub-committee of the committee or an officer of the Authority; or

(b) by any other regional or, as the case may be, local flood defence committee;

and two or more regional or two or more local flood defence committees may arrange to carry out any of their functions jointly or may arrange for the carrying out of any of their functions by a joint sub-committee of theirs.

(2) Where by virtue of this paragraph any functions of a flood defence committee or of two or more such committees may be carried out by a sub-committee, then, unless the committee or committees otherwise direct, the sub-committee may arrange for the carrying out of any of those functions by an under sub-committee or by an officer of the Authority.

(3) Where by virtue of this paragraph any functions of a flood defence committee or of two or more such committees may be carried out by an under sub-committee, then, unless the committee or committees or the sub-committee otherwise direct, the under sub-committee may arrange for the carrying out of any of those functions by an officer of the Authority.

(4) Any arrangements made by a flood defence committee under this paragraph for the carrying out of any function shall not prevent the committee from discharging their functions themselves.

(5) References in the preceding provisions of this paragraph to the carrying out of any functions of a flood defence committee include references to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the carrying out of any of those functions.

(6) A regional flood defence committee shall not, under this paragraph, make arrangements for the carrying out in a local flood defence district of any functions which fall to be carried out there by the local flood defence committee.

*Rules of procedure*

13.—(1) A flood defence committee may, with the approval of the relevant Minister, make rules for regulating the proceedings of the committee.

(2) Nothing in section 105 or 106 of this Act shall entitle the Authority to make any arrangements or give any directions for regulating the proceedings of any flood defence committee. SCH. 4

(3) In this paragraph "relevant Minister" has the same meaning as in paragraph 10 above.

*Declarations of interest etc.*

14.—(1) Subject to the following provisions of this paragraph, the provisions of sections 94 to 98 of the Local Government Act 1972 (pecuniary interests of members of local authorities) shall apply in relation to members of a flood defence committee as those provisions apply in relation to members of local authorities. 1972 c. 70.

(2) In their application by virtue of this paragraph those provisions shall have effect in accordance with the following provisions—

(a) for references to meetings of the local authority there shall be substituted references to meetings of the committee;

(b) in section 94(4), for the reference to provision being made by standing orders of a local authority there shall be substituted a reference to provisions being made by directions of the committee;

(c) in section 96, for references to the proper officer of the local authority there shall be substituted a reference to an officer of the Authority appointed for the purposes of this paragraph; and

(d) section 97 shall apply as it applies to a local authority other than a parish or community council.

(3) Subject to sub-paragraph (4) below, a member of a flood defence committee shall be disqualified, for so long as he remains such a member and for twelve months after he ceases to be such a member, for appointment to any paid office by the Authority or any regional flood defence committee.

(4) Sub-paragraph (3) above shall not disqualify any person for appointment to the office of chairman of a local flood defence committee.

*Authentication of documents*

15.—(1) Any notice or other document which a flood defence committee are required or authorised to give, make or issue by or under any enactment may be signed on behalf of the committee by any member of the committee or any officer of the Authority who is generally or specifically authorised for that purpose by a resolution of the committee.

(2) Any document purporting to bear the signature of a person expressed to be authorised as mentioned in sub-paragraph (1) above shall be deemed, unless the contrary is shown, to be duly given, made or issued by authority of the committee.

(3) In this paragraph "signature" includes a facsimile of a signature by whatever process reproduced.

*Proof and validity of proceedings*

16.—(1) A minute of the proceedings of a meeting of a flood defence committee, purporting to be signed at that or the next ensuing meeting by—

(a) the chairman of the meeting to the proceedings of which the minute relates; or

(b) by the chairman of the next ensuing meeting,

shall be evidence of the proceedings and shall be received in evidence without further proof.

SCH. 4

(2) Where a minute has been signed as mentioned in sub-paragraph (1) above in respect of a meeting of a committee or sub-committee, then, unless the contrary is shown—

(a) the meeting shall be deemed to have been duly convened and held;

(b) all the proceedings had at any such meeting shall be deemed to have been duly had; and

(c) that committee or sub-committee shall be deemed to have been duly constituted and have had power to deal with the matters referred to in the minute.

(3) The validity of any proceedings of a flood defence committee shall not be affected by any vacancy among the members of the committee or by any defect in the appointment of such a member.

Section 21.

## SCHEDULE 5

### 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 Authority 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 sub-paragraph (2) above, the Authority 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;

SCH. 5

(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;

(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, the Secretary of State for Transport;

(g) any person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity; and 1989 c. 29.

(h) every person who—

(i) has given notice to the Authority 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 Authority have required him to pay a reasonable charge for being so notified, has paid that charge.

(4) The Authority 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.

*Duty to provide copy of draft statement*

3. The Authority shall, at the request of any person, furnish him with a copy of the draft statement on payment of such charge as the Authority thinks reasonable.

*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 Authority 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

SCH. 5

(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 Authority 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.

*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 Authority or with alterations, the Secretary of State shall give notice to the Authority—

(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 Authority shall forthwith publish the notice.

(2) The Authority 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.

Section 33.

## SCHEDULE 6

### ORDERS PROVIDING FOR EXEMPTION FROM RESTRICTIONS ON ABSTRACTION

*Notice of draft order*

1.—(1) An application to the Secretary of State for an order under section 33 of this Act ("an exemption order") shall be accompanied by a draft of the proposed order.

(2) Before submitting a draft exemption order to the Secretary of State, the applicant authority 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 SCH. 6

(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 locality in which the sources of supply to which the draft order 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.

(4) Not later than the date on which the notice is first published in pursuance of sub-paragraph (2) above, the applicant authority shall serve a copy of the notice on—

(a) the Authority, if it is not the applicant;

(b) every local authority or joint planning board whose area comprises any source of supply to which the draft order relates;

(c) any water undertaker having the right to abstract water from any such source of supply;

(d) any other water undertaker having the right to abstract water from any related underground strata;

(e) the drainage board for any internal drainage district which comprises any such source of supply or from which water is discharged into any such source of supply;

(f) any navigation authority, harbour authority or conservancy authority having functions in relation to any such source of supply or any related inland waters;

(g) if any such source of supply or any 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; and

(h) any person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity. 1989 c. 29.

(5) Where an application for an exemption order is made, the applicant authority shall also publish a notice in the London Gazette—

(a) stating that the draft exemption order 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 (4)(b) 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 (1) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.

(6) For the purposes of this paragraph—

(a) underground strata are related underground strata in relation to any source of supply if—

(i) a water undertaker has a right to abstract water from the strata; and

SCH. 6

(ii) it appears to the applicant authority, having regard to the extent to which the level of water in those strata depends on the flow of the waters in that source of supply, that the exercise of that right may be substantially affected by so much of the draft order in question as relates to that source of supply;

(b) inland waters are related inland waters in relation to any source of supply, where it appears to the applicant authority that changes in the flow of the waters of the source of supply may affect the flow of the waters in the inland waters in question.

*Duty to provide copy of draft order*

2. Where an application for an exemption order is made, the applicant authority shall, at the request of any person, furnish him with a copy of the draft exemption order on payment of such charge as the authority thinks reasonable.

*Making of order*

3.—(1) Where an application for an exemption order is made, the Secretary of State may make the exemption 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 exemption order before making it; and

(b) considers that any persons are likely to be adversely affected by it,

the applicant authority 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) 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 exemption order (either as prepared in draft or as proposed to be altered) or, in the case of a draft order submitted under section 33(4) of this Act, from the Authority.

(4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before making the order, shall either—

(a) cause a local inquiry to be held; or

(b) afford to the objector and to the applicant authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(5) Where the exemption order (whether as prepared in draft or as proposed to be altered) relates to any tidal water in respect of which there is no relevant authority for the purposes of section 33 of this Act except the Authority, sub-paragraphs (1) to (4) above and paragraph 4 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 Secretary of State and the Secretary of State for Transport.

*Notice and inspection of final order* SCH. 6

4.—(1) Where an exemption order is made under section 33 of this Act, whether in the form of the draft proposed by the applicant authority or with alterations, the Secretary of State shall give notice to the applicant authority and (if it is not the applicant authority) to the Authority—

(a) stating that the exemption 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 Authority shall forthwith publish the notice.

(2) The Authority shall keep a copy of every order made under section 33 of this Act available at its offices for inspection by the public, free of charge, at all reasonable times.

## 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 Water Act 1989 shall continue to apply (notwithstanding the repeals made by the Water Consolidation (Consequential Provisions) Act 1991 but subject to the following provisions of this Schedule) in relation— 1989 c. 15. 1991 c. 60.

(a) to any application made under either of those paragraphs which is outstanding immediately before the coming into force of this Act; and

(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 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. 1963 c. 38.

(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 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 1965 c. 36.

(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 Authority, of a licence the provisions of which are in accordance with the proposals contained in the application;

SCH. 7

(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 Authority 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 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.

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 Authority in pursuance of section 60 of this Act (liability of the Authority 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 Authority 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 Authority 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 Authority 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.

*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 Water Act 1989; or 1989 c. 15.

(b) any licence which, having been granted in pursuance of an application under section 33 of the 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. 1963 c. 38.

(2) The repeal by the 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. 1991 c. 60.

## SCHEDULE 8

Section 73.

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;

(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 Authority (where it is not the applicant).<br>(b) Every local authority (not being a county council) and water undertaker (not being the applicant) whose area would be affected by the |

SCH. 8

| | |
|---|---|
| | 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 a county council) in whose area the source, or the place at which water or effluent is to be discharged, is situated.<br>(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.<br>(c) Every navigation authority exercising functions over any watercourse affected by the order.<br>(d) If the order concerns any consent relating to the discharge of sewage effluent or trade effluent, the person to whom the consent was given. |
| Orders which authorise the carrying out of any works. | (a) Every local authority (not being a county council) within whose area the works are situated.<br>(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. |
| Orders which prohibit or limit the taking of water. | Every named person to whom the prohibition or limitation applies. |

(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.

*Objections to and making of orders* SCH. 8

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.

(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.

*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.

Section 79.

## SCHEDULE 9

### 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 consent 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 consent or the attachment of conditions to the consent.

*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 Lands Tribunal.

*Claims for compensation under paragraph 2* SCH. 9

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 consent 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 Lands 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 a consent originally given.

(3) In assessing the compensation to be made under paragraph 2(2) above the Lands 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 Lands Tribunal may, if it thinks fit, have regard to the amount of water which, under the conditions existing by 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.

## SCHEDULE 10

Section 88.

### DISCHARGE CONSENTS

*Applications for consents*

1.—(1) An application for a consent, for the purposes of section 88(1)(a) of this Act, for any discharges shall be made to the Authority.

(2) An application under this paragraph shall be accompanied or supplemented by all such information as the Authority may reasonably require; but, subject to paragraph 2(4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this Schedule in relation to such an application, a failure to provide information in pursuance of this sub-paragraph, shall not invalidate an application.

(3) An application made in accordance with this paragraph which relates to proposed discharges at two or more places may be treated by the Authority as separate applications for consents for discharges at each of those places.

SCH. 10

(4) Where an application is made in accordance with this paragraph the Authority shall—

(a) publish notice of the application, at least once in each of two successive weeks, in a newspaper or newspapers circulating in—

(i) the locality or localities in which the places are situated at which it is proposed in the application that the discharges should be made; and

(ii) the locality or localities appearing to the Authority to be in the vicinity of any controlled waters which the Authority considers likely to be affected by the proposed discharges;

(b) publish a copy of that notice in an edition of the London Gazette published no earlier than the day after the publication of the last of the notices to be published by virtue of paragraph (a) above;

(c) send a copy of the application to every local authority or water undertaker within whose area any of the proposed discharges is to occur;

(d) in the case of an application which relates to proposed discharges into coastal waters, relevant territorial waters or waters outside the seaward limits of relevant territorial waters, serve a copy of the application on each of the Ministers.

(5) The Authority shall be entitled, on an application made in accordance with this paragraph, to disregard the provisions of paragraphs (a) to (c) of sub-paragraph (4) above if it proposes to give the consent applied for and considers that the discharges in question will have no appreciable effect on the waters into which it is proposed that they should be made.

(6) Where notice of an application under this paragraph is published by the Authority under sub-paragraph (4) above, the Authority shall be entitled to recover the expenses of publication from the applicant.

(7) If a person who proposes to make or has made an application under this paragraph ("the relevant application")—

(a) applies to the Secretary of State within the prescribed period for a certificate providing that the provisions of sub-paragraph (4) above and subsection (1) of section 190 of this Act shall not apply to—

(i) the relevant application;

(ii) any consent given or conditions imposed on the relevant application;

(iii) any sample of effluent taken from a discharge for which consent is given on the relevant application; or

(iv) information produced by analysis of such a sample;

and

(b) satisfies the Secretary of State that it would be contrary to the public interest or would prejudice, to an unreasonable degree, some private interest, by disclosing information about a trade secret, if a certificate were not issued under this sub-paragraph,

the Secretary of State may issue a certificate to that person providing that those provisions shall not apply to such of the things mentioned in paragraph (a) above as are specified in the certificate.

*Consideration and determination of applications*

2.—(1) It shall be the duty of the Authority to consider any written representations or objections with respect to an application under paragraph 1 above which are made to it in the period of six weeks beginning with the day of the publication of notice of the application in the London Gazette and are not withdrawn.

SCH. 10

(2) On an application under paragraph 1 above the Authority shall be under a duty, if the requirements of that paragraph are complied with, to consider whether to give the consent applied for, either unconditionally or subject to conditions, or to refuse it.

(3) Subject to sub-paragraph (4) and paragraph 3(5) below, on an application made in accordance with paragraph 1 above, the consent applied for shall be deemed to have been refused if it is not given within the period of four months beginning with the day on which the application is received or within such longer period as may be agreed in writing between the Authority and the applicant.

(4) Where—

(a) any person, having made an application to the Authority for a consent, has failed to comply with his obligation under paragraph 1(2) above to supplement that application with information required by the Authority; and

(b) that requirement was made by the Authority at such a time before the end of the period within which the Authority is required to determine the application as gave that person a reasonable opportunity to provide the required information within that period,

the Authority may delay its determination of the application until a reasonable time after the required information is provided.

(5) The conditions subject to which a consent may be given under this paragraph shall be such conditions as the Authority may think fit and, in particular, may include conditions—

(a) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;

(b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;

(c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;

(d) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;

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

(f) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent; and

(g) as to the making of returns and the giving of other information to the Authority about the nature, origin, composition, temperature, volume and rate of the discharges;

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

(6) A consent for any discharges which is given under this paragraph is not limited to discharges by a particular person and, accordingly, extends to discharges which are made by any person.

SCH. 10

*Notification of proposal to give consent*

3.—(1) This paragraph applies where the Authority proposes to give its consent under paragraph 2 above on an application in respect of which such representations or objections as the Authority is required to consider under sub-paragraph (1) of that paragraph have been made.

(2) It shall be the duty of the Authority to serve notice of the proposal on every person who made any such representations or objection; and any such notice shall include a statement of the effect of sub-paragraph (3) below.

(3) Any person who made any such representations or objection may, within the period of twenty-one days beginning with the day on which the notice of the proposal is served on him, in the prescribed manner request the Secretary of State to give a direction under paragraph 4(1) below in respect of the application.

(4) It shall be the duty of the Authority not to give its consent on the application before the end of the period of twenty-one days mentioned in sub-paragraph (3) above and, if within that period—

(a) a request is made under sub-paragraph (3) above in respect of the application; and

(b) the person who makes that request serves notice of it on the Authority,

the Authority shall not give its consent on the application unless the Secretary of State has served notice on the Authority stating that he declines to comply with the request.

(5) Any period during which the Authority is prohibited by virtue of sub-paragraph (4) above from giving its consent on the application shall be disregarded in determining whether the application is deemed to have been refused under paragraph 2(3) above.

*Reference to Secretary of State of certain applications for consent*

4.—(1) The Secretary of State may, either in consequence of representations or objections made to him or otherwise, direct the Authority to transmit to him for determination such applications for consent under paragraph 1 above as are specified in the direction or are of a description so specified.

(2) Where a direction is given to the Authority under this paragraph, the Authority shall comply with the direction and inform every applicant to whose application the direction relates of the transmission of his application to the Secretary of State.

(3) Paragraphs 1(4) to (6) and 2(1) above shall have effect in relation to an application transmitted to the Secretary of State under this paragraph with such modifications as may be prescribed.

(4) Where an application is transmitted to the Secretary of State under this paragraph, the Secretary of State may at any time after the application is transmitted and before it is granted or refused—

(a) cause a local inquiry to be held with respect to the application; or

(b) afford the applicant and the Authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(5) The Secretary of State shall exercise his power under sub-paragraph (4) above in any case where a request to be heard with respect to the application is made to him in the prescribed manner by the applicant or by the Authority.

(6) Where under this paragraph the Secretary of State affords to an applicant and the Authority an opportunity of appearing before, and being heard by, a person appointed for the purpose, it shall be the duty of the Secretary of State to afford an opportunity of appearing before, and being heard by, that person to every person who has made any representations or objection to the Secretary of State with respect to the application in question.

(7) It shall be the duty of the Secretary of State, if the requirements of this paragraph and of any regulations made under it are complied with, to determine an application for consent transmitted to him by the Authority under this paragraph by directing the Authority to refuse its consent or to give its consent under paragraph 2 above (either unconditionally or subject to such conditions as are specified in the direction).

(8) In complying with a direction under sub-paragraph (7) above to give a consent the Authority shall not be required to comply with any requirement imposed by paragraph 3 above.

(9) Without prejudice to any of the preceding provisions of this paragraph, the Secretary of State may by regulations make provision for the purposes of, and in connection with, the consideration and disposal by him of applications transmitted to him under this paragraph.

*Consents without applications*

5.—(1) If it appears to the Authority—

(a) that a person has caused or permitted effluent or other matter to be discharged in contravention—

(i) of the obligation imposed by virtue of section 85(3) of this Act; or

(ii) of any prohibition imposed under section 86 of this Act;

and

(b) that a similar contravention by that person is likely,

the Authority may, if it thinks fit, serve on him an instrument in writing giving its consent, subject to any conditions specified in the instrument, for discharges of a description so specified.

(2) A consent given under this paragraph shall not relate to any discharge which occurred before the instrument containing the consent was served on the recipient of the instrument.

(3) Sub-paragraphs (5) and (6) of paragraph 2 above shall have effect in relation to a consent given under this paragraph as they have effect in relation to a consent given under that paragraph.

(4) Where a consent has been given under this paragraph, the Authority shall, as soon as practicable after giving it—

(a) publish notice of the consent, at least once in each of two successive weeks, in a newspaper or newspapers circulating in—

(i) the locality or localities in which the places are situated at which discharges may be made in pursuance of the consent; and

(ii) the locality or localities appearing to the Authority to be in the vicinity of any controlled waters which it considers likely to be affected by the discharges;

(b) publish a copy of that notice in an edition of the London Gazette published no earlier than the day after the publication of the last of the notices to be published by virtue of paragraph (a) above;

(c) send a copy of the instrument containing the consent to every local authority within whose area any of the discharges authorised by the consent may occur;

SCH. 10

(d) in the case of a consent which relates to discharges into coastal waters, relevant territorial waters or waters outside the seaward limits of relevant territorial waters, serve a copy of the instrument containing the consent on each of the Ministers.

(5) It shall be the duty of the Authority to consider any written representations or objections with respect to a consent under this paragraph which are made to it in the period of six weeks beginning with the day of the publication of notice of the consent in the London Gazette and are not withdrawn.

(6) Where notice of a consent is published by the Authority under sub-paragraph (4) above, the Authority shall be entitled to recover the expenses of publication from the person on whom the instrument containing the consent was served.

*Revocation of consents and alteration and imposition of conditions*

6.—(1) It shall be the duty of the Authority to review from time to time the consents given under paragraphs 2 and 5 above and the conditions (if any) to which the consents are subject.

(2) Subject to such restrictions on the exercise of the power conferred by this sub-paragraph as are imposed under paragraph 7 below, where the Authority has reviewed a consent under this paragraph, it may by a notice served on the person making a discharge in pursuance of the consent—

(a) revoke the consent;

(b) make modifications of the conditions of the consent; or

(c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.

(3) If on a review under sub-paragraph (1) above it appears to the Authority that no discharge has been made in pursuance of the consent to which the review relates at any time during the preceding twelve months, the Authority may revoke the consent by a notice served on the owner or occupier of the land from which discharges would be made in pursuance of the consent.

(4) If it appears to the Secretary of State appropriate to do so—

(a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;

(b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or

(c) in consequence of any representations or objections made to him or otherwise,

he may, subject to such restrictions on the exercise of the power conferred by virtue of paragraph (c) above as are imposed under paragraph 7 below, at any time direct the Authority, in relation to a consent given under paragraph 2 or 5 above, to do anything mentioned in sub-paragraph (2)(a) to (c) above.

(5) The Authority shall be liable to pay compensation to any person in respect of any loss or damage sustained by that person as a result of the Authority's compliance with a direction given in relation to any consent by virtue of sub-paragraph (4)(b) above if—

(a) in complying with that direction the Authority does anything which, apart from that direction, it would be precluded from doing by a restriction imposed under paragraph 7 below; and

(b) the direction is not shown to have been given in consequence of—

(i) a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates; or

(ii) consideration by the Secretary of State of material information which was not reasonably available to the Authority at the beginning of that period.

(6) For the purposes of sub-paragraph (5) above information is material, in relation to a consent, if it relates to any discharge made or to be made by virtue of the consent, to the interaction of any such discharge with any other discharge or to the combined effect of the matter discharged and any other matter.

*Restriction on variation and revocation of consent and previous variation*

7.—(1) Each instrument signifying the consent of the Authority under paragraph 2 or 5 above shall specify a period during which no notice by virtue of paragraph 6(2) or (4)(c) above shall be served in respect of the consent.

(2) Each notice served by the Authority by virtue of paragraph 6(2) or (4)(c) above (except a notice which only revokes a consent) shall specify a period during which a subsequent such notice which alters the effect of the first-mentioned notice shall not be served.

(3) The period specified under sub-paragraph (1) or (2) above in relation to any consent shall not, unless the person who proposes to make or makes discharges in pursuance of the consent otherwise agrees, be less than the period of two years beginning—

(a) in the case of a period specified under sub-paragraph (1) above, with the day on which the consent takes effect; and

(b) in the case of a period specified under sub-paragraph (2) above, with the day on which the notice specifying that period is served.

(4) A restriction imposed under sub-paragraph (1) or (2) above shall not prevent the service by the Authority of a notice by virtue of paragraph 6(2) or (4)(c) above in respect of a consent given under paragraph 5 above if—

(a) the notice is served not more than three months after the beginning of the period specified in paragraph 5(5) above for the making of representations and objections with respect to the consent; and

(b) the Authority or, as the case may be, the Secretary of State considers, in consequence of any representations or objections received by it or him within that period, that it is appropriate for the notice to be served.

## SCHEDULE 11

Section 93.

### WATER PROTECTION ZONE ORDERS

*Applications for orders*

1.—(1) Where the Authority 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;

SCH. 11

(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-

(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.

*Supply of copies of draft orders*

2. Where the Authority 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 Authority 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 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 Authority has given and published such additional notices, in such manner, as the Secretary of State may have required.

(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.

*Consideration of objections etc.*

4. Without prejudice to section 213 of this Act, 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.

## SCHEDULE 12

Section 94.

### NITRATE SENSITIVE AREA ORDERS

### PART I

### APPLICATIONS BY THE AUTHORITY FOR DESIGNATION ORDERS

*Orders made only on application*

1.—(1) Subject to sub-paragraphs (2) and (3) below, the relevant Minister shall not make an order under section 94 of this Act by virtue of which any land is designated as land comprised in a nitrate sensitive area, except with the consent of the Treasury and on an application which—

(a) has been made by the Authority in accordance with paragraph 2 below; and

(b) in identifying controlled waters by virtue of sub-paragraph (2)(a) of that paragraph, identified the controlled waters with respect to which that land is so comprised by the order.

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

*Procedure for applications*

2.—(1) The Authority shall not for the purposes of paragraph 1 above apply for the making of any order under section 94 of this Act by which any land would be comprised in the areas for the time being designated as nitrate sensitive areas unless it appears to the Authority—

(a) that pollution is or is likely to be caused by the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of particular land in England and Wales for agricultural purposes; and

(b) that the provisions for the time being in force in relation to those waters and that land are not sufficient, in the opinion of the Authority, for preventing or controlling such an entry of nitrate into those waters.

(2) An application under this paragraph shall identify—

(a) the controlled waters appearing to the Authority to be the waters which the nitrate is or is likely to enter; and

(b) the land appearing to the Authority to be the land the use of which for agricultural purposes, or the doing of anything in connection with whose use for agricultural purposes, is resulting or is likely to result in the entry of nitrate into those waters.

(3) An application under this paragraph shall be made—

(a) where the land identified in the application is wholly in Wales, by serving a notice containing the application on the Secretary of State; and

(b) in any other case, by serving such a notice on each of the Ministers.

### PART II

### ORDERS CONTAINING MANDATORY PROVISIONS

*Publication of proposal for order containing mandatory provisions*

3.—(1) This paragraph applies where the relevant Minister proposes to make an order under section 94 of this Act which—

(a) makes or modifies any such provision as is authorised by subsection (3)(a) of that section; and

SCH. 12

(b) in doing so, contains provision which is not of one of the following descriptions, that is to say—

(i) provision reproducing existing provisions without modification and in relation to substantially the same area; and

(ii) provision modifying any existing provisions so as to make them less onerous.

(2) The relevant Minister shall, before making any such order as is mentioned in sub-paragraph (1) above—

(a) publish a notice with respect to the proposed order, at least once in each of two successive weeks, in one or more newspapers circulating in the locality in relation to which the proposed order will have effect;

(b) not later than the date on which that notice is first published, serve a copy of the notice on—

(i) the Authority;

(ii) every local authority and water undertaker whose area includes the whole or any part of that locality; and

(iii) in the case of an order containing any such provision as is authorised by section 94(3)(b) of this Act, such owners and occupiers of agricultural land in that locality as appear to the relevant Minister to be likely to be affected by the obligations in respect of which payments are to be made under that provision;

and

(c) publish a notice in the London Gazette which-

(i) names every local authority on whom a notice is required to be served under this paragraph;

(ii) specifies a place where a copy of the proposed order and of any relevant map or plan may be inspected; and

(iii) gives the name of every newspaper in which the notice required by virtue of paragraph (a) above was published and the date of an issue containing the notice.

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

(a) state the general effect of the proposed order;

(b) specify a place where a copy of the proposed order, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of forty-two days beginning with the date of the first publication of the notice; and

(c) state that any person may, within that period, by notice to the Secretary of State or, as the case may be, to one of the Ministers object to the making of the order.

*Supply of copies of proposed orders*

4. The Secretary of State and, in a case where he is proposing to join in making the order, the Minister shall, at the request of any person and on payment by that person of such charge (if any) as the Secretary of State or the Minister may reasonably require, furnish that person with a copy of any proposed order of which notice has been published under paragraph 3 above.

*Modifications of proposals*

5.—(1) Where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above and the period of forty-two days mentioned in sub-paragraph (3)(b) of that paragraph has expired, the relevant Minister may—

(a) make the order either in the proposed terms or, subject to sub-paragraph (2) below (but without any further compliance with paragraph 3 above), in those terms as modified in such manner as he thinks fit; or SCH. 12

(b) decide not to make any order.

(2) The relevant Minister shall not make such a modification of a proposed order of which notice has been so published and served as he considers is likely adversely to affect any persons unless he has given such notices as he considers appropriate for enabling those persons to object to the modification.

(3) Subject to sub-paragraph (2) above and to the service of notices of the proposed modification on such local authorities as appear to him to be likely to be interested in it, the modifications that may be made by the relevant Minister include any modification of any area designated by the proposed order as a nitrate sensitive area.

(4) For the purposes of this Schedule it shall be immaterial, in a case in which a modification such as is mentioned in sub-paragraph (3) above incorporates land in England in an area which (but for the modification) would have been wholly in Wales, that any requirements of paragraph 3 above in relation to the proposed order have been complied with by the Secretary of State, rather than by the Ministers.

*Consideration of objections etc.*

6. Without prejudice to section 213 of this Act, where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above, the Secretary of State or, as the case may be, the Ministers may, if he or they consider it appropriate to do so, hold a local inquiry before deciding whether or not to make the proposed order or to make it with modifications.

*Consent of Treasury for payment provisions*

7. The consent of the Treasury shall be required for the making of any order under section 94 of this Act the making of which does not require the consent of the Treasury by virtue of paragraph 1 above but which contains any such provision as is authorised by subsection (3)(b) of that section.

## SCHEDULE 13

Section 103.

### TRANSITIONAL WATER POLLUTION PROVISIONS

*Transitional power to transfer power of determination with respect to water pollution matters to the Authority*

1. Where by virtue of the provisions of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 in relation to anything having effect under paragraph 21 of Schedule 26 to the Water Act 1989 any matter falls to be determined by the Secretary of State in accordance with any of the provisions of Part III of this Act (other than section 91), that matter shall, if the Secretary of State refers the matter to the Authority for determination, be determined by the Authority instead. 1991 c. 60. 1989 c. 15.

SCH. 13

*Order under section 32(3) of the 1974 Act*

2.—(1) Except in so far as the Secretary of State by order otherwise provides, section 85 of this Act shall not apply to any discharges which are of a kind or in any area specified in an order which was made under subsection (3) of section 32 of the Control of Pollution Act 1974 (preservation of existing exemptions) and is in force for the purposes of paragraph 22(1) of Schedule 26 to the Water Act 1989 immediately before the coming into force of this Act.

1974 c. 40.
1989 c. 15.

(2) The Secretary of State may by order require the Authority to publish in a manner specified in the order such information about the operation of any provision made by or under this paragraph as may be so specified.

(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.

*Pre-1989 transitional provisions*

3.—(1) A consent which has effect, in accordance with paragraph 24(2) of Schedule 26 to the Water Act 1989 and paragraph 1 of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991, as a consent given for the purposes of Chapter II of Part III of this Act in respect of an application which itself has effect, by virtue of paragraph 21 of that Schedule 26 and that paragraph 1, as an application made under Schedule 10 to this Act shall cease to have effect on the disposal of that application by—

1991 c. 60.

(a) the giving of an unconditional consent on that application;

(b) the expiration, without an appeal under section 91 of this Act being brought, of the period of three months beginning with the date on which notice is served on the applicant that the consent applied for is refused or is given subject to conditions; or

(c) the withdrawal or determination of any such appeal.

(2) Particulars of consents to which sub-paragraph (1) above applies shall not be required to be contained in any register maintained under section 190 of this Act.

*Discharge consents on application of undertakers etc.*

4.—(1) The repeal by the Water Consolidation (Consequential Provisions) Act 1991 of sub-paragraphs (2) and (6) of paragraph 25 of Schedule 26 to the Water Act 1989 shall not affect any provision made under section 113(2) of that Act for the purposes of either of those sub-paragraphs; and, accordingly any such provision shall have effect in accordance with Schedule 2 to that Act of 1991 as if made in exercise of a power conferred by section 99 of this Act.

(2) If the Secretary of State determines that this sub-paragraph is to apply in relation to any application which is deemed by virtue of paragraph 25(2)(a) of Schedule 26 to the Water Act 1989 and Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 to have been made to the Authority by the successor company of a water authority—

(a) that application shall be treated as having been transmitted to the Secretary of State in accordance with a direction under paragraph 4 of Schedule 10 to this Act; but

(b) the Authority shall not be required, by virtue of sub-paragraph (2) of that paragraph 4, to inform that company that the application is to be so treated.

(3) Where an application is deemed to have been so made by the successor company of a water authority, then, whether or not it is treated under sub-paragraph (2) above as having been transmitted to the Secretary of State, the following provisions shall apply in relation to the application and, except in so

far as the Secretary of State otherwise directs, shall so apply instead of paragraphs 1(4) to (6) and 2(1) or, as the case may be, paragraph 4(3) of Schedule 10 to this Act, that is to say— SCH. 13

(a) the application shall not be considered by the Secretary of State or the Authority unless the company has complied with such directions (if any) as may be given by the Secretary of State with respect to the publicity to be given to the application;

(b) the Secretary of State or, as the case may be, the Authority shall be under a duty to consider only such representations and objections with respect to the application as have been made in writing to the Secretary of State or the Authority before the end of such period as he may determine and as are not withdrawn; and

(c) the Secretary of State shall have power to direct the Authority (pending compliance with any direction under paragraph (a) above or pending his or, as the case may be, its consideration of the application, representations and objections) to give such a temporary consent under Chapter II of Part III of this Act, or to make such temporary modifications of the conditions of any existing consent, as may be specified in the direction.

(4) The power of the Secretary of State to make a determination or give a direction under sub-paragraph (2) or (3) above shall be exercisable generally in relation to applications of any such description as he may consider appropriate (as well as in relation to a particular application) and, in the case of a direction to give a temporary consent or to make a temporary modification, shall include-

(a) power to require a temporary consent to be given either unconditionally or subject to such conditions falling within paragraph 2(5) of Schedule 10 to this Act as may be specified in the direction;

(b) power, where the direction relates to a description of applications, to require the temporary consent given in pursuance of the direction to be a general consent relating to cases of such a description as may be so specified; and

(c) power, where the direction is in respect of an application falling to be considered by the Authority, to require the consent or modification to be given or made so as to continue to have effect until the Authority's determination on the application becomes final—

(i) on the expiration, without the bringing of an appeal against the determination, of the prescribed period for the bringing of such an appeal; or

(ii) on the withdrawal or determination of any such appeal.

(5) Without prejudice to the provisions of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991, a consent to which sub-paragraph (7) of paragraph 25 of the Water Act 1989 applies immediately before the coming into force of this Act by virtue of its conditions including a condition that is contravened where there is a failure by more than a specified number of samples to satisfy specified requirements, shall continue to have effect as if the only samples falling to be taken into account for the purposes of that condition were samples taken on behalf of the Authority in exercise, at a time after 31st August 1989, of a power conferred by the Water Act 1989 or a corresponding provision of this Act. 1991 c. 60. 1989 c. 15.

(6) References in this paragraph to the successor company of a water authority shall be construed in accordance with the Water Act 1989.

Section 108.

## SCHEDULE 14

### ORDERS TRANSFERRING MAIN RIVER FUNCTIONS TO THE AUTHORITY

*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 Authority 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.

*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 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 Authority 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.

*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* SCH. 14

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 House of Lords from a decision of the Court of Appeal in proceedings under this paragraph.

(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.

*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 Authority in writing under the common seal of the Authority; and

(b) shall be deemed to be raised on the date on which a resolution is passed by the Authority 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.

SCH. 15

(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.

*Publication of drainage charge*

2.—(1) A drainage charge shall not be valid unless notice of the charge is given by the Authority in accordance with sub-paragraph (2) below within ten days of the date on which it is raised.

(2) The notice must—

(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.

*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 the local flood defence district 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 Authority 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.

*Cases where identity of occupiers in doubt*

4.—(1) The Authority 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;

(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 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 Authority, 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.

*Arrangements for owner of land to pay drainage charge*

5.—(1) Subject to paragraph 6 below, the Authority may make arrangements with the owner of any chargeable land for any drainage charges which may be raised by the Authority 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 Authority 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 Authority shall make to him an allowance equal to ten per cent. of the full amount of the charges.

(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 Authority 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.

*Power of occupier to prevent arrangements under paragraph 5*

6.—(1) The occupier of any chargeable land may, by notice given to the Authority, 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 Authority.

SCH. 15

(3) Where notice is given to the Authority under sub-paragraph (1) above, it shall be the duty of the Authority to send a copy of the notice to the owner of the land to which it relates.

*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 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 Authority 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 Authority 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 Authority 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 to comply with the notice in question.

(5) This paragraph shall be without prejudice to the provisions of Part VIII of this Act.

*Power to correct erroneous assessments etc.* SCH. 15

10.—(1) The Authority 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 Authority necessary in order to make the raising, levying and collection of the charge conform with this Act.

(2) In particular, the Authority 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 Authority 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 Authority shall serve a notice of any amendment made by the Authority 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.

*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 for the area in which the land or any part of it is situated.

(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 Authority; 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.

*Recovery of drainage charges*

12.—(1) Arrears of any drainage charge may be recovered by the Authority in the same manner in which arrears of a non-domestic rate may be recovered under the Local Government Finance Act 1988 by a charging authority within the meaning of that Act. 1988 c. 41.

(2) Without prejudice to its powers by virtue of section 4 of this Act and paragraph 5 of Schedule 1 to this Act, the Authority may by resolution authorise any member or officer of the Authority, 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

SCH. 15

(b) notwithstanding that he is not qualified to act as a solicitor, to appear on the Authority's behalf in any proceedings before a magistrates' court for the issue of a warrant of distress 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 Authority 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.

*Use of certain authorities as agents for assessment, collection etc. of drainage charges*

13.—(1) The Authority and any relevant authority may enter into agreements for—

(a) the doing by the relevant authority, as agents of the Authority, 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 Authority to the relevant authority of payments in respect of anything so done.

(2) The Authority may make arrangements with either of the Ministers for the exercise by him on behalf of the Authority, in such cases as may be determined in pursuance of the arrangements, of the powers conferred on the Authority by paragraph 9 above.

(3) Any arrangements under sub-paragraph (2) above shall contain provision for the reimbursement by the Authority 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 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 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.

Section 137.

## SCHEDULE 16

### SCHEMES IMPOSING SPECIAL DRAINAGE CHARGES

*Submission of scheme*

1.—(1) Before submitting a special charges scheme to either of the Ministers, the Authority 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 Authority shall—

(a) send copies of the scheme to—

(i) the council of any county, 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 Authority 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 Authority submit a special charges scheme which designates any watercourse wholly or partly within an internal drainage district, then (unless the Authority 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.

*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 Authority in addition to the special drainage charge authorised by the scheme.

(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.

*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.

SCH. 16

(2) The persons referred to in sub-paragraph (1) above are—

(a) every county 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 Authority 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.

*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.

(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

(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 House of Lords 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 Statutory Orders (Special Procedure) Act 1945;

1945 c. 18 (9 & 10 Geo 6).

(b) where the order is not subject to special parliamentary procedure, the date of the publication of the notice mentioned in paragraph 7 above.

*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.

SCH. 16

(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.

Section 143.

## SCHEDULE 17

### 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*

1919 c. 50.

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 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.

*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.

(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 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 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— 1965 c. 56.

(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 affecting that other land by the exercise of the powers conferred by this or the special Act."

*Section 8 of the 1965 Act*

4. For subsection (1) of section 8 of the 1965 Act (protection for vendor against severance of house, garden, etc.) there shall be substituted the following subsections—

"(1) No person shall be required to grant any right over part only—

(a) of any house, building or manufactory; or

(b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determine that—

(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or

SCH. 18

(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and, if the Lands Tribunal so determine, the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

(1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

*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.

*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

*Applications for orders*

1.—(1) Where the Authority 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 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 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 Authority 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 Authority, 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.

(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 a county council;

SCH. 19

(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;

(d) every owner, lessee or occupier (except tenants for a month or for any period of less than a month) of any land in relation to which compulsory powers would become exercisable if the order were made in the terms of the draft order;

(e) every person who has given notice to the Authority requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the Authority 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 Authority 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.

*Supply of copies of draft orders*

2. Where the Authority 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 Authority 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.

*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 Authority 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 Authority 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.

*Consideration of objections etc.* SCH. 19

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,

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 Authority 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 sub-paragraph (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 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

(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.

*Notice after making of order*

5.—(1) As soon as practicable after a compulsory works order has been made, the Authority 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 Authority 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;

SCH. 19

(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 Authority shall, at the request of any person and on payment by that person of such charge (if any) as the Authority 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 Authority 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 23 to this Act—

1965 c. 56. (a) Part I of the Compulsory Purchase Act 1965;

1981 c. 67. (b) section 4 and Part III of, and Schedule 3 to, the 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 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, SCH. 19

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—

(a) shall not apply to the order if it is confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945; and 1945 c. 18 (9 & 10 Geo. 6).

(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 Acquisition of Land Act 1981 or, as the case may require, of Part II of Schedule 3 to that Act; and 1981 c. 67.

"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.

SCH. 19 *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 Authority; 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.

*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 Authority 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 Authority 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 Authority 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 Authority in pursuance of a compulsory works order shall be entitled to recover compensation from the Authority 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 Authority) 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 Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications. 1961 c. 33.

(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.

*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.

SCH. 19

*Interpretation*

10. In this Schedule—

1980 c. 66.

"bridleway" and "footpath" have the same meanings as in the 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;

and references to a tenant for a month or for any period of less than a month include references to a statutory tenant, within the meaning of the Landlord and Tenant Act 1985, and to a licensee under an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988.

1985 c. 70.

1988 c. 50.

Section 173.

## SCHEDULE 20

SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

*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

(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 New Roads and Street Works Act 1991; and

1991 c. 22.

(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 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).

1950 c. 39.

*Warrant to exercise power* SCH. 20

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;

(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.

SCH. 20

*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

(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 President of the Lands Tribunal where the relevant authority is one of the Ministers; and

(b) by one of the Ministers, where the Authority is the relevant authority.

*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 liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

*Interpretation*

8.—(1) In this Schedule—

"relevant authority", in relation to a power to which this Schedule applies, means one of the Ministers or the Authority, 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

1991 c. 56.

"sewerage services" has the same meaning as in the 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 (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.

## SCHEDULE 21

Section 177.

COMPENSATION ETC. IN RESPECT OF CERTAIN WORKS POWERS

*Compensation in respect of street works powers*

1.—(1) This paragraph applies, in relation to the Authority, 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 Authority—

(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 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 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). 1991 c. 22. 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority, of any power to carry out pipe-laying works on private land, the Authority 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 Authority, 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.

SCH. 21

(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.

*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 Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.

1961 c. 33.

(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.

*Compensation in respect of discharges for works purposes*

4.—(1) It shall be the duty of the Authority—

(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.

(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 Authority 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.

*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 Authority of any powers under section 165(1) to (3) of this Act, the Authority 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 Lands Tribunal.

(3) Where injury is sustained by any person by reason of the exercise by the Authority of its powers under subsection (1)(b) of section 167 of this Act—

(a) the Authority 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 Authority of its powers under section 165(1) to (3) of this Act.

## SCHEDULE 22

Section 178.

PROTECTION FOR PARTICULAR UNDERTAKINGS

*General provisions protecting undertakings*

1.—(1) Nothing in any of the provisions of this Act conferring power on the Authority 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.

SCH. 22

(4) The following are the undertakings protected by this paragraph, that is to say-

(a) the undertakings of the Civil Aviation Authority, the British Coal Corporation and the Post Office;

(b) the undertaking of any water undertaker or sewerage undertaker;

(c) any undertaking consisting in the running of a telecommunications code system, within the meaning of Schedule 4 to the Telecommunications Act 1984;

1984 c. 12.

1986 c. 31.

(d) any airport to which Part V of the Airports Act 1986 applies;

(e) the undertaking of any public gas supplier within the meaning of Part I of the Gas Act 1986;

1986 c. 44.

1989 c. 29.

(f) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989 to generate, transmit or supply 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.

(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.

*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 Authority 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.

*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 Highways Act 1980)—

1980 c. 66.

(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, SCH. 22

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 New Roads and Street Works Act 1991. 1991 c. 22.

(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 Authority 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 Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provisions— 1870 c. 78.

(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 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). 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

(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

SCH. 22

(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.

*Protection for telecommunication systems*

1984 c. 12.

5. Paragraph 23 of Schedule 2 to the Telecommunications Act 1984 (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Authority for the purposes of any works carried out by the Authority in exercise of any of the powers conferred by any enactment (including section 4(1) of this Act).

*Interpretation*

6. In this Schedule "railway company" means the British Railways Board, London Regional Transport 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.

Section 182.

## SCHEDULE 23

### MINERAL RIGHTS

*Acquisition of mineral rights*

1.—(1) This paragraph applies in each of the following cases, that is to say—

(a) where the Authority acquires any land (whether compulsorily in exercise of any power conferred by or under this Act or otherwise); and

(b) where the Authority 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 Authority 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 Authority unless express provision to the contrary is contained—

(a) where the land vests in the Authority by virtue of a conveyance, in the conveyance; or

(b) where the land is acquired by the Authority in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.

(3) The Authority 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.

*Notice required for the working of underlying mines*

2.—(1) If the owner of any mines or minerals underlying any part of the Authority'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 Authority.

(2) On receipt of a notice under sub-paragraph (1) above the Authority 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 Authority—

(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 Authority, and the Authority 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 Lands 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 Authority, 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 Authority 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 Authority 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.

*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 Authority.

(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 Authority 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.

SCH. 23

(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 Authority 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 the Authority'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 Authority 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 Authority 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 Authority'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 Authority 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 the Authority 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 Authority'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 Authority; and

(c) carrying out any works and taking any other steps which the Authority 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 Authority 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. SCH. 23

*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 Authority 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 Law of Property Act 1925; 1925 c. 20.

"designated distance", in relation to any part of the Authority'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 Authority's undertaking, means lying under, or within the designated distance from, that part of that undertaking.

(2) For the purposes of this Schedule the Authority'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 Authority 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 195 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.

(4) For the purposes of this Schedule land shall be treated as acquired by the Authority 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 Authority in accordance with a scheme under Schedule 2 to the Water Act 1989 or otherwise. 1989 c. 15.

(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 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 Authority'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 Authority in pursuance of any powers of compulsory acquisition; and

SCH. 23

(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.

Section 204.

## SCHEDULE 24

### DISCLOSURE OF INFORMATION

### PART I

### PERSONS IN RESPECT OF WHOSE FUNCTIONS DISCLOSURE MAY BE MADE

Any Minister of the Crown.

The Director General of Fair Trading.

The Monopolies and Mergers Commission.

The Director General of Telecommunications.

The Civil Aviation Authority.

The Director General of Gas Supply.

The Director General of Electricity Supply.

A local weights and measures authority in England and Wales.

### PART II

### ENACTMENTS ETC. IN RESPECT OF WHICH DISCLOSURE MAY BE MADE

1968 c. 29. The Trade Descriptions Act 1968.

1973 c. 41. The Fair Trading Act 1973.

1974 c. 39. The Consumer Credit Act 1974.

1976 c. 34. The Restrictive Trade Practices Act 1976.

1976 c. 53. The Resale Prices Act 1976.

1979 c. 38. The Estate Agents Act 1979.

1980 c. 21. The Competition Act 1980.

1984 c. 12. The Telecommunications Act 1984.

1986 c. 31. The Airports Act 1986.

1986 c. 44. The Gas Act 1986.

1987 c. 43. The Consumer Protection Act 1987.

1989 c. 29. The Electricity Act 1989.

Any subordinate legislation made for the purpose of securing compliance with the Directive of the Council of the European Communities dated 10th September 1984 (No. 84/450/EEC) on the approximation of the laws, regulations and administrative provisions of the member States concerning misleading advertising.

## SCHEDULE 25

Section 210.

BYELAW-MAKING POWERS OF THE AUTHORITY

*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 Authority to be necessary or expedient to do so for the purposes of any of the functions specified in paragraphs (a), (c) and (d) of section 2(1) of this Act, the Authority 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 Authority 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 Authority; 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 Authority in such manner as the byelaws may provide; and

(b) authorise the Authority to make reasonable charges in respect of the registration of boats in pursuance of the byelaws.

*Byelaws for regulating the use of navigable waters etc.*

2.—(1) The Authority 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;

SCH. 25

(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 Authority 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 Authority;

(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.

(5) In this paragraph "boat" includes a vessel of any description, and "boating" shall be construed accordingly.

*Byelaws for regulating the use of the Authority's waterways etc.*

3.—(1) The Authority 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 Authority 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 Authority 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 Authority;

(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

1949 c. 97.

"waterway" has the same meaning as in the National Parks and Access to the Countryside Act 1949.

*Byelaws for controlling certain forms of pollution* SCH. 25

4.—(1) The Authority may by byelaws make such provision as the Authority 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.

*Byelaws for flood defence and drainage purposes*

5.—(1) The Authority may make such byelaws in relation to any particular locality or localities as it considers necessary for securing the efficient working of any drainage system including the proper defence of any land against sea or tidal water.

(2) Without prejudice to the generality of sub-paragraph (1) above and subject to sub-paragraph (3) below, the Authority 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 Authority 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;

(c) preventing the obstruction of any watercourse vested in the Authority 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 Authority 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.

(4) Notwithstanding anything in this Act, no byelaw made by the Authority under this paragraph shall conflict with or interfere with the operation of any byelaw made by a navigation authority, harbour authority or conservancy authority.

(5) In this paragraph "banks" and "watercourse" have the same meanings as in Part IV of this Act.

*Byelaws for purposes of fisheries functions*

6.—(1) The Authority shall have power, in relation to 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—

SCH. 25
1975 c. 51.

(a) the better execution of the Salmon and Freshwater Fisheries Act 1975; and

(b) the better protection, preservation and improvement of any salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.

(2) Subject to paragraph 7(1) below, the Authority shall have power, in relation to 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, whether alive or dead;

(b) prohibiting or regulating—

(i) the taking of trout or any freshwater fish of a size less than such as may be prescribed by the byelaw; or

(ii) the taking of fish 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 salmon, trout, or freshwater fish of any instrument (not being a fixed engine) in such waters and at such times as may be prescribed by the byelaws;

(d) specifying the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout, freshwater fish and eels, 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;

(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 licensed 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 salmon or trout of any net which is not licensed, 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 the annual close season for salmon of a net capable of taking salmon, 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.

(3) Subject to the provisions of Schedule 1 to the Salmon and Freshwater Fisheries Act 1975 (duty to make byelaws about close season), the Authority shall have power, in relation to 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) fixing or altering any such close season or close time as is mentioned in paragraph 3 of that Schedule;

(b) dispensing with a close season for freshwater fish or rainbow trout;

(c) determining for the purposes of the Salmon and Freshwater Fisheries Act 1975 the period of the year during which gratings need not be maintained;

(d) prohibiting or regulating fishing with rod and line between the end of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning;

(e) determining the time during which it shall be lawful to use a gaff in connection with fishing with rod and line for salmon or migratory trout;

(f) authorising fishing with rod and line for eels during the annual close season for freshwater fish.

(4) Subject to paragraph 7(2) below, the Authority shall have power, in relation to any part or parts of the area mentioned in sub-paragraph (1) above, to make byelaws for the purpose of regulating the deposit or discharge in any waters containing fish of any liquid or solid matter specified in the byelaw which is detrimental to salmon, trout or freshwater fish, or the spawn or food of fish.

(5) The Authority shall have power, in relation to 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 Authority 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 salmon, trout, freshwater fish or eels,

(b) of whether they have taken any; and

(c) if they have, of what they have taken.

(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 Salmon and Freshwater Fisheries Act 1975 have the same meanings in this paragraph as in that Act. 1975 c. 51.

*Restrictions on powers to make byelaws for fisheries purposes*

7.—(1) The Authority shall not make any byelaws by virtue of paragraph 6(2)(e) above in relation to any place within the sea fisheries district of a local fisheries committee except with the consent of that committee.

(2) The Authority shall not make byelaws by virtue of paragraph 6(4) above so as to prejudice any powers of a sewerage undertaker to discharge sewage in pursuance of any power given by a public general Act, a local Act or a provisional order confirmed by Parliament.

## SCHEDULE 26

Section 210.

PROCEDURE RELATING TO BYELAWS MADE BY THE AUTHORITY

*Confirmation of byelaws*

1.—(1) No byelaw made by the Authority 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 Authority 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.

SCH. 26

(3) For at least one month before an application is made by the Authority for the confirmation of any byelaw, a copy of it shall be deposited at one or more of the offices of the Authority, including (if there is one) at an office in the area to which the byelaw would apply.

(4) The Authority 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 Authority, to be furnished free of charge with a printed copy of a byelaw so deposited.

*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 Authority for confirmation under this Schedule, or may confirm the byelaw either without or, if the Authority consents, with modifications.

(2) The Authority 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 Authority 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 Authority consents" of the words "after consultation with the Authority".

*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 Authority and confirmed under this Schedule shall be printed and deposited at one or more of the offices of the Authority, 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 Authority and on payment of such reasonable sum as the Authority may determine, to be furnished with a copy of any byelaw so deposited by the Authority.

*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 Authority and considering any representations or objections made by the Authority; and

(b) if required by the Authority, after holding a local inquiry,

revoke that byelaw.

*Proof of byelaws*

6. The production of a printed copy of a byelaw purporting to be made by the Authority upon which is indorsed a certificate, purporting to be signed on its behalf, stating—

(a) that the byelaw was made by the Authority;

(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.

*Meaning of "the relevant Minister"*

7. In this Schedule "the relevant Minister"—

(a) in relation to byelaws which—

(i) are made by virtue of paragraph 5 of Schedule 25 to this Act or by virtue of section 136(8) of the Water Act 1989 as read with the savings in paragraphs 1 and 5 of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 (transfer of land drainage functions under local statutory provisions); and

1989 c. 15.
1991 c. 60.

(ii) have effect in the area of a regional flood defence committee the whole or the greater part of whose area is 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 Authority), means the Secretary of State or the Minister; and

(c) in relation to any other byelaws, means the Secretary of State.

## Table of Derivations

*Notes:*

1. 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.

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. |

| Provision of Act | Derivation |
|---|---|
| 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: 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. |

| Provision of Act | Derivation |
|---|---|
| 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). |
| 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). |

| Provision of Act | Derivation |
|---|---|
| 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. |
| 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. |

| Provision of Act | Derivation |
|---|---|
| 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). |
| 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. |

| Provision of Act | Derivation |
|---|---|
| 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). |

| Provision of Act | Derivation |
|---|---|
| 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). |

| Provision of Act | Derivation |
|---|---|
| 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 & 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. |

| Provision of Act | Derivation |
|---|---|
| 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. |
| 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. |

| Provision of Act | Derivation |
|---|---|
| 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). |
| 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. |

| Provision of Act | Derivation |
|---|---|
| 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 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. |

| Provision of Act | Derivation |
|---|---|
| 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. |
| 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). |

| Provision of Act | Derivation |
|---|---|
| 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). |
| 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. |

| Provision of Act | Derivation |
|---|---|
| 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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