

Hampshire Water Transfer and Water Recycling Project

Explanatory Memorandum to Draft Order

VOLUME NUMBER: 3

PLANNING INSPECTORATE SCHEME NUMBER: WA010002

APPLICATION DOCUMENT REFERENCE: 3.2

APFP REGULATION: 5(2)(c)

May 2026

Version 0



from
**Southern
Water** 

The Southern Water logo consists of three stylized, wavy blue lines of varying lengths, positioned to the right of the word 'Water'.

**THE HAMPSHIRE WATER TRANSFER AND WATER RECYCLING PROJECT DEVELOPMENT
CONSENT ORDER 202[*]**

EXPLANATORY MEMORANDUM

1. SUMMARY

1.1 This explanatory memorandum has been prepared to explain the purpose and effect of the provisions of the draft Hampshire Water Transfer and Water Recycling Project Development Consent Order (“the Order”), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This document should be read alongside the Order and the other documents submitted by Southern Water Services Limited (“Southern Water” or “the undertaker”) in respect of this application for the Order.

2. PURPOSE OF THE ORDER

2.1 The overall purpose of the Order is to authorise the construction, operation and maintenance of the Hampshire Water Transfer and Water Recycling Project (the “**Project**”).

2.2 The Project comprises the construction, operation and maintenance of the following components:

- (a) Water Recycling Plant and associated pumping stations.
- (b) Underground pipelines between Budds Farm Wastewater Treatment Works and the Water Recycling Plant.
- (c) Pipelines between the Water Recycling Plant site and Bedhampton Springs, connecting into pipelines being delivered by Portsmouth Water between Bedhampton Springs and Havant Thicket Reservoir.
- (d) Underground pipeline between the Water Recycling Plant site and Otterbourne Water Supply Works.
- (e) Above Ground Plant comprising Intermediate Pumping Stations and Break Pressure Tanks located along the Pipeline between the Water Recycling Plant and Otterbourne Water Supply Works.

2.3 The Project would also comprise the use of the following existing infrastructure:

- (a) Use of Havant Thicket Reservoir for the storage of recycled water.
- (b) The use of the Eastney Long Sea Outfall, Eastney Pumping Station, and Eastney Transfer Tunnel for the release of reject water (containing impurities removed from the treated wastewater) from the Water Recycling Plant.
- (c) The use of pipelines that are consented separately by Portsmouth Water for the transfer of recycled water and source water between Bedhampton Springs and Havant Thicket Reservoir.
- (d) The construction and operation of the Project would include other works such as landscaping and environmental mitigation measures.

2.4 The construction and operation of the Project would be supported by other temporary and permanent works.

2.5 The Project will require the demolition, disassembly and/or temporary relocation of a small number of structures.

- 2.6 A detailed description of the Project is provided in Chapter 3 Description of Project of the Environmental Statement [6.1]. The background to and justification for the Project are explained in the Case for the Project [5.6].
- 2.7 The Planning Act 2008 (“the 2008 Act”) provides that various specified categories of infrastructure projects within defined fields are to be “nationally significant infrastructure projects” (“NSIPs”). If development is, or forms part of, an NSIP, it requires development consent under the 2008 Act. The categories of NSIPs specified by the Act do not include water recycling, which is a relatively new and emerging technology in the UK.
- 2.8 It follows that the Project would not ordinarily be an NSIP. However, section 35 of the 2008 Act enables the Secretary of State to direct that a development be treated as development for which development consent is required. Such a direction (“the Direction”) was given in relation to the Project on 31 May 2022, and varied on 19 November 2024, following a request by Southern Water.

3. **GRANT OF DEVELOPMENT CONSENT**

- 3.1 Development consent is granted by the Order, at article 3, for the “authorised development” (defined by article 2 as the development described in Schedule 1 and any other development authorised by the Order). This is in accordance with section 115 of the 2008 Act, which permits development consent to be granted for “development for which development consent is required” and also for “associated development” (i.e. development which is associated with development requiring development consent). The Secretary of State’s section 115 power to grant development consent, and the provisions made by section 120 concerning what may be included in a DCO, apply equally to both development for which development consent is required and associated development. It is thus unnecessary for the Order to distinguish between them.

4. **ANCILLARY MATTERS**

- 4.1 The draft Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 4.2 The draft Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land and disapply provisions relating to certain other consent regimes. It is for this reason that under sections 117 and 120(5) of the 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.
- 4.3 Other ancillary matters include: the compulsory acquisition of rights over land, the stopping up and diversion of public rights of way, traffic regulation and the application and disapplication of legislation relating to the Project.

5. **KEY CONCEPTS UNDERLYING THE DCO APPLICATION DOCUMENTS**

- 5.1 In accordance with statutory drafting conventions, the draft Development Consent Order refers to Southern Water as the “undertaker” and for consistency this explanatory memorandum adopts the same convention.
- 5.2 The description of the development authorised by the Order is set out in detail, in the form of a textual description, in Schedule 1, where the component parts of the Project are set out in a series of ‘numbered works’, cross-references to which also feature in other DCO application documentation. Some of those numbered works are themselves sub-divided, in recognition of the fact that they have several distinct but interdependent component parts. Following the numbered works there is a list of ancillary works. The ancillary works form part of, and support, the construction, operation and maintenance of the numbered works to which they relate and are not to give rise to any materially new or materially different adverse environmental effects in comparison with those assessed in the environmental statement. Ancillary works are set out separately to the numbered works so as to avoid the need to repeat them within the description of each of the numbered works. This approach aids the clarity and legibility of the description of the numbered works.

5.3 In summary, the numbered works set out in Schedule 1 to the draft Order comprise:

- (a) Work No. 1 – the Water Recycling Plant;
- (b) Work No. 2 – pipelines between the Water Recycling Plant (Work No. 1) and a pumping station at Budds Farm Wastewater Treatment Works (Work No. 5E);
- (c) Work No. 3 – pipelines between the Water Recycling Plant (Work No. 1) and Bedhampton Springs;
- (d) Work No. 4 – a pipeline between the Water Recycling Plant (Work No. 1) and Otterbourne Water Supply Works;
- (e) Work No. 5 – a series of above ground plant comprising Intermediate Pumping Stations and Break Pressure Tanks located along the Pipeline between the Water Recycling Plant and Otterbourne Water Supply Works;
- (f) Work No. 6 – temporary construction compounds supporting the construction of the Project.
- (g) Work No. 7 – environmental mitigation and additional environmental enhancement areas.
- (h) Work No. 8 – highways and access works. These are not described in more detail in Schedule 1 as the nature of the works proposed are set out in more detail in Schedule 3.
- (i) Work Nos. 9A and 9B – relate to the permanent and temporary access arrangements for the above ground plant comprised in Work No. 5A.
- (j) Work No. 10 – invasive non-native species treatment plant.

5.4 There is no prescribed approach for dividing a project into a series of numbered works; it is open to an applicant to do this in whatever way is most appropriate for the project for which it seeks development consent. Accordingly, a variety of contrasting approaches can be seen in DCO applications granted to date.

5.5 The parameters of where the authorised development can be constructed are set out in two key documents, the Works Plans [2.3] and the Design Principles Document [5.11]. As is discussed in more detail at paragraphs 8.16 to 8.21, article 7 (limits of deviation) of the draft Order requires each of the numbered works to be situated within the areas for that work shown on the Works Plans [2.3]. The Design Principles Document includes specific maximum upwards parameters for certain buildings and structures comprised in the above ground works and requirements on the minimum depths for certain underground works such as the pipelines. The measures within the Design Principles Document also constrain the locations within the limits of deviation, that specific buildings may be constructed and identifies the spatial location of proposed environmental mitigation. Compliance with the Design Principles Document is secured through requirement 3 contained in Schedule 2 to the draft Order (discussed further below at paragraphs 13.9 to 13.13).

6. DRAFT ORDER

6.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. Guidance on the contents of development consent orders make it plain that it is no longer necessary to include provisions in a draft DCO that were contained in the Model Provisions Order which are no longer relevant¹. This Explanatory Memorandum makes reference to the Model Provisions where it is

¹ Paragraph 002 Reference ID 04-002-20240430, <https://www.gov.uk/guidance/planning-act-2008-content-of-a-development-consent-order-required-for-nationally-significant-infrastructure-projects>

considered appropriate to do so but does not seek to track changes of its provisions against the equivalent Model Provisions.

6.2 At the time of writing, no other development consent order has been made in respect of development for the purposes of the transfer of water resources or water recycling. As such, while the undertaker has carefully considered other precedent development consent orders, transport and works orders and hybrid Acts whilst preparing this draft Order, and reference is made to those precedents where appropriate to do so, it has carefully considered and justified the requirement for the provisions it seeks in this Explanatory Memorandum. The Applicant has had regard to the full suite of applicable guidance and advice including Guidance - Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (Reference ID 04-001-20240430) and the Planning Inspectorate's Nationally Significant Infrastructure Projects - Advice Note 15: drafting Development Consent Orders (version 2, last updated March 2025), in preparing the draft Order and this Explanatory Memorandum.

6.3 The Order makes provision for a deemed marine licence. This relates to a surface water drainage outfall serving the Sustainable Urban Drainage System proposed at the Water Recycling Plant (Work No. 1).

7. **PART 1 – PRELIMINARY**

Preamble

7.1 The preamble recites the background to the making of the Order and cites the relevant provisions under which the Order is made (should it be made).

7.2 The Applicant is satisfied that open space when burdened with any new rights under the Order, will be "no less advantageous than it was before". The draft preamble to the Order therefore sets out the Secretary of State's acknowledgment that section 132(2)(a) applies (as it must pursuant to section 132(2)(a)). The Applicant's justification as to why section 132(2)(a) applies is set out in the Statement of Reasons [4.1], but in essence, the rights in question relate to underground infrastructure and so do not materially interfere with the enjoyment of the open space.

Article 1 – Citation and commencement

7.3 Article 1 sets out the name of the Order and, if made by the Secretary of State, will include the date that it will come into force.

Article 2 – Interpretation

7.4 The purpose of article 2(1) is to define terms used in the remainder of the Order.

7.5 Definitions to note include:

(a) "the Havant Thicket Reservoir infrastructure" is a key term that relates to articles 4 (development consent) and 5 (use, enjoyment and operation of the Havant Thicket Reservoir infrastructure). The purpose and effect of this definition is discussed in more detail in relation to those provisions below;

(b) "maintain" which includes inspect, repair, adjust, alter, remove, replace or reconstruct and any derivative of maintain in the Order is to be construed accordingly. Southern Water considers this definition to be appropriate in the circumstances of this Project. It is important for Southern Water that it is able to undertake all the elements of maintenance that are included within this definition in order to discharge its functions as a regulated water undertaker. The definition of "maintain" is qualified by the proviso that maintenance must not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement [6.1]. In accordance with the Guidance, it would not permit the replacement of the consented development with

the construction of what is effectively a different project². Section 3.6 of Chapter 3 of the Environmental Statement discusses in more detail the operation and maintenance of the authorised development.

- (c) “the Order land” refers to land which is shown coloured pink and coloured blue on the Land Plans [2.2], and which, respectively, comprises the land which Southern Water can permanently acquire, and the land over which Southern Water can create and permanently acquire new rights. The term is necessary to distinguish the land within the Order limits that would be subject to powers of compulsory acquisition from the land within the Order limits that is not so subject; and
- (d) “the Order limits” references the Order limits as shown on the Works Plans [2.3] and the Land Plans [2.2].

7.6 Paragraph (2) explains the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.

7.7 Paragraph (3) defines measurements as being approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances and points, although all works are to take place within the limits of deviation for those works. It is commonplace to include such provision in legislation authorising linear infrastructure.

7.8 Paragraph (4) provides that areas given in the Book of Reference [4.3], in relation to plot numbers, are approximate, since these are not covered by article 2(3). This is intended to clarify the status of the area measurements in the Book of Reference [4.3], and the purpose and effect of the term ‘approximately’ in this context is the same as set out in the previous paragraph. The term ‘approximately’ is required to be read-in to all plot area measurements in the Book of Reference [4.3], as these measurements are given in square metres, and each measurement is rounded up to the nearest whole square metre.

7.9 Paragraphs (5) and (6) tie references to lettered/numbered plots and reference points and numbered works in the Order to the relevant plans.

7.10 Paragraph (7) provides that references to materially new or materially different environmental effects in the Order are not to be construed as including the avoidance, removal or reduction of an assessed adverse environmental or positive environmental effect reported on in the environmental statement. This is intended to clarify that the environmental statement fully assesses the environmental effects arising out of the authorised development and accords with the government’s guidance on the drafting of development consent orders in a manner that does not prevent the approval of details which would lead to environmentally better outcomes³. This approach is in line with recent precedents for linear infrastructure including the A66 Northern Trans-Pennine Development Consent Order 2024 and the A122 (Lower Thames Crossing) Development Consent Order 2025.

8. PART 2 – PRINCIPAL POWERS

Article 3 – Development consent, etc. granted by the Order

8.1 This article confers the principal power to construct and operate the authorised development, including the use of the Havant Thicket Reservoir infrastructure (see article 5 below). Schedule 1 describes the elements of the authorised development.

8.2 Paragraph (2) is required to ensure that other schemes or legislation of local application that affect land within the Order limits, or land adjacent to the Order limits, have to take account of the Order. It

² Paragraph 006 Reference ID 04-006-20240430, Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects - GOV.UK.

³ Paragraph 017 Reference ID 04-017-20240430, <https://www.gov.uk/guidance/planning-act-2008-content-of-a-development-consent-order-required-for-nationally-significant-infrastructure-projects>

does not modify the application of general legislation. The provision is necessary in this case to ensure that any enactments of local application affecting land within the Order limits that have not been expressly disapplied by article 46 (disapplication and modification of legislative provisions), do not impede the delivery of this project of national significance. It is a widely precedented provision.

Article 4 – Maintenance of the authorised development

- 8.3 This article sets out the scope within which the undertaker may maintain the authorised development. The definition of “maintain” is contained in article 2(1) as discussed in paragraph 7.5(a). Maintenance of the authorised development, within the meaning that would be authorised by this article, has been assessed in the environmental statement, and the power is constrained, through the definition of “maintain”, by the qualification that maintenance works must not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement. The power to maintain is necessary to ensure that the undertaker has the powers necessary to ensure the long term operation of the authorised development.

Article 5 – Use, enjoyment and operation of the Havant Thicket Reservoir infrastructure

- 8.4 The purpose of this article is to provide clear statutory authority for the undertaker to use and enjoy the Havant Thicket Reservoir infrastructure for the purposes of the Project. The use of the Havant Thicket Reservoir infrastructure to convey water from the authorised development to the reservoir for storage, and its subsequent draw down for conveyance into the authorised development and then into public supply, is integral to achieving the purposes of the Project. Paragraph (1) sets out in clear terms the overall purpose of this article and puts the undertaker’s use and enjoyment of the Havant Thicket Reservoir infrastructure on a clear statutory footing.
- 8.5 The Havant Thicket Reservoir infrastructure is being developed by Portsmouth Water pursuant to planning permissions granted by Havant Borough Council and East Hampshire District Council and related planning obligations. The terms of those planning permissions impose conditions requiring that only spring water can be stored in the reservoir or conveyed through the pipelines.
- 8.6 Sub-paragraph (2) provides further clarification on the nature of the undertaker’s use and enjoyment of the Havant Thicket Reservoir infrastructure. It expressly includes the conveyance of water to and from the authorised development, the storage of water in the reservoir and the drawing down of such water. It also clarifies that the ‘water’ includes both recycled water produced by the authorised development and water that is a combination of recycled water and other water.
- 8.7 Sub-paragraphs (3) to (6) make provision for a scheme of operation to be agreed between Portsmouth Water and the undertaker to regulate the practical arrangements in relation to the operation and maintenance of the Havant Thicket Reservoir infrastructure, given that operation and maintenance of the Havant Thicket Reservoir infrastructure are integral to the undertaker’s use and enjoyment of it and so to achieving the purposes of the Project. If a scheme of operation cannot be agreed then one is to be determined by the Secretary of State. Any disputes in relation to the terms of a scheme of operation are also to be determined by the Secretary of State. There is a clear need to ensure that the interface between the authorised development and the Havant Thicket Reservoir infrastructure is appropriately regulated and these provisions provide the mechanisms to ensure this. While not commonplace, the use of a ‘scheme of operation’ as a mechanism to regulate the interface between statutory undertakers has precedent, see for example, article 43 (operation of new bridge) of the Great Yarmouth Third River Crossing Development Consent Order 2020 and article 41 (operation of the new bridge) of the Lake Lothing (Lowestoft) Third Crossing Order 2020.
- 8.8 Paragraph (7) clarifies that the undertaker may exercise its functions under Part 6 of the Water Industry Act 1991 to secure or maintain its use and enjoyment of the Havant Thicket Reservoir infrastructure in accordance with this article and the scheme of operation.
- 8.9 The purpose of paragraph (8) is to integrate Southern Water’s use of the Havant Thicket Reservoir infrastructure into the land use planning and water resources regulatory regimes.
- 8.10 Sub-paragraph (8)(a) ensures that the undertaker’s use of the Havant Thicket Reservoir infrastructure under the Order, in particular the use of recycled water, does not place Portsmouth

Water, or the undertaker, in breach of planning control or Portsmouth Water in breach of any planning obligations. As the authorisation contained in this article is strictly limited to the undertaker's use and enjoyment of the Havant Thicket Reservoir infrastructure, any other breach of planning control or planning obligations (for example, relating to the physical form of the Havant Thicket Reservoir infrastructure or the means by which it will be constructed) would not be affected by this provision. Sub-paragraph (8)(b) ensures that any inconsistency in a planning permission for the Havant Thicket Reservoir infrastructure with the undertaker's use under this article does not prejudice reliance on that planning permission. Sub-paragraph (8)(c) ensures that the abstraction of water from, and the discharge of water into, the Havant Thicket Reservoir will remain regulated by the requirement for an abstraction licence under section 24 of the Water Resources Act 1991 and the requirement for a water discharge activity permit under the Environmental Permitting (England and Wales) Regulations 2016. The exercise of the undertaker's functions under this article would therefore be subject to appropriate environmental regulation.

- 8.11 Paragraph (9) provides for the undertaker and Portsmouth Water to enter into agreements relating to the undertaker's use and enjoyment of the Havant Thicket Reservoir infrastructure for the purposes of the Project and the opening and maintenance arrangements for that infrastructure. Any such agreements would operate to circumscribe the undertaker's functions under the article.
- 8.12 Paragraph (10) draws the reader's attention to the provisions contained in article 46 and Schedule 8 to the Order which modify the certain legislative provisions applicable to the authorised development and to the Havant Thicket Reservoir infrastructure. This is discussed in more detail in the Appendix to this Explanatory Memorandum.
- 8.13 Paragraph (11) disapplies article 55 (arbitration) ensuring that any disputes concerning the provisions of this article are to be determined by the Secretary of State in accordance with paragraph (5).
- 8.14 This article is integral to the Order and is necessary to ensure that the undertaker has available to it all the powers required to operate and maintain the authorised development and to achieve the purposes of the Project.

Article 6 – Maintenance of drainage works

- 8.15 The purpose and effect of this article is to make it clear that any realignment of award drains or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between Southern Water and the responsible party. This article is concerned with maintaining the status quo with respect to the responsibility for drainage that may have been established in historic but still in effect Enclosure Acts and related enactments.

Article 7 – Limits of deviation

- 8.16 The purpose and effect of this article is to establish the spatial limits within which each of the numbered works described in Schedule 1 to the Order would be authorised. It does so by reference to the areas for those numbered works shown on the Works Plans [2.3].
- 8.17 Paragraph (2) further constrains the limits within which the underground pipeline comprised in Work No.4(a) would be authorised by the Order, by confining that work to being situated within the limits of deviation for that work shown on the Works Plans [2.3] in locations where an additional limit of deviation is shown for Work No. 4(a). In locations on the Works Plans [2.3] where no additional limit of deviation is shown for Work No. 4(a), the limit of deviation will be the limits of Work No. 4. This reflects a proportional approach by the Applicant by limiting the flexibility for where the pipeline may be laid in cases where it is able to do so, but preserving flexibility where it is required.
- 8.18 Paragraphs (3) and (4) provide a mechanism whereby departures from the limits of deviation described in this article can be authorised by the relevant planning authority if it is demonstrated to its satisfaction that to do so would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement. This provides a degree of flexibility for minor departures from these limits subject to the twin safeguards

of the scrutiny of the relevant planning authority and by requiring any such departures to remain within the effects assessed within the Environmental Statement.

- 8.19 The purpose of this article is to provide Southern Water with a necessary but proportionate degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the development of the detailed design of the Project, within the set limits.
- 8.20 It should be noted that this article does not seek to establish all of the spatial parameters within which the authorised development is authorised to be constructed. In relation to the above ground infrastructure, such as for example the Water Recycling Plant comprised in Work No. 1, the Design Principles Document [5.11] establishes a range of other factors that have to be considered within the detailed design, including vertical limits on the height of buildings. Compliance with the Design Principles Document [5.11] is secured through requirement 3 contained in Schedule 2 to the draft Order. Similarly, in relation to the below ground infrastructure, such as the pipelines comprised in Work No. 4, the Outline Construction Environmental Management Plan [7.1] secures among other matters, the locations of pipeline works where trenchless crossing techniques are required to be used and imposes minimum depths by which pipelines are to be installed below ground.
- 8.21 The spatial parameters for the authorised development, as summarised above, have been assessed in the Environmental Statement [6.1] accompanying the application for development consent and are described in Chapter 3 of that document.

Article 8 – Benefit of Order

- 8.22 This article overrides the default position set out in section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to Southern Water rather than anyone with an interest in the land. It would be wholly impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to apply.
- 8.23 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others e.g. rights for statutory undertakers, and mitigation works outlined in the Schedule 1 description of the works. Without this provision, there would be a contradiction since strictly speaking only Southern Water could benefit from development consent for these works.

Article 9 – Consent to transfer benefit of Order

- 8.24 This article would allow functions under the Order to be transferred to others by Southern Water, with the consent of the Secretary of State. This may be required, for example, where there is a need to transfer development consent to other parties such as utility undertakers for protective or diversionary works to their apparatus carried out under the Order. Importantly, it may be required to transfer all or part of the benefit of the Order to the Competitively Appointed Provider procured in accordance with OFWAT's Direct Procurement for Customers Regime.
- 8.25 The purpose of paragraph (4) is to allow for Southern Water to transfer the deemed marine licence contained in Schedule 9, with the Secretary of State's consent following the consultation with the MMO required by paragraph (5).
- 8.26 Paragraph (6) ensures that the person in receipt of the benefit of the Order is subject to the same restrictions and obligations under it as would apply to the undertaker.
- 8.27 Such provisions are widely accepted practice in development consent orders and are required in the case of the Project to enable the transfer of such functions under the supervision and control of the Secretary of State.
- 8.28 Paragraph (7) is a necessary consequential modification to reflect such a transfer being made with the approval of the Secretary of State and to permit the MMO to update the deemed marine licence accordingly.

Article 10 – Defence to proceedings in respect of statutory nuisance

- 8.29 The default position under section 158 (nuisance: statutory authority) of the 2008 Act is to confer statutory authority for the carrying out of development or doing anything else authorised by a development consent order. This would act as a defence in any criminal or civil proceedings for nuisance in the absence of any contrary provision in the Order.
- 8.30 This article is such a provision, which applies to proceedings brought under the Environmental Protection Act 1990 in respect of noise emitted from premises. In such circumstances, a defence would be available if:
- (a) the noise is created during the construction or maintenance of the works authorised by the Order in accordance with a notice given under sections 60 or 61 of the Control of Pollution Act 1974; or
 - (b) is a consequence of the construction, maintenance or use of the authorised development and cannot reasonably be avoided.

9. PART 3 – STREET WORKS

Article 11 – Streets Works

- 9.1 Implementation of the Project will require the installation and maintenance of apparatus in or under streets. This article is necessary to provide a clear authority and regulatory basis for such works. Its purpose and effect therefore is to ensure that street works carried out under the Order do so with the benefit of a statutory right for the purposes of, and would be subject to, Part 3 of New Roads and Street Works Act 1991 (subject to the modifications set out in article 12).
- 9.2 The undertaker has considered whether it would be appropriate to include a Schedule listing each of the locations in respect of which street works are proposed, but has concluded that it is neither necessary nor practicable to do so. It is unnecessary because the Southern Water as a water undertaker in any event enjoys a statutory right to carry out street works by virtue of that status and the provisions of Part 3 of the New Roads and Street Works Act 1991 already regulate the relationship between statutory undertakers and street authorities. It is impracticable due to the sheer number of streets, particularly in urban areas, under which the pipeline will cross and the identification of each such street would have little utility.

Article 12 – Application of the 1991 Act

- 9.3 This article provides for the application of the New Roads and Street Works Act 1991 (defined in article 2 as “the 1991 Act”). As noted above, the purpose of Part 3 of the 1991 Act is to regulate the competing public interest between undertakers, and others, with apparatus that interacts with streets and with the street authorities charged with the maintenance of those streets. ‘Street works’ which is defined in section 48(3) of the 1991 Act (and applied for the purposes of the Order by article 2(1)) is concerned with the placing of apparatus in or under streets. This should not be confused with works to the street itself.
- 9.4 Paragraphs (1) and (2) provide that certain works to streets carried out under the authority of the Order are to be “major highway works” for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if the works were carried out by the highway authority) will apply in respect of the works authorised by the Order, irrespective of who, in fact, carries them out.
- 9.5 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which would risk restricting the ability of the Project to be built out in a timely and cohesive manner) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 3 and

Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the works.

9.6 Paragraph (4) seeks to preserve the application of the 1991 Act in relation to determining the identity of the street authority for streets affected by the Project. Paragraph (4)(a) provides that nothing in article 15 of the Order (which provides that the streets constructed, altered or diverted under the Order are to be maintained by the undertaker for a 12 month period before being adopted to be maintained by the highway authority) affects the ability of the highway authority (under s.87 of the 1991 Act) to apply Part 3 of the 1991 Act to such streets in advance of those streets becoming publicly maintainable. Paragraph (4)(b) limits the operation of article 15 in relation to street works maintaining the clear regulatory distinction between street works and works to streets.

9.7 The provision is required in order to clarify the treatment of the authorised development in relation to streets for the purposes of the New Roads and Street Works Act 1991 and is essential to ensure the timely delivery of this nationally significant infrastructure project.

Article 13 – Application and modification of a permit scheme

9.8 Hampshire County Council has made a permit scheme pursuant to Part 3 of the Traffic Management Act 2004 for its area. The provisions of the permit scheme apply to street works carried out under a statutory right (such as that conferred by article 11 or otherwise enjoyed by utility undertakers such as Southern Water). The permits scheme assists the Hampshire County Council, as the street authority and traffic authority for its network, to co-ordinate the conduct of the carrying out of street works by statutory undertakers.

9.9 Southern Water intends to exercise its statutory rights to carry out street works under the draft Order, if granted, in accordance with any applicable permit scheme. The purpose and effect of article 13 is to ensure that the delivery of the important public benefits that the Project would bring is not frustrated or unduly delayed as a consequence of the provisions of a permit scheme.

9.10 It seeks to achieve this by ensuring that:

- (a) the imposition of a moratorium against further street works in consequence of substantial works by a highway authority cannot be used as a reason for refusing to grant a permit;
- (b) by ensuring that conditions may not be imposed on any permit that would lead to a breach of the Order or which could not be complied with through the exercise of the powers conferred by the Order (paragraphs (2)(a) to (2)(c)).
- (c) It also provides, through paragraphs (3) to (5) a mechanism for the undertaker and the highway authority to agree suitable permit conditions in a timely fashion.

9.11 Finally, in view of the national significance of the project and the public benefits it will deliver, as a fall back paragraph (6) provides a mechanism for disputes to be resolved through arbitration under article 55 (arbitration) of the draft Order.

Article 14 – Power to alter layout etc., of streets

9.12 The project will require the temporary and permanent alteration of streets for a range of purposes. These include the formation of new permanent accesses to above ground works, temporary accesses to facilitate construction, the temporary removal of street furniture and other impediments from streets to facilitate the movement of abnormal vehicles. The purposes and effect of article 14 is to provide clear authority for such works.

9.13 It does so by way of reference to the permanent and temporary alterations listed in Schedule 3 and shown on the Access and Public Rights of Way plans [2.4]. In addition to the specific authority contained in paragraph (1), a general power to alter streets for the purposes of the authorised development is provided by paragraph (2). This power is required to authorise any further alterations that may be required for the purposes of the authorised development which could not be foreseen at

this stage. This general power is proportionate in that it may only be exercised with the consent of the street authority for that street.

9.14 Paragraph (3) authorises, and requires, the restoration by the undertaker of any streets temporarily altered pursuant to paragraph (1)(b).

9.15 Paragraph (5) is intended to avoid the absurdity in the circumstances where the undertaker is the street authority for a street (for example, a private access road wholly maintained by the undertaker), it is not required to seek its own consent to the exercise of its functions under this article.

Article 15 – Construction and maintenance of new, altered and diverted streets

9.16 The purpose of this article is to secure the satisfactory conduct of temporary alterations to streets and their subsequent restoration and the satisfactory construction of permanent alterations to streets pursuant to article 14 (power to alter layout, etc., of streets). It also clarifies who is responsible for the maintenance of such works.

9.17 Article 15 provides:

(a) In relation to the permanent alterations to streets listed in Part 1 of Schedule 3, these works must be carried out to the reasonable satisfaction of the street authority (which in the majority of cases, will be the highway authority for that street) and be maintained by the undertaker for a period of 12 months. Thereafter, those alterations are to be maintained by the street authority. This mirrors the standard approach of highway authorities to works carried out and then adopted through agreements pursuant to the Highways Act 1980.

(b) In relation to the temporary alteration of streets listed in Part 2 of Schedule 3, these works must be carried out to the reasonable satisfaction of the street authority and be maintained by the undertaker for the duration of the temporary alterations.

(c) In relation to the restoration works carried out pursuant to article 14(3) these are to be maintained by the undertaker for a period of 12 months. Thereafter, the restoration works are to be maintained by the street authority concerned.

9.18 Each of the above referenced provisions permits the undertaker and the street authority to agree alternative arrangements in relation to the maintenance of such works.

9.19 Paragraphs (4) and (5) are ancillary to paragraphs (1) to (3) and relate to claims against the undertaker where it is responsible for the maintenance of streets. It provides a defence against actions in respect of loss or damage where the undertaker can prove that it had taken such care as in all the circumstances reasonably required to secure that the relevant part of the street was not dangerous to traffic. Paragraph (5) directs a court considering such a defence to have regard to a range of matters such as the character of the street in question.

9.20 Paragraph (6) provides that the undertaker is not to be identified as a street authority, for the purposes of section 49 of the New Roads and Street Works Act 1991, due to any obligations to maintain streets imposed under paragraphs (1) to (3). This is to ensure that by reason of its obligations to maintain works to an adopted highway under the Order it does not usurp a street authority's functions for the purposes of Part 3 of the New Roads and Street Works Act 1991.

9.21 The provisions in this article are required in consequence of the alterations to streets needed to facilitate the Project. It is appropriate that the draft Order clarifies who is responsible for the maintenance of such alterations to streets but also provides a degree of flexibility by recognising and allowing for the undertaker and the street authority to agree alternative arrangements.

Article 16 – Temporary closure etc., of public rights of way

- 9.22 The pipelines comprised in the Project will cross under a number of public rights of way. The provisions of this article are required to ensure that such works can be carried out safely and where appropriate, to authorise their temporary closure or diversion. It achieves this by providing a general power to interfere temporarily with public rights of way. This power may only be exercised with the consent of the street authority (see paragraph (5)) and is required in order to address any unforeseen circumstances that might require a different approach to the management of the use of public right of way in consequence of the Project.
- 9.23 Paragraph (2) is necessary to ensure that a public right of way that has been temporarily interfered with can be used by the undertaker for the purposes of carrying out the works for which it has been so interfered.
- 9.24 Paragraph (3) ensures that pedestrian access to premises abutting such a right of way is maintained at all reasonable times in circumstances where there is no alternative means of access.
- 9.25 Paragraph (4) makes provisions for the specific temporary interferences with the public rights of way that are shown on the Access and Public Rights of Way plans [2.4] and which are necessary for the construction of the Project. It draws a distinction between those rights of way that may be closed and for which a substitution is to be provided (listed in Part 4 of Schedule 3) and those public rights of way for which no substitution is to be provided (listed in Part 3 of Schedule 3). The Applicant has sought to provide substitutions where practicable but in a number of instances it is not feasible to do so and so users would be expected to find alternative routes on the existing public rights of way network.
- 9.26 Paragraph (5) imposes restrictions on the undertaker's powers to exercise its functions in this article. It confirms that:
- (a) in relation to the specific power to close public rights for which no substitution is to be provided, the undertaker is required to consult the street authority before exercising its functions. This would provide an opportunity for the street authority to raise any concerns relating for example, to signage directing users to alternative routes.
 - (b) in relation to the specific power to close public rights of way for which a substitution is to be provided, requiring that substitution to be available for public use before the public right of way is temporarily closed. There is also provision for a different substitution to that specified in Part 4 of Schedule 3 to be agreed with the relevant planning authority in consultation with the relevant local highway authority; and
 - (c) in relation to the general power that relates to any other public right of way, that the power is not to be exercised without the consent of the street authority concerned who may impose reasonable conditions on such a consent.
- 9.27 Paragraph (6) makes specific provision for motor vehicles under the direction of the undertaker to travel along or to cross the public rights of way for the extents set out in Schedule 3. The power to travel along public rights of way is limited to the extents specified in Part 5 of Schedule 3. The power to cross is limited to crossing the public rights of way identified in Parts 3 and 4 of Schedule 3, whether or not those rights of way are closed to public use at the time at which they are crossed. This power is considered appropriate as it provides for a lesser measure that avoids the prolonged closures of public rights of way during the construction of the Project, and would be subject to appropriate regulation through the implementation of a Rights of Way Management Plan as secured by requirement 9 of Schedule 2.
- 9.28 The difference in oversight between the exercise of the general versus the specific powers is justified because the specific proposals will be scrutinised through the examination and determination of the application for development consent and the principle of their acceptability determined by the making of the Order, if granted. Furthermore, Southern Water's proposals for the management of public

rights of way during construction will be subject to a requirement for approval prior to commencement. Therefore, in view of those two tiers of scrutiny it is appropriate to require only consultation, and not require street authority consent, before the exercise of the specific power.

Article 17 - Permanent diversion of public rights of way

- 9.29 To accommodate the new intermediate pumping station (Work No. 5A) it is necessary to permanently divert footpath Fareham 103. There appears to be a misalignment between the line for Fareham 103 shown on the Definitive Map and the path walked on the ground and so the purpose and effect of this article is to make provision for the extinguishment of both ways with a substitution to be provided. The purpose and effect of this article is to make provision for those permanent diversions. The power applies only to the extents of those two ways listed public right of way listed in Part 6 of Schedule 3 and shown on the Access and Public Rights of Way plans [2.4].
- 9.30 Paragraph (2) confirms that the affected public rights of way may only be stopped up once either the replacement right of way specified in the corresponding column (4) of the table in Part 6 of Schedule 3 or such other replacement public right of way as may be approved by the local planning authority in consultation with the relevant local highway authority, is completed and available for public use. The replacement public right of way for both ways is the same, reflecting the reality that the walked path merely diverges from the route of Fareham 103 shown on the definitive map.
- 9.31 Paragraphs (3) and (4) deal with the public and private rights that may subsist in the stopped up way, ensuring that any private right so extinguished is compensated. This could arise, for example, where there is a private right to travel along the way.
- 9.32 Paragraphs (5) and (6) make provision that would require the undertaker, following the opening for public use of the substituted public right of way to notify the surveying authority (the County Council or unitary authority in a single tier administrative area) of the “as built” alignments of those public rights of way, together with a statement of modifications to the definitive map. This notification is deemed to be a legal event order modifying the definitive map accordingly. The purpose of this provision is to facilitate the prompt updating of the definitive map by avoiding imposing a requirement on the surveying authority to make a legal event order to modify the definitive map as a consequence of the Order. This approach reflects the position where local highway authorities making Highways Act 1980 orders may combine those with a legal event order under the Wildlife and Countryside Act 1981 (see the Public Rights of Way (Combined Orders) (England) Regulations 2008).
- 9.33 Paragraph (7) ensures that the provisions in article 40 (apparatus and rights of statutory undertakers in stopped-up streets) apply to apparatus in a stopped up public right of way.
- 9.34 The provisions of this article ensure that the proposed diversion of public rights of way, necessitated by the Project, can be carried out. It complies with section 136 of the 2008 Act because the Secretary of State can be satisfied, through paragraph (2), that a public right of way will only be stopped up where an alternative is provided.
- 9.35 The article needs to be read in conjunction with the requirements (in particular requirement 9) which secure the implementation of the measures contained in the Framework Rights of Way Management Plan [Appendix B, 7.2]. If the Order is made then the principle of the stopping up of the length of rights of way will be approved through the 2008 Act process. As such, it is considered that no further constraint would be appropriate to the exercise of this power. The provision for an alternative replacement public right of way, which may only be approved by the local planning authority following consultation with the relevant local highway authority, provides for a degree of flexibility with appropriate safeguards should a more desirable replacement public right of way be identified once the Project moves into detailed design.

Article 18 – Access to works

- 9.36 The project will require the formation of permanent accesses from the highway to above ground plant and temporary access for the purposes of constructing the authorised development. The purpose and effect of this article is to authorise the formation of such accesses. It also contains a general

power to layout or improve other accesses within the Order limits, with the approval of the relevant planning authority following consultation with the street authority.

Article 19 – Traffic regulation measures

- 9.37 Temporary traffic regulation measures are likely to be required in relation to certain aspects of the project as assessed in the Transport Assessment (Appendix 18.1 of the Environmental Statement [6.2]). This article makes provision for Southern Water to make temporary traffic regulation measures which are akin to temporary traffic regulation orders that can be made by traffic authorities under the Road Traffic Regulation Act 1984.
- 9.38 This article makes a general provision for such temporary measures to be made by the undertaker. Paragraph (2) sets out that the Order allows for the variation of a specific traffic regulation order to permit vehicles under the direction of the undertaker to perform a manoeuvre that would otherwise be prohibited by that traffic regulation order.
- 9.39 Paragraphs (4) and (5) require the undertaker to consult the chief officer of police and to obtain the consent of the relevant traffic authority before making a traffic regulation measure and to give notice to the public, via a locally circulating newspaper, and to the chief officer of police before the measure comes into effect.
- 9.40 Paragraphs (6) and (7) address administrative matters, and include confirmation that the measure must have regard to the Traffic Management Strategy [7.3], be contained in a written instrument, takes effect as though it were a traffic order duly made under the 1984 Act and is deemed to be subject to civil enforcement under Schedule 7 of the 2004 Act.
- 9.41 The provision commonly appears in development consent Orders and is required to provide a clear basis upon which appropriate measures can be put in place to manage traffic. It avoids the need for traffic authorities to make traffic regulation orders under the 1984 Act, relieving them of an administrative burden, but has appropriate safeguards over the exercise of the power.

Article 20 – Agreement with street authorities

- 9.42 The purpose and effect of this article is to provide a statutory basis upon which agreements can be made between the undertaker and a street authority in connection with the powers contained in this Part of the Order.

10. PART 4 – SUPPLEMENTAL POWERS

Article 21 – Discharge of water

- 10.1 This article sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so. It closely follows the Model Provision, amended to reflect the subsequent coming into force of the Environmental Permitting (England and Wales) Regulations 2016 and the Homes and Communities Agency changing the name by which it is known.
- 10.2 The effect of this article is that discharge can only be done with the consent of the owner, but consent cannot be withheld unreasonably.
- 10.3 Paragraph (5) imposes a duty on the undertaker to ensure that water discharged is free from gravel, soil or other solid substance, oil or matter in suspension. This is to ensure that the water discharged does not affect the efficacy of the drain or watercourse into which it is discharged. It should be noted that this provision is not intended to control the discharge of pollution; such matters are regulated under the Environmental Permitting (England and Wales) Regulations 2016 which, as paragraph (6) makes clear, continue to apply.
- 10.4 In a departure from the model provisions, paragraph (7) deems the consent of the Environment Agency for the discharge into a watercourse belonging to the Environment Agency where an

environmental permit for the discharge has been granted. This ensures that the undertaker will not need to obtain a separate consent where a discharge has already been formally permitted.

- 10.5 This article has precedent in many DCOs and is necessary for this Project in order to establish and regulate the undertaker's authority to discharge water in connection with the authorised development.

Article 22 – Protective works to buildings

- 10.6 The purpose of this article is to allow Southern Water to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.

- 10.7 Paragraph (4)(b) provides that Southern Water is authorised to enter and survey land which is adjacent to a building (or the curtilage of a building) in respect of which Southern Water has the power to undertake protective works, should it be required. Paragraph (4) provides Southern Water with a power to take possession, or to take exclusive possession, where reasonably required, for the purpose of carrying out protective works.

- 10.8 Paragraph (10) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

- 10.9 This article is required on a precautionary basis as part of the authorised development will pass at a significant depth below existing buildings and so it is appropriate that the undertaker be empowered to take action to protect those buildings in the unlikely event that damage, or the risk of damage, arises.

Article 23 – Authority to survey and investigate land

- 10.10 This article gives the undertaker the power to enter certain land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.

- 10.11 Paragraph (1) authorises surveys, where reasonably necessary, on land which may be affected by the authorised development. The ability to survey land adjacent to the Order limits where reasonably necessary is required so that Southern Water can be confident that the surveys can be conducted to assess the effects of the authorised development, or on the authorised development, from outside its limits. This is particularly relevant with respect to ecological receptors that are liable to move into and out of the Order limits.

- 10.12 Paragraph (3) requires that the notice must set out the nature of the survey or investigation to be carried out. Paragraph (6) makes provision for compensation to the owners and occupiers of land for any loss or damage arising from the exercise of the power. Paragraph (7) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused.

- 10.13 Paragraph (5) imposes additional limitations on the nature of surveys that can be conducted in relation to land comprised in highways and private streets, requiring the consent of the highway authority or street authority as the case may be where the investigations comprise trial holes or boreholes in a highway or private street.

Article 24 – Removal of human remains

- 10.14 The purpose and effect of this article is to disapply section 25 of the Burial Act 1857 and related legislation, and replace it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. Article 24 is required to ensure that the appropriate treatment of such remains does not delay the implementation of authorised development.

- 10.15 Paragraph (12) provides that the requirement to give notice before the removal of remains does not apply where the undertaker is satisfied the remains were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. Paragraph (13) requires that the undertaker seeks and complies with a direction from the Secretary of State under paragraph (15) regarding the treatment of such remains following their removal.
- 10.16 Paragraph (18) applies section 239 (use and development of burial grounds) of the Town and Country Planning Act 1990 to land, and rights over land, acquired under the Order and permits the use of such land notwithstanding any obligation or restriction imposed under ecclesiastical law or law relating to burial grounds, save as provided for in the remainder of the article. Paragraph (19) excludes the application of the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950. The Order does not apply section 238 (use and development of consecrated land) of the Town and Country Planning Act 1990 as there is no consecrated land within the Order limits.
- 10.17 Taken together the effect of article 24 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single article in the Order. It is required to ensure that human remains, and in particular, any archaeological remains, are recovered appropriately without causing unacceptable delay to the implementation of this project of national significance and the public benefits it would deliver.

Article 25 – Felling or lopping of trees and hedgerows

- 10.18 This article allows any tree, shrub, shrubbery, hedgerow or important hedgerow that is within or overhanging land within the authorised development to be felled, removed, lopped, pruned, coppiced, pollarded, or reduced in height or width, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using, constructing, operating or maintaining it. Compensation is payable for any loss or damage caused.
- 10.19 Paragraph (2) also makes provision for works to be carried out to the trees and hedgerows described in Schedule 4 (works to trees and hedgerows). Paragraph (4) provides deemed consent where the works authorised by this article are to trees under a tree preservation order, and confirms that the duty to replace trees does not apply. There is no need to make an equivalent provision for those trees listed in Schedule 4 that are within a conservation area because section 211(1) of the 1990 Act is clear that such protections do not apply where the act in question is authorised by an order granting development consent.
- 10.20 The article is included to ensure that Southern Water has adequate powers to construct, operate and maintain the authorised development, and ensures that trees or hedgerows do not obstruct the construction, operation or maintenance of this project of national significance. This avoids any duplication or inconsistency with the requirements contained in Schedule 2, in particular requirement 4 in relation to landscape and ecology management plans which secures the measures set out in the Outline Landscape and Ecology Management Plan [7.5] and certain measures in the Design Principles Document [5.11].

11. PART 5 – POWERS OF ACQUISITION AND POSSESSION OF LAND

Article 26 – Compulsory acquisition of land

- 11.1 This article authorises the compulsory acquisition of the Order land. It grants Southern Water the power to acquire such land as is required for the authorised development. This is expressly subject to articles that include a limit or restriction on the power of compulsory acquisition, including articles 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily), 29(2) (compulsory acquisition of rights and restrictive covenants), 37 (temporary use of land for constructing the authorised development), and 42 (Crown rights), which are explained below.
- 11.2 The provision is necessary to secure the delivery of the land, rights over land and temporary use of land required to deliver the authorised development as is set out in more detail in the Statement of Reasons [4.1] accompanying the application.

Article 27 – Compulsory acquisition of land – incorporation of the minerals code

- 11.3 By incorporating Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, this article exempts existing rights in minerals from the scope of the exercise of the compulsory acquisition powers unless they are expressly named and conveyed through it. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines or minerals. This article is necessary to properly balance the interests of the undertaker and persons seeking to exploit mines and mineral within the Order land. It is required because elements of the Project are sited on land that has been safeguarded for the exploitation of minerals.

Article 28 – Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

- 11.4 This article gives Southern Water five years to issue ‘notices to treat’ or to execute ‘general vesting declarations’ to acquire the land that is subject to the power of compulsory acquisition under the Order. These are the two procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. The article provides that the five year period starts to run from the later of the expiry of the legal challenge period under section 118 of the 2008 Act, or the final determination of any legal challenge under that provision. This is necessary following recent experience of legal challenges to made DCOs, which may delay the exercise of compulsory acquisition powers and, in doing so, reduce the length of time within which those powers may be exercised if the time limit were to relate to the date on which the Order is made. The drafting reflects the amendments made by the Levelling-up and Regeneration Act 2023 to the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981, that extend the ‘applicable period’ for compulsory acquisition to allow for any delays caused by a judicial challenge to a compulsory purchase order.
- 11.5 The article also provides that land subject to the power of temporary possession for the carrying out of the authorised development, under article 37 (temporary use of land for constructing the authorised development), may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order.

Article 29 – Compulsory acquisition of rights and restrictive covenants

- 11.6 This article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights and restrictive covenants to be created over land for the benefit of Southern Water and for the benefit of others, including statutory undertakers.
- 11.7 It provides for such rights as may be required to be acquired by Southern Water over land which it is authorised to acquire under article 26 (compulsory acquisition of land). The public benefit of this is that it would allow Southern Water, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead, and therefore enables a more proportionate exercise of compulsory acquisition powers. Paragraph (1) allows Southern Water to acquire existing rights and create new rights over any of the Order land, and to do so for the benefit of others. This is necessary to ensure that, where existing apparatus must be moved in order to implement the authorised development, the undertaker is able to ensure that the owner of that apparatus is afforded the rights necessary to protect, operate and maintain the apparatus after it has been relocated. This power ensures that the protections provided to statutory undertakers in the protective provisions to ensure no serious detriment is caused to their undertaking do not, in turn, act as an undue restriction on the ability to implement the authorised development.
- 11.8 Paragraph (2) provides that, for the land described in Schedule 5, Southern Water’s powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 5. The justification for the imposition of restrictive covenants is set out in more detail in the Statement of Reasons [4.1], but in short, such restrictions are necessary to ensure that below ground apparatus is protected and the imposition of such restrictions imposes a lesser burden on the owners of such interests than would be the case if Southern Water were instead to seek to permanently acquire the land.

- 11.9 Paragraph (3) manages how the power, in paragraph (1), to acquire rights and restrictive covenants for the benefit of others must be exercised. The article ensures that, in a situation where the apparatus belonging to two statutory undertakers are moved into the same land, the rights acquired for them do not conflict and do not preclude the undertaker from acquiring the interests that it requires for the Project.
- 11.10 Paragraph (4) provides that, where Southern Water needs only to acquire rights over land, it is not obliged to acquire any greater interest in that land.
- 11.11 Paragraph (5) introduces Schedule 6 which modifies the application of compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

Article 30 – Private rights over land

- 11.12 The purpose this article is to deal with existing private rights over land.
- 11.13 Paragraph (1) provides that where land that could be compulsorily acquired under the Order is acquired, whether by agreement or compulsion, all existing private rights over that land are extinguished. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the Project. In respect of land subject to the compulsory acquisition of rights or imposition of restrictive covenants, paragraph (2) ensures that existing rights are extinguished only to the extent that the continued exercise of the existing right would be inconsistent with the enjoyment by Southern Water of the rights acquired, or restrictive covenants imposed, under the Order. In respect of land subject to temporary possession, paragraph (3) provides that private rights are suspended and unenforceable for as long as Southern Water remains in possession of the land. This approach is proportionate and ensures that interference with private rights is minimised. Paragraph (4) ensures that persons with the benefit of such rights are to be compensated.
- 11.14 Paragraphs (6) and (7) make provision for agreements, or notices served by the undertaker, to take precedence over the provisions of paragraphs (1) to (3), allowing where appropriate, for the relevant private rights to avoid the effect of those paragraphs.

Article 31 – Application of the 1981 Act

- 11.15 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition authorised by a DCO) the provisions of the 1981 Act to compulsory acquisition under the Order. This allows for Southern Water to have the option of acquiring Order land, or rights over the Order land, that is subject to the powers of compulsory acquisition by vesting declaration.
- 11.16 Vesting declarations are one of two procedures for the compulsory acquisition of land (the other being by means of serving a notice to treat). Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure. Their use is subject to serving notices and observing time limits as required by the 1981 Act.
- 11.17 The following modifications have two purposes. The first is to ensure consistency with the five year period sought under the Order for acquisition of rights and land. The second is to facilitate the acquisition of rights over the land for the benefit of a statutory undertaker, public communications provider or local authority.

11.18 More specifically:

- (a) Paragraph (1) applies the 1981 Act by treating the Order as though it were a compulsory purchase order for the purposes of the 1981 Act.
- (b) Paragraph (2) introduces the modifications to the 1981 Act that follow.
- (c) Paragraph (3) modifies section 1 so that section 1 applies to the undertaker and allows for vesting by a declaration for the benefit of others by deleting “in themselves” from that provision.
- (d) Paragraph (4) modifies section 4(1) to allow for a declaration in the prescribed form to permit the vesting of rights in the undertaker and in others.
- (e) Paragraph (5) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
- (f) Paragraph (6) omits section 5A, on the basis that the article 28 of the Order prescribes the time limit for compulsory acquisition.
- (g) Paragraph (7) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in respect of legal challenges to DCOs. The cross-reference to section 5A is also modified, to reflect the time limit on the exercise of compulsory acquisition powers applicable to the Order in article 28.
- (h) Paragraph (8) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of DCOs.
- (i) Paragraph (9) modifies section 7(1)(a) in respect of constructive notice to treat under the Acquisition of Land Act 1981. This is because the DCO contains an equivalent provision at article 43 (disregard of certain interests and improvements).
- (j) Paragraphs (10) to (12) modify sections 8, 8A, and 8B to ensure that rights over land are capable of being vested in third parties. In each case it does so by defining “acquiring authority” as including a statutory undertaker, public communications provider or local authority by reference to the modification to section 4(1) made by paragraph (4) of this article.
- (k) Paragraph (13) to (14) again make modifications to be consistent with the acquisition of rights for the benefit of a third party.
- (l) Paragraph (15) modifies Schedule A1 so that it is consistent with article 33 (acquisition of subsoil, etc., only) of the draft Order.
- (m) Paragraph (16) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 30, on the basis that both section 125 and article 30 modify the provisions of the 1965 Act.

11.19 This article is based upon the precedent established by recent DCOs for linear infrastructure (see for example article 31 of the A122 (Lower Thames Crossing) Development Consent Order 2025. It has also been necessary to make further amendments to reflect the provisions of the Planning and Infrastructure Act 2025 which are in the process of being commenced.

11.20 As noted above, many of the modifications are intended to provide confirmation that the 1981 Act can be used to acquire rights and land on behalf of third parties, without the need to acquire the land in favour of the undertaker and then transfer such land or rights to a third party, thereby causing a delay to any transfers of land or rights to those who are intended to benefit from such acquisition.

This is needed in relation to this Project, in particular, in relation to any utility apparatus that is required to be diverted and in connection with certain highway works (for example, where it may be necessary to transfer the benefit of rights connected with drainage to the local highway authority).

Article 32 – Modification of the 2017 Regulations

- 11.21 For the same reasons as the preceding article, this article makes the modifications to the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 necessary to the prescribed form of general vesting declaration to accommodate the acquisition of rights for the benefit of a third-party.

Article 33 – Acquisition of subsoil, etc., only

- 11.22 This article allows the undertaker to compulsorily acquire land, rights or both, below the surface as required for the Project instead of acquiring all of the land up to and including the surface.
- 11.23 The purpose of this article is to give Southern Water the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners and lower compensation payments. It is considered to be in the public interest to provide this flexibility at the point at which Southern Water begins to compulsorily acquire the necessary land pursuant to the powers conferred by the Order.

Article 34 – Power to override easements and other rights

- 11.24 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the 2008 Act. It provides a statutory authority for carrying out any authorised activity that interferes with any of the interests listed in paragraph (2) including restrictions on user of land arising by the virtue of a contract. Paragraph (3) provides for compensation to be payable where the interests listed in paragraph (2) are overridden. It is necessary in order to override easements and other rights that may conflict with the exercise of a power that is not otherwise addressed by article 30 (private rights over land), for example, in relation to the power to survey land under article 23 (authority to survey and investigate land).

Article 35 – Modification of Part 1 of the 1965 Act

- 11.25 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act.
- 11.26 Paragraph (2) to (4) modify the time limit for the service of notice under the 1965 Act so that it is consistent with the time limit for the exercise of compulsory acquisition powers in article 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily). Paragraphs (5) and (6) makes it clear that the counter-notice provisions do not apply to the temporary possession or use of land under articles 22 (protective works to buildings), 23 (authority to survey and investigate land), 36 (temporary use of land for constructing the authorised development) and 37 (temporary use of land for maintaining the authorised development) of this Order. This is appropriate because those powers are not compulsory acquisition powers and it would be inappropriate for a person to require the undertaker to acquire all of its interest in land merely because it proves necessary to enter it pursuant to the provisions previously listed.

Article 36 - Rights over or under streets

- 11.27 The purpose of this article is to allow Southern Water to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

Article 37 – Temporary use of land for constructing the authorised development

- 11.28 The purpose of this article is to allow the land set out in Schedule 7 (land of which only temporary possession may be taken) to be occupied and used temporarily while the works are carried out. The land identified in Schedule 7 is land which is required during construction of the authorised development but not required permanently. This article also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of rights, but which has, or which have, not yet been acquired. The drafting makes it clear what can be done on Schedule 7 land, and what can be done on land intended for permanent acquisition, or for the creation and permanent acquisition of rights. Such possession requires not less than 14 days' prior notification to the owner and occupier of the land.
- 11.29 The article provides for any of the authorised development listed in Schedule 1 (authorised development), in particular, to be built and remain on land that has been temporarily occupied. The rationale for this is that it enables the undertaker to carry out permanent works on land occupied temporarily prior to permanent acquisition. On the completion of the works the undertaker will know, with a precision that is not available at an earlier stage, the extent of the land or rights over land it requires permanently and can ensure that no more land than is actually required to accommodate the authorised development once implemented, is acquired permanently or rights imposed over it.
- 11.30 The time limits set out in article 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) apply to this article. Paragraph (3) provides that the undertaker must not remain in possession of land without the agreement of the owners for more than one year after the date of completion of the relevant part of the authorised development, unless (in relation to land not listed in Schedule 7) it is has started to exercise compulsory acquisition powers.
- 11.31 Paragraph (4) requires the land to be restored to the landowner's reasonable satisfaction before the undertaker gives up temporary possession. Paragraphs (5) to (6) provide for compensation for loss or damage, determined as a dispute under the Land Compensation Act 1961, and paragraph (7) confirms that any dispute over compensation does not prevent the undertaker from giving up possession of the land. Paragraph (9) provides that, where the undertaker takes possession of land under this article it is not obliged to acquire the land or any interest in it.
- 11.32 Paragraph (10) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where temporary use of the land under the article is refused. Paragraph (11) makes it plain that land may be occupied temporarily under this article on more than one occasion.

Article 38 – Temporary use of land for maintaining the authorised development

- 11.33 This article provides that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose. Owners and occupiers of the land must be given not less than 28 days' notice, save that where Southern Water has identified a potential risk to the safety of the authorised development, the public or the surrounding environment, where as much notice as is reasonably practicable in the circumstances must be given. The notice must include details of the purpose for which Southern Water requires the land.
- 11.34 As with temporary possession under article 36, Southern Water must restore the land to the reasonable satisfaction of the owner, and compensation is payable for any loss or damage. Clarity is provided that any dispute over the amount of such compensation does not prevent Southern Water from giving up possession of the land.
- 11.35 The power is exercisable within a period of 5 years from the time the particular part of the authorised works is first (a) commences operation by supplying water to the water supply network; (b) in relation to landscape and ecology management areas, such period as is set out in a landscape and ecology management plan approved by the relevant planning authority in accordance with the requirements in Schedule 2 or (c) in respect of any other part of the authorised development, the period of 5 years from when that part was brought into operational use. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

- 11.36 This article is required to enable the undertaker to carry out maintenance during the maintenance period and is considered appropriate as it would impose a lesser burden than permanently acquiring rights to achieve the same purpose. It is required, in particular, to ensure that the undertaker can maintain landscape and ecology management areas for the whole of the period that it is required to maintain them in accordance with the requirements.

Article 39 – Statutory undertakers

- 11.37 This article allows the undertaker to extinguish rights of statutory undertakers, and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans [2.2] and described in the Book of Reference [4.3]. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 11.38 As the land where this power may be exercised is shown on the Land Plans [2.2], and the beneficiaries of such rights are identified in the Book of Reference [4.3], the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 11.39 Paragraph (2) restricts Southern Water's power to extinguish rights or move apparatus by excluding apparatus in streets. This article is also subject to Schedule 10 which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions, despite the interference with their rights/apparatus required to facilitate the authorised development, and is necessary to ensure the timely delivery of this project of national significance.

Article 40 – Apparatus and rights of statutory undertakers in stopped up streets

- 11.40 This article governs what happens to statutory undertakers' apparatus (pipes, cables, etc.) under the streets that are to be permanently stopped up pursuant to the Order. Without the article, any statutory undertaker with apparatus in that street would not have access to the apparatus, since there would no longer be a right of way along the street. The undertaker may require such a statutory undertaker to relocate the apparatus elsewhere, although it will compensate the statutory utility for doing so. Paragraph (6) discounts from this compensation the increase in value to the statutory utility of having new rather than old (i.e. older than 7¹/₂ years) apparatus.
- 11.41 Paragraph (7) provides that in certain cases (most notably where an existing highway is crossed by a trunk road) the cost of relocating apparatus will be subject to alternative cost sharing arrangements between Southern Water and the statutory undertaker which are provided for in regulations made under section 85 of the 1991 Act.
- 11.42 This article should be read in conjunction with article 29 (compulsory acquisition of rights and restrictive covenants), which provides the undertaker with the express power to acquire rights on behalf of statutory undertakers, ensuring that any difficulty experienced in relocating apparatus elsewhere as a result of a request made under paragraph (2) can be satisfactorily resolved such that it does not impede the delivery of the authorised development. Its provisions follow the equivalent position where such streets are stopped up pursuant to the provisions of the Highways Act 1980.

Article 41 – Recovery of costs of new connection

- 11.43 This article (which reflects the Model Provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker. It is not anticipated that any person would lose supply as a consequence of the Project, but it is appropriate to make provision for this eventuality, in the unlikely event that it should occur.

Article 42 – Crown rights

- 11.44 This article protects the Crown’s position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that the Crown’s written consent is required where any land, hereditaments or rights are to be taken, used or interfered with under the Order. Given the known presence of Crown landholdings in the Order Land, this article has been included to ensure that any acquisition of other landholdings, or the creation or extinguishment of rights over land, cannot create any interference with the rights of the Crown. This article reflects the provisions of section 135 of the 2008 Act. It is unnecessary to define in the Order the terms “Crown land” and “the appropriate Crown authority” as definitions are provided in section 227 of the 2008 Act and so, by virtue of the Interpretation Act 1978, those definitions will automatically apply to the Order.

Article 43 – Disregard of certain interests and improvements

- 11.45 This article provides for the Upper Tribunal (Lands Chamber) (which has jurisdiction to determine disputed compulsory purchase compensation) to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.
- 11.46 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The principle of the article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the River Humber Gas Pipeline Replacement Order 2016, and in numerous more recent development consent orders.

Article 44 – Set-off for enhancement in value of retained land

- 11.47 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Upper Tribunal (Lands Chamber) must set-off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 11.48 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and numerous more recent orders.
- 11.49 The principle in this article was established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership) and is now reflected in section 6B of that Act following amendments made by the Housing and Planning Act 2016, which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 45 – No double recovery

- 11.50 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 11.51 The principle of equivalence, namely that a claimant in a compulsory purchase matter is to be compensated for no more than and no less than the loss suffered, is long established and no part of the compensation code conflicts with this principle.
- 11.52 This article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, and more recently in the A66 Northern Trans-Pennine Development Consent Order 2024.

12. **PART 6 – MISCELLANEOUS AND GENERAL**

Article 46 – Disapplication and modification of legislative provisions

- 12.1 This article provides (in reliance on section 120(5)(a) of the 2008 Act (what may be included in order granting development consent)) for the disapplication and modification of certain requirements which would otherwise apply under public general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

Disapplication of consents prescribed for the purposes of section 150 of the 2008 Act

- 12.2 Sub-paragraphs (1)(h) and (1)(i) provide for the disapplication of consents ordinarily required from the Environment Agency, under the Environmental Permitting (England and Wales) Regulations 2016 (“the EP Regulations”) and the Water Resources Act 1991.

- 12.3 Specifically, these are the requirements to obtain the consent of:

- (a) the Environment Agency in relation to byelaws made under or having effect as if made under Schedule 25 to the Water Resources Act 1991; and
- (b) the Environment Agency in relation ‘flood risk activities’ that are not ‘exempt activities’ as defined in the EP Regulations.

- 12.4 These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the Project can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained from the Environment Agency. The requirement for a separate consent is intended to be replaced by protective provisions to be agreed for the protection of the drainage authority and the Environment Agency in Schedule 10 to the Order. In relation to flood risk activities that are also ‘exempt activities’; these would remain within the scope of the EP Regulations to be regulated by the Environment Agency in the normal way.

- 12.5 In accordance with section 150 of the 2008 Act, the consent of the Environment Agency to the inclusion of these provisions in the Order, is required. Southern Water is progressing discussions with the Environment Agency in that regard and would expect that consent to be forthcoming before the close of the examination.

Disapplication of sections 28E, 28H and 28I of the Wildlife and Countryside Act 1981

- 12.6 Sub-paragraphs (1)(a), (1)(b) and (1)(c) disapply sections 28E (duties in relation to sites of scientific interest), 28H (statutory undertakers, etc.: duty in relation to carrying out operations) and 28I (statutory undertakers, etc.: duty in relation to authorising operations) of the Wildlife and Countryside Act 1981 respectively.

- 12.7 Section 28E imposes duties on owners and occupiers of land notified as being of special interest to refrain from (and not “cause or permit”) activities specified in a notice given by Natural England from being carried out unless those operations are carried out as part of a management agreement or with the consent of Natural England.

- 12.8 Section 28E(2) is clear that these obligations do not apply to an owner or occupier that is a section 28G authority exercising its functions. Southern Water, as a statutory undertaker, is a section 28G authority and so section 28E(1) cannot apply to it. However, the legislation did not envisage the scenario where an undertaker, possessing the powers to acquire land or to temporarily possess land, may seek to occupy land to carry out works. As such, Section 28E acts as a barrier to persons who may otherwise be minded to enter into agreements (avoiding the need for the exercise of compulsory powers) with the undertaker in relation to the use or occupation of their land. To do so would risk those persons causing or permitting operations which may be lawful for the undertaker to perform but which would be unlawful for those persons to “cause or permit” by agreeing to allow the use of the land they own or occupy. Its disapplication is therefore justified.

- 12.9 As a section 28G authority, Southern Water is subject to the duty in section 28G(2) to “take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.”. Southern Water will remain subject to this duty in the exercise of its functions under the Order.
- 12.10 Section 28H applies where a section 28G authority intends to carry out operations likely to damage the special features of a SSSI by reason of which it has been so designated. In summary, it requires:
- (a) the section 28G authority to give notice Natural England;
 - (b) Natural England may then either decline to assent to the operation, or assent to it (and its assent may be subject to conditions);
 - (c) If Natural England does not respond to the notice within 28 days, it is deemed to have declined to assent;
 - (d) If Natural England declines to assent, or if the section 28G authority intends to carry out the operations otherwise than in accordance with the conditions of an assent, the section 28G authority must refrain from undertaking the operation until it has notified Natural England of the date it proposes to start the operations (which must be at least 28 days from the date of this second notice) and notified how it has taken account of any written advice received from Natural England before the date of this second notice;
 - (e) the section 28G authority may then carry out the operations subject to the duties:
 - (i) “to carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological or physiographical features by reason of which the site is of special interest” taking into account in particular any advice received from Natural England; and
 - (ii) that the section 28G authority restores the site to its former condition, so far as is reasonably practicable, if any such damage does occur.
- 12.11 Section 28I applies where a section 28G authority is required to give its permission before operations may be carried out. If those operations are likely to damage the features of special interest of a SSSI the section 28G authority is required to give notice to Natural England and wait until 28 days have expired or Natural England confirms that it need not wait, before granting its permission. If Natural England advises against permitting those operations and the section 28G authority is not minded to follow that advice, the section 28G authority is required to give notice of the permission and its terms and include a statement of how (if at all) it has taken account of Natural England’s advice. It is also required not to grant a permission that would allow the operations to start before the end of 21 days beginning with the date of that notice.
- 12.12 In short, sections 28H and 28I are important provisions that regulate the normal ‘day to day’ functions of statutory undertakers and others subject to the section 28G duty. However, it is contrary to the ‘single consent’ ethos of the 2008 Act to have a parallel consenting regime sitting outside the carefully assessed regime to regulate the authorised development. Furthermore, the underlying purposes of section 28H to ensure that important public functions can be carried out whilst preserving features of special scientific interest are equally served by the requirements contained in Schedule 2 to the Order. In particular, the provisions of the Outline Construction Environmental Management Plan [7.1], compliance with which is secured by requirement 6, ensure that as little damage as is reasonably practicable in the circumstances is caused and requirement 4 (landscape and ecology management plan) ensures the restoration of the site should damage be caused. Their disapplication is therefore both appropriate and justified.
- 12.13 These sections 28E, 28H and 28I are not consents to which section 150 of the 2008 Act applies and so the consent of Natural England is not required for the inclusion of these provisions in the Order.

The Secretary of State is a section 28G authority and so, should the Secretary of State be minded to include these disapplications and grant development consent, it may be necessary for the Secretary comply with section 28I when doing so.

Other disapplications and modifications

- 12.14 In terms of other disapplications and modifications in relation to which section 150 of the 2008 Act does not apply:
- (a) The Project will require the demolition, disassembly and/or temporary relocation of a number of small structures and so the paragraph (1)(d) disapplies section 80 of the Building Act 1984;
 - (b) Consistent with article 6 (maintenance of drainage works), paragraph (1)(e) disapplies section 32 (variation of awards) of the Land Drainage Act 1991;
 - (c) The Project will involve construction under ordinary watercourses. While Southern Water is content to use section 23 of the Land Drainage Act 1991 in relation to works where it applies, it seeks to disapply the requirement to obtain consents pursuant to byelaws made under section 66 of that Act;
 - (d) The Project requires works to be conducted in proximity to another water undertaker's land and so byelaws made under section 157 of the Water Industry Act 1991 are disapplied by paragraph (1)(g). The interface between the authorised development and the interests of other water undertakers will be regulated through protective provisions and legal agreements.
 - (e) Paragraph (1)(j) disapplies the temporary possession provisions of the Neighbourhood Planning Act 2017. It is understood that the Government intends, alongside the bringing into force of the provisions of the Planning and Infrastructure Act 2025, to bring these provisions into force and to make temporary possession powers available more widely. While not yet in force section 112 of the Planning and Infrastructure Act 2025 would maintain the established practice of development consent orders utilising their own temporary possession regime and envisages that the application of the temporary possession provisions in the Neighbourhood Planning Act 2017 are subject to any contrary provision in a development consent order. This disapplication is such a provision and would be required whether or not section 112 of the Planning and Infrastructure Act 2025 is brought into force.
 - (f) Paragraph (2) disapplies the Community Infrastructure Levy Regulations 2010 by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.
 - (g) Paragraph (3) modifies the Hedgerow Regulations 1997 to bring development consent under the 2008 Act in line with a planning permission granted under the 1990 Act.
 - (h) Paragraph (4) effectively corrects a lacuna in the existing legislative regime whereby planning permission for development under the 1990 Act removes the requirement for a felling licence under section 9 of the Forestry Act 1967, but no equivalent provision is made for development consent under the 2008 Act.
- 12.15 Paragraph (5) provides for the disapplication of the historic local legislation listed in the paragraph, in so far as the provisions still in force are incompatible with the exercise by the undertaker of its functions conferred by this Order. The local legislation in question relates to the establishment of what is now a water undertaker, Portsmouth Water. As noted previously, the interface between the undertaker and Portsmouth Water would be appropriately regulated through protective provisions and the other provisions of the Order (such as, for example, article 5) and legal agreements.

- 12.16 Paragraph (6) introduces Schedule 8 (modifications to legislative provisions applying to the authorised development and to the Havant Thicket Reservoir infrastructure) which contains modifications to the abstraction licensing provisions, and other legislative provisions, in connection with the Havant Thicket Reservoir infrastructure and the authorised development. The purpose and effect of Schedule 8 are discussed in detail in the Appendix to this Explanatory Memorandum.

Article 47 – Deemed marine licence

- 12.17 This article introduces and gives effect to the deemed marine licence contained in Schedule 9 (deemed marine licence) to the Order. Section 149A of the 2008 Act makes provision for the inclusion of provisions within a development consent order deeming a marine licence to have been granted.

Article 48 – Application of landlord and tenant law

- 12.18 This article provides that landlord and tenant law will be overridden so as not to prejudice the operation of any agreement entered into under article 9 (consent to transfer benefit of Order). It is based on a Model Provision and is required to be included in the Order so as to prevent landlord and tenant law interfering with the operation of any agreement to transfer the benefit of the Order.

Article 49 – Planning permission etc.

- 12.19 This article seeks to manage the interaction between the Order and planning permissions granted under the 1990 Act in the light of the Supreme Court's decision in the *Hillside*⁴ case.

- 12.20 Paragraph (1) clarifies that the carrying out of development pursuant to planning permissions granted under the 1990 Act for development that does not comprise part of the authorised development does not breach the Order. This ensures that planning permissions granted under the 1990 Act for any development, *other than the authorised development*, can proceed without being impeded by the terms of the Order.

- 12.21 Paragraphs (3) and (4) address any inconsistencies arising between planning permissions granted under the 1990 Act and the Order. Paragraph (3) preserves planning permissions that overlap with the Order by disregarding any inconsistencies between the planning permission and the Order. Paragraph (4) takes a similar approach but preserves the Order from inconsistencies introduced by development pursuant to a planning permission under the 1990 Act.

- 12.22 The inclusion of these provisions is important and necessary to avoid the circumstances where the subsequent implementation of a planning permission granted under the 1990 Act prejudices reliance on the development consent granted by the Order. Similarly, it is important that the undertaker does not inadvertently prejudice planning permissions granted under the 1990 Act.

- 12.23 Paragraph (2) clarifies that development consent granted by this Order is to be treated as a specific planning permission for the purposes of determining whether land is or is not operational land under section 264(3) of the 1990 Act.

Article 50 - Safeguarding

- 12.24 The purpose of this article is to provide a proportionate mechanism to safeguard the authorised development from development proposed by others.

- 12.25 Paragraph (1) sets out the overall objectives of the article which are to require a relevant planning authority to consult the undertaker on any application for planning permission and to inform the undertaker of any notification under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), to which the article applies.

- 12.26 Paragraph (2)(a) requires the relevant planning authority to provide written notice of those matters to the undertaker. Paragraphs (2)(b), (3) and (4) make provision for the undertaker to be provided

⁴ *Hillside Parks Ltd v Snowdonia National Park Authority* [2020] UKSC 30

with an opportunity to make representations in respect of such matters and for the relevant planning authority to take such representations into account.

- 12.27 Paragraph (5) makes the requirements of this article a local land charge and provides the requirements under the article to cease to have effect once the undertaker has given notice to the local planning authority that it has completed the construction of the authorised development and has acquired the necessary interests in and rights over land for the authorised development within that authority's area. This reflects the fact that once the authorised development is completed and undertaker has acquired the necessary interests in and rights over land, it will safeguard the authorised development from ongoing adverse development through the exercise of those property interests and rights.
- 12.28 Paragraph (6) sets out the scope of the article which applies to applications for planning permission for, and GDPO notifications relating to, development wholly or partly within the Order limits, which are not exempt applications.
- 12.29 Paragraph (7) sets out the relevant definitions, in particular the definition of an "exempt application", which makes it clear that its provisions do not apply to development consisting of alterations to an existing building or change of use of such a building or other land. It will also not apply to development that does not involve and is not likely to involve any construction, engineering or other operations below existing ground level, or applications due to be determined within 21 days of the Order coming into force.
- 12.30 The provision is necessary to facilitate the protection of the authorised development from other development that would prejudice its construction. It does so by requiring the undertaker to be notified of planning applications and GPDO notifications and by requiring the undertaker's representations in relation to those matters to be taken into account by the relevant planning authority. It does not prohibit development, but requires the construction of the authorised development to be taken into account before any development approvals are given by the local planning authority.
- 12.31 The principle of a DCO making provision for safeguarding through the planning system has precedent in article 52 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. That article makes provision for safeguarding covering both the construction phase and permanently thereafter in relation to the 'as built' development. Southern Water's proposed safeguarding measure is more limited in its effect and relates only to the period between the grant of development consent and when the authorised development has been constructed and the necessary interests in and rights over land have been acquired.

Article 51 – Exercise of the undertaker's other statutory functions

- 12.32 Southern Water, as a water and sewerage undertaker, has available to it a suite of powers under other legislation, principally the Water Industry Act 1991. The purpose and effect of this provision is to clarify that nothing in this Order is to restrict Southern Water's exercise of those powers.

Article 52 – Protective provisions

- 12.33 This article introduces Schedule 10, which contains provisions protecting the interests of particular third parties including other statutory utility undertakers.

Article 53 – Certification of plans, etc.

- 12.34 This article provides for various plans and other documents to be certified by the Secretary of State as true copies of those documents referred to in the Order. The documents in question (with their reference and revision numbers) are listed in Schedule 11. A form of this article is included in the Model Provisions and in the majority of DCOs made to date. It is necessary to provide legal certainty in connection with the documents referenced in the Order.

Article 54 – Service of notices

- 12.35 This article governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order.

Article 55 – Arbitration

- 12.36 This article governs what happens when two parties disagree in relation to the implementation or interpretation of any provision of the Order. A dispute must be referred to arbitration, and if the parties cannot agree on an arbitrator the appointment will be decided by the President of the Institution of Civil Engineers. A form of this article is in the Model Provisions and in the majority of DCOs made to date. This provision does not apply where the Order makes express contrary provision, such as the appeal procedures set out in Part 2 of Schedule 2 (requirements).

Article 56 – Consents, agreements and approvals

- 12.37 This article provides for the mechanics of certain consents, agreements and approvals that need to be obtained by Southern Water under the Order. In summary, it ensures that any consents, agreements or approvals required under the listed provisions (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 28 days if no decision is made, beginning with the day any application for a consent, agreement or approval is made.
- 12.38 Any application for a consent, agreement or approval must include a written statement that the 28 day ‘guillotine’ provision is in force.
- 12.39 The purpose of the article is to draw together the usual provisions for consents, agreements and approvals under the Order, rather than including them for each consent, agreement or approval required under the Order which is considered to be unduly repetitive drafting. The principle of such provisions is widely precedented, in recognition of the importance of the timely delivery of infrastructure of national significance.

13. SCHEDULES

Schedule 1 - Authorised development

- 13.1 Schedule 1 sets out the component parts of the authorised development, which is described in detail in Chapter 3 of the Environmental Statement [6.1].
- 13.2 A list of ancillary works is included at the end of Schedule 1. The ancillary works listed in Schedule 1 support, and are ancillary to, and form part of the carrying out of the numbered works and may not give rise to any materially new or materially different adverse environmental effects than those assessed in the environmental statement. They must relate to the numbered works, since they must be “For the purposes of or in connection with the construction, operation and maintenance of any of the works and other development mentioned above”, as set out in the paragraph preceding the list of ancillary works in Schedule 1.
- 13.3 In terms of location, article 7(1) (limits of deviation) confirms that the authorised development must be constructed within the corresponding numbered areas shown on the Works Plans [2.3], being within Order limits. Any ancillary work would also be expected to be in the same general location as the numbered work to which it relates.
- 13.4 Ancillary works are set out separately to the numbered works so as to avoid the need to repeat them within the description of each of the numbered works. This approach aids the clarity and legibility of the description of the numbered works.

Schedule 2 - Requirements

Part 1 - Requirements

- 13.5 Schedule 2 sets out the requirements which apply to the construction, operation and maintenance of the authorised development. The Order limits lie within the administrative boundaries of East Hampshire District Council, Eastleigh Borough Council, Fareham Borough Council, Hampshire County Council, Havant Borough Council, Portsmouth City Council and Winchester City Council. For those Work Nos. falling within multiple administrative boundaries, requirements would need to be discharged by each authority, for the relevant part within their respective areas. For ease the term 'relevant planning authority' is used below.
- 13.6 The Requirements apply the mitigation set out in the Environmental Statement [6.1 - 6.3]. Various Requirements allow their discharge in relation to "a part" of the authorised development - this permits, for instance, the submission and approval of a management plan for the pipelines first, if the construction programme means that those are ahead of another part of the authorised development. The Order deliberately does not define "a part", since it is not known at this stage exactly how each Requirement will be discharged. If the relevant planning authority considers, on receipt of an application to discharge a Requirement, that it requires more information then it has power to require that pursuant to the process set out in Part 2 of Schedule 2 of the Order (see paragraph 13.46). Additional information could include that relating to another part of the authorised development, if required reasonably required to consider the details submitted for approval.
- 13.7 The first paragraph sets out some important definitions:
- (a) "above ground installations" – is defined by reference to Work No. 1 (the water recycling plant) and Work Nos. 5A to 5E (being the intermediate pumping stations and break pressure tanks) being the substantial permanent above ground works comprised in the authorised development.
 - (b) "additional environmental enhancement" – the Applicant has identified a number of opportunities to provide additional environmental enhancements in and around its project. While these are included in the Order limits and development consent is sought for their implementation the Applicant does not consider that the powers of compulsory acquisition necessary to secure their delivery can be justified in the public interest. Therefore, it is not seeking such powers and the Applicant is not committing to their delivery. The additional environmental enhancements are described in the Design Principles Document [5.11].
 - (c) "begin" is defined by reference to the carrying out of any material operation as defined in section 56(4) of the 1990 Act. The term is used only in requirement 2 and it is to make clear that any material operation, including those excluded from the definition of 'commence', is sufficient to begin the authorised development for the purposes of requirement 2.
 - (d) "commence" is also defined by reference to the carrying out of a material operation. However, the definition excludes a range of material operations the conduct of which is assessed as being *de minimis* in environmental terms and in relation to which none of the measures contained in the pre-commencement requirements are necessary to be in place. Indeed, many of the operations excluded from the definition are necessary to facilitate the discharge of pre-commencement requirements.
 - (e) "relevant planning authority" is defined as the local planning authority for the area in which the land to which the relevant provision of this Schedule applies is situated.
 - (f) "substantially in accordance with" – the application for development consent is accompanied by a comprehensive suite of 'outline' or 'framework' documents that specify the relevant controls or mitigation necessary to address the likely

significant environmental effects of the authorised development. Necessarily, the details of those measures will need to be developed after the grant of development consent (should it be granted). Consequently, it is considered helpful to provide a definition for “substantially in accordance with” to clearly articulate that the details submitted for subsequent approval must “in the main” accord with those in the outline or framework document but must not give rise to any materially new or materially different environmental effects to those reported in the environmental statement. The Applicant considers this strikes the right balance between providing sufficient flexibility to allow the outline document to be developed in the light of the detailed design of the authorised development whilst also ensuring that it remains firmly within the assessed Rochdale Envelope.

Requirement 2 (when the authorised development must begin)

- 13.8 This Requirement is based upon the model provisions and requires that the authorised development must begin within five years of the date of the Order coming into force.

Requirement 3 (detailed design)

- 13.9 This requirement is concerned with securing the delivery of the measures contained in the Design Principles Document [5.11]. Sub-paragraph (1) requires the authorised development to be constructed substantially in accordance with relevant design principles in the Design Principles Document [5.11]. This provision therefore secures the implementation of both the site wide and site specific design principles. Sub-paragraph (2) permits the relevant planning authority to approve a departure from a design principle provided that doing so would not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement [6.1].
- 13.10 Sub-paragraph (3) provides additional control over the external appearance of the above ground installations. It requires, before they are commenced, approval by the relevant planning authority of the details of the external appearance of the above ground installations. Such an application must be accompanied by a statement of compliance (defined in sub-paragraph (7)) demonstrating how the relevant design principles have been incorporated into the design of those works.
- 13.11 Sub-paragraph (4) requires the relevant planning authority to consult the South Downs National Park Authority in relation to the approval of the design of the above ground installations that may affect the setting of the South Downs National Park.
- 13.12 Sub-paragraph (5) requires compliance with the approved details.
- 13.13 Sub-paragraph (6) makes it clear that nothing in this requirement will require the undertaker to deliver the ‘additional environmental enhancements’. As noted above, while the Applicant is seeking development consent for the additional environmental enhancements their delivery is subject to reaching agreement with the landowners concerned and so the Applicant cannot commit to their delivery under a requirement. The conclusions of the Environmental Statement [6.1] are not reliant on the implementation of the additional environmental enhancements.

Requirement 4 (landscape and ecology management plan)

- 13.14 This requirement is concerned with securing the provision of the environmental mitigation described in the Design Principles Documents [5.11] and its associated plans. The principles for the establishment and management of the associated landscaping and ecological management are set out in the Outline Landscape and Ecology Management Plan [7.5].
- 13.15 Sub-paragraph (1) requires, before the commencement of any part of the authorised development, the relevant planning authority’s approval of a landscape and ecology management plan for that part in consultation with Natural England. In relation to those parts of the authorised development within the setting of the South Down National Park, sub-paragraph (3) requires the relevant planning authority to consult the South Downs National Park Authority before giving its approval. Sub-paragraphs (2) and (4) require the details submitted to substantially accord with the relevant Design

Principles and the Outline Landscape and Ecology Management Plan and for subsequent compliance with the approved details.

- 13.16 Again, sub-paragraph (5) ensures the undertaker is not obliged to implement the 'additional environmental enhancement'.

Requirement 5 (biodiversity net gain)

- 13.17 This requirement is concerned with securing the delivery of a minimum of ten percent biodiversity net gain. Sub-paragraph (1) requires before any part of the authorised development is commenced, the relevant planning authority's approval of a detailed biodiversity gain plan for that part. Sub-paragraph (2) requires the detailed biodiversity gain to be substantially in accordance with the Biodiversity Gain Plan [7.11] and its appended Outline Habitats Management and Monitoring Plan.

- 13.18 The plan must set out details relating to how the measures contained within it contribute to the delivery of the minimum ten percent biodiversity for the authorised development, details of the habitat management and monitoring to be implemented for that biodiversity gain over a period of thirty years, and an updated biodiversity metric calculation or an explanation of why a biodiversity metric calculation is not necessary. The detailed biodiversity gain plan must be implemented as approved.

- 13.19 Sub-paragraph (5) makes it clear that where there is a conflict between the duration of maintenance and monitoring required under requirement 4 and requirement 5, the thirty year minimum period specified under requirement 5 will prevail.

Requirement 6 (construction environmental management plan)

- 13.20 The purpose of this requirement is to secure the delivery of the mitigation set out in the Outline Construction Environmental Management Plan [7.1]. It requires the relevant planning authority's approval of a construction environmental management plan before a part of the authorised development may commence. The construction environmental management plan must substantially accord with the Outline Construction Environmental Management Plan and must be implemented as approved.

Requirement 7 (contaminated land)

- 13.21 The purpose of this requirement is to make provision for unforeseen contaminated land encountered at any time during the construction of the authorised development. It should be noted that this is not a 'pre-commencement' requirement and would be engaged if unexpected contamination is encountered during the conduct of any of the operations excluded from the definition of 'commence'.

- 13.22 If unexpected contaminated land is encountered it must be reported to the relevant planning authority and the Environment Agency and the undertaker is required to carry out a risk assessment of the contamination in consultation with those bodies. If the undertaker determines that remediation of the contaminated land is necessary, it must submit for the approval of the relevant planning authority (in consultation with the Environment Agency) a written scheme and programme for its remediation so as to render the land fit for its intended purpose. Thereafter the written scheme and programme must be implemented as approved.

Requirement 8 (construction traffic management plan)

- 13.23 The purpose of this requirement is to secure the delivery of the mitigation set out in the Framework Construction Traffic Management Plan [7.2] and its appended Framework Construction Worker Travel Plan. It requires the relevant planning authority's approval (following consultation with the relevant highway authority and National Highways) of a construction traffic management plan and construction worker travel plan before any part of the authorised development is commenced. The plans submitted for approval must substantially accord with the framework plans, and the authorised development must be constructed in accordance with the approved plans.

Requirement 9 (public rights of way)

- 13.24 The purpose of this requirement is to secure the delivery of the mitigation set out in the Framework Rights of Way Management Plan which is appended to the Framework Construction Traffic Management Plan [7.2].
- 13.25 It requires, before any part of the authorised development may commence, the relevant planning authority's approval (following consultation with the relevant local highway authority) of a rights of way management plan relating to any sections of public rights of way to be temporarily or permanently closed or diverted in connection with that part of the authorised development. A rights of way management plan must be in substantial accordance with the framework document, and the authorised development must be constructed in accordance with the approved plan.

Requirement 10 (archaeology)

- 13.26 The purpose of this requirement is to secure the delivery of the mitigation set out in the Outline Written Scheme of Investigation [7.6].
- 13.27 It requires, before any part of the authorised development may commence, the relevant planning authority's approval (following consultation with Historic England) of a written scheme of investigation for that part of the authorised development.
- 13.28 Because "archaeological investigations" are excluded from the definition of "commence" contained in paragraph 1 of this Schedule, the relevant planning authority's approval of a written scheme of investigation is also required before any intrusive archaeological investigations are carried out.
- 13.29 A written scheme of investigation must be in substantial accordance with the outline document, and each part of the authorised development and the intrusive archaeological investigations must be carried out in accordance with the approved written scheme of investigation.

Requirement 11 (skills and employment)

- 13.30 The purpose of this requirement is to secure the delivery of the measures described in the Outline Skills and Employment Plan [7.9].
- 13.31 It requires, before any part of the authorised development may commence, the relevant planning authority's approval of a skills and employment plan for that part of the authorised development. A skills and employment plan must be in substantial accordance with the outline document, and the authorised development must be constructed in accordance with the approved plan.

Requirement 12 (carbon management plan)

- 13.32 The purpose of this requirement is to secure the delivery of the measures described in the Outline Carbon Management Plan [7.8].
- 13.33 It requires, before any part of the authorised development may commence, the relevant planning authority's approval of a carbon management plan for that part of the authorised development. A carbon management plan must be in substantial accordance with the outline document. The detailed carbon management plan must be implemented as approved.

Requirement 13 (operational environmental management plan)

- 13.34 The purpose of this requirement is to secure, during the operation and maintenance of the authorised development, compliance with the measures contained in the Operational Environmental Management Plan [7.7].
- 13.35 The Operational Environmental Management Plan is not an outline document for which subsequent approval of details is required; the details of the necessary measures are set out in the document. However, in recognition of the long term operation of the authorised development and the need to maintain a degree of operational flexibility, provision is made in sub-paragraph (2) for the relevant

planning authority to approve changes to the Operational Environmental Management Plan when to do so would not give rise to any materially new or materially different environmental effects in comparison with those assessed in the environmental statement.

Requirement 14 (invasive non-native species biosecurity plan)

- 13.36 The purpose of this requirement is to secure, during the construction, operation and maintenance of the authorised development, the measures set out in the Invasive Non-Native Species Biosecurity Plan [7.10].
- 13.37 The Invasive Non-Native Species Biosecurity Plan is not an outline document for which subsequent approval of details is required; the details of the necessary measures are set out in the document. However, in recognition of the long term operation of the authorised development and the need to maintain a degree of flexibility, provision is made in sub-paragraph (2) for the relevant planning authority to approve changes to the Invasive Non-Native Species Biosecurity Plan when to do so would not give rise to any materially new or materially different environmental effects in comparison with those assessed in the environmental statement.

Requirement 15 (sustainable drainage)

- 13.38 The purpose of this requirement is to secure the delivery of the measures set out in the Sustainable Drainage Strategy (which is contained in Appendix G to ES Vol II – ES Appendix 19.1 Flood Risk Assessment [6.2]).
- 13.39 It requires, before any part of the authorised development comprised in the above ground installations may commence, the relevant planning authority's approval (following consultation with the lead local flood authority and the Environment Agency) of the details of the proposed surface drainage for that part of the authorised development. The details submitted must substantially accord with the Sustainable Drainage Strategy and must be implemented as approved.

Requirement 16 (water monitoring)

- 13.40 The purpose of this requirement is to secure the delivery of the measures set out in Outline Water Monitoring Plan (ES Vol II – ES Appendix 19.9 Outline Water Monitoring Plan [6.2]).
- 13.41 It requires, before any part of the authorised development may commence, the relevant planning authority's approval (following consultation with the Environment Agency) of a water monitoring plan. A water monitoring plan must be in substantial accordance with the outline document and must be implemented as approved.

Requirement 17 (Solent Waders and Brent Goose mitigation)

- 13.42 The purpose of this requirement is to secure the delivery of the Solent Waders and Brent Goose mitigation identified in the Habitats Regulations assessment (Habitats Regulations Assessment – Stage 2 Appropriate Assessment and Marine Conservation Zone – Stage 1 Assessment [5.2]).
- 13.43 It requires, before any part of Work No. 1 (water recycling plant) may commence, the relevant planning authority's approval of details demonstrating that the undertaker has secured land to enable the provision of that mitigation, together with the details of a regime of management measures and timetable for the implementation of those measures. The relevant planning authority must consult Natural England before giving its approval. The details submitted must substantially accord with the description of the Solent Waders and Brent Goose mitigation, and the mitigation must be provided and maintained in accordance with the approved timetable and details.

Requirement 18 (amendments to approved details)

- 13.44 The purpose of this requirement is to make it clear that where the relevant planning authority has approved details pursuant to a requirement, it remains open to the undertaker to seek approval for amended details.

Requirement 19 (anticipatory steps towards compliance with any requirement)

- 13.45 The purpose of this requirement is to permit steps towards compliance with any requirement to be undertaken before the Order comes into force, provided that those steps would have been valid had the Order been in force. The provision facilitates the delivery of the authorised development, or parts of it, should there be a delay to the determination of the application and should development consent be granted.

Part 2 – Procedure for discharge of requirements

- 13.46 This Part provides a clear procedure for the discharge of Requirements by the relevant planning authority. It sets out a time limit for decisions to be made within, with the ability to extend this period by agreement between the relevant planning authority and the undertaker, and a power for the relevant planning authority to request further information from the undertaker. Deemed consent provisions come into effect when decisions are not made during this time, but this cannot apply where that could be inappropriate taking into account the environmental impacts of the authorised development. This Part further sets out the provision for fees relating to applications for written consent and the process for appealing decisions made under this Part. This process, including the time periods and deemed consent, is considered to be appropriate in order to ensure that the delivery of the authorised development is not delayed. The provisions closely follow those contained in Appendix 1 to Advice Note Fifteen: drafting Development Consent Orders.

Schedule 3 – Streets

- 13.47 Schedule 3 sets out further information concerning the specific functions conferred on the undertaker through articles 14 to 18 in relation to streets. Its provisions are discussed in more detail above in relation to each of those articles.

Schedule 4 – Works to trees and hedgerows

- 13.48 Schedule 4 sets out the specific protected trees and hedgerows and the corresponding works the undertaker has powers to carry out under article 25.

Schedule 5 – Land in which only new rights etc., may be acquired

- 13.49 Schedule 5 sets out the land plots in relation to which the undertakers' powers of compulsory acquisition are limited to the acquisition of rights over land and the imposition of restrictive covenants, pursuant to article 29. The purposes for which such rights and restrictive covenants can be compulsorily acquired are set out in Schedule 5 in relation to each such plot of land shown on the Land Plans [2.2] and described in the Book of Reference [4.3]. The justification for the imposition of restrictive covenants is set out in more detail in the Statement of Reasons [4.1].

Schedule 6 – Modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants

- 13.50 This Schedule is introduced by, and relates to, article 29 (compulsory acquisition of rights and restrictive covenants). Its provisions are discussed in more detail above in relation to article 29.

Schedule 7 – Land of which only temporary possession may be taken

- 13.51 This Schedule is introduced by, and relates to, article 37. It sets out the land in relation to which the undertaker's powers of compulsory acquisition are limited only to the temporary possession of land. The purposes for which temporary possession may be taken are set out in Schedule 7 in relation to each such plot of land shown on the Land Plans [2.2] and described in the Book of Reference [4.3].

Schedule 8 – Modifications to legislative provisions applying to the authorised development and to the Havant Thicket Reservoir infrastructure

- 13.52 The purpose and effect of this Schedule is set out in detail in the Appendix to this Explanatory Memorandum.

Schedule 9 – Deemed marine licence

- 13.53 Schedule 9 contains the provisions of the deemed marine licence that is given effect by article 47 (deemed marine licence). It licences limited works within the marine environment, subject to the conditions set out within the licence.

Schedule 10 – Protective Provisions

- 13.54 This Schedule is introduced by article 49 (protective provisions) and sets out the protective provisions for the benefit of range of statutory undertakers and other such persons.

Schedule 11 – Documents to be certified

- 13.55 This Schedule relates to article 53 (certification of plans, etc.) and lists the documents that are to be certified in accordance with the terms of that article.

APPENDIX

SCHEDULE 8

MODIFICATIONS TO LEGISLATIVE PROVISIONS APPLYING TO THE AUTHORISED DEVELOPMENT AND TO THE HAVANT THICKET RESERVOIR INFRASTRUCTURE

1. Schedule 8 consists of six parts. Parts 1 to 4 modify the application of relevant regulatory regimes to the Havant Thicket Reservoir infrastructure. Part 5 contains provisions governing the form of abstraction licences to be granted in respect of the Havant Thicket Reservoir, addressing both the shared infrastructure and the existing commercial arrangements underpinning the Havant Thicket Reservoir infrastructure. Finally, Part 6 provides the rules for enforcement in the event of a breach of the abstraction licence(s), directing enforcement action to be taken against the party responsible for that breach.
2. The provisions of each Part are set out in more detail below.

Part 1 – Modifications to the Water Resources Act 1991

3. Part 1 modifies provisions of the Water Resources Act 1991 (WRA 1991), as they apply to the wider Havant Thicket Reservoir infrastructure, for the purposes of the project. The modifications necessarily extend in effect to both the authorised development (consented by the Order) and the Havant Thicket Reservoir infrastructure (provided pursuant to planning permissions obtained by Portsmouth Water). This approach provides a coordinated and unified regime that applies to all relevant regulated activities that utilise the interconnected Havant Thicket Reservoir infrastructure.
4. Paragraph 1 provides for the modifications to the WRA 1991 to have effect in respect of the authorised development and the Havant Thicket Reservoir infrastructure generally.
5. Paragraph 2 inserts a new definition of “Havant Thicket Reservoir” into section 72 of the Act, so that it may be referenced by later modifications. This definition also has effect for the purposes of interpreting the Water Resources (Abstraction and Impounding) Regulations 2006 (as modified by Part 2 of Schedule 8), being Regulations made under powers contained in the WRA 1991.
6. The definition identifies Havant Thicket Reservoir by reference to its grid reference, and further specifies that the pipeline for the transfer of water to and from the reservoir to and from Bedhampton Springs is included as the same source of supply for the purposes of Chapter 2 of Part 2 of the WRA 1991 (relating to abstraction and impounding). This approach enables the point of abstraction for relevant abstraction licences to be located at Bedhampton Springs, downstream of the pipeline ‘tee’ where water leaves the shared infrastructure and enters either Southern Water’s or Portsmouth Water’s infrastructure and network. This modification is required in order to effectively allow for the abstraction carried out by each company to be monitored independently.
7. Paragraphs 3 and 4 manage the complexities for enforcement that arise out of the use of shared abstraction infrastructure. Paragraph 3 modifies section 24 of the WRA 1991 (restrictions on abstraction) to apply the enforcement rules in Part 6 of Schedule 8 (explained below) for the purpose of identifying the party responsible for an over-abstraction. That party will be the person guilty of the offence under section 24(4). Paragraph 4 modifies section 25A (enforcement notices) through the addition of a new subsection (2B) to apply the enforcement rules to the identification of the party responsible for over-abstraction who should receive an enforcement notice.
8. Paragraph 4 also modifies section 25A (enforcement notices) of the WRA 1991 through the insertion of a new subsection (2A). This subsection removes the requirement that significant harm to the environment is being caused, or is likely to be caused, before an enforcement notice can be served in relation to over-abstraction from Havant Thicket Reservoir. A risk to the resilience of the public water supply is substituted as the relevant condition for an enforcement notice to be issued.

9. Whilst abstracting without a licence, or in breach of the conditions of that licence, is an offence under section 24 of the Act, section 25A provides the option for the Environment Agency (EA) to issue an enforcement notice requiring a breach to be rectified. This is particularly suitable for inadvertent or administrative breaches where criminal prosecution is not warranted. The modification reflects that Havant Thicket Reservoir is primarily a service reservoir, filled from a sustainable source (the water recycling plant (WRP)), and that significant environmental harm is unlikely to result from an over-abstraction. However, over-abstraction has the potential to affect the resilience of the reservoir for the purposes of public water supply. It is considered appropriate that the regulator continues to be able to issue an enforcement notice for such a breach, thereby avoiding a situation where a criminal prosecution is not pursued on the ground that it would be disproportionate to the nature of the breach.
10. Paragraph 5 makes two modifications to section 39A of the WRA 1991 in relation to protected rights. The first modification makes the list of protected rights subject to a new subsection (1A). Subsection (1A) then provides that the rights held by Portsmouth Water to abstract from Havant Thicket Reservoir are not protected rights. The effect of this is that later abstraction licences may be granted without requiring the licence holder's consent, even if to do so would be to derogate from Portsmouth Water's abstraction entitlement. This reflects the nature of Portsmouth Water's interests in the water in Havant Thicket Reservoir: Portsmouth Water does not require the water in Havant Thicket Reservoir for the purposes of its water supply; and Portsmouth Water's entitlement to the water in Havant Thicket Reservoir is, pursuant to existing commercial arrangements between Southern Water and Portsmouth Water, primarily compensatory in nature and corresponds to water provided by Portsmouth Water to Southern Water elsewhere in Portsmouth Water's water network. If no water is provided by Portsmouth Water to Southern Water elsewhere, Portsmouth Water is not entitled to take or use the water in the Havant Thicket Reservoir.
11. Furthermore, whilst Portsmouth Water is responsible for the construction and operation of the Havant Thicket Reservoir, all parts of the reservoir project (including the elements being delivered by Portsmouth Water) are being funded by Southern Water and its customers for the purposes of increasing the resilience of Southern Water's public water supply. The full combined abstraction entitlement across both Southern Water and Portsmouth Water will nevertheless be protected rights by virtue of their inclusion in the abstraction licence to be held by Southern Water. In this context, it is not appropriate that the abstraction rights enjoyed by Portsmouth Water to be separately and cumulatively treated as protected rights, and doing so could restrict the potential for Havant Thicket Reservoir to provide greater resilience in the future.
12. The second modification inserts a new subsection (1B) which enables an abstraction licence to be granted to Portsmouth Water in circumstances where a licence has already been granted to Southern Water, notwithstanding that doing so may derogate from Southern Water's protected rights under that licence. The deemed non-derogation applies to a licence for abstraction by Portsmouth Water as anticipated as part of the wider Havant Thicket Reservoir infrastructure project. This modification enables the licence to be granted to Portsmouth Water without needing to obtain the consent of Southern Water or a direction from the Secretary of State that the licence should be granted. The modification would not apply to any subsequent application for an abstraction licence, reflecting that such an application would be outside the scope of what is anticipated for the Project and would have the potential to affect the availability of water for Southern Water's public water supply.
13. Paragraphs 6 to 8 operate to provide standing to Southern Water in the event an application for an abstraction or impounding licence, made by a third party and in connection with Havant Thicket Reservoir, is called-in for determination by the Secretary of State, or in any appeal made in respect of such an application. These provisions ensure that Southern Water is provided an appropriate opportunity to appear and make submissions in respect of the application. This is necessary as Southern Water does not own and operate Havant Thicket Reservoir, and therefore has greatly reduced control over what third parties may seek to do in relation to the reservoir. The importance of Havant Thicket Reservoir to Southern Water's public water supply is recognised and reflected by the modification which enables Southern Water to appeal in respect of an application as though it were the applicant. This ensures that Southern Water is able to challenge an abstraction licensing decision, for example to grant an abstraction licence that does not contain suitable conditions to support the long-term security of the supply. The scope of the modifications is broad in order to capture applications that may be made for abstraction from Havant Thicket Reservoir itself, as well

as applications to vary abstraction licences relied on in part to supply water to Havant Thicket Reservoir, and any variation to the impounding licence that secures Havant Thicket Reservoir itself.

14. Paragraph 9 modifies section 46, which sets out the form and content of licences, in two ways. First, it enables a licence to be granted and remain in force until it is revoked. Secondly, it requires that any licence for abstraction from Havant Thicket Reservoir is in a form that corresponds as nearly as may be to the provisions of Part 5 of Schedule 8. This provision uses as precedent the transitional provisions from the Water Resources Act 1963, which first introduced abstraction licences and provided a mechanism for a licence to be granted in a form consistent with a person's existing statutory rights to abstract. The provisions for inclusion in the licences, set out in Part 5 of this Schedule, are explained below.
15. Paragraph 10 modifies the power of the EA and the Secretary of State (SoS) to propose to revoke or vary a licence, so that this may not be used to reduce the abstraction entitlement in Southern Water's abstraction licence below the levels specified in this Schedule. This is justified as Havant Thicket Reservoir will be continuously refilled from the WRP and is therefore not subject to the environmental sensitivities that may warrant a reduction in abstraction volumes. The Project is also designed to provide resilience to Southern Water's public water supply, which currently relies on abstraction from environmentally sensitive chalk streams. Any reduction in Southern Water's abstraction entitlement from Havant Thicket Reservoir would need to be met from other, likely less resilient, sources and would be contrary to the policy imperative towards sustainable abstraction.
16. The modifications applied by paragraph 10 further provide for Southern Water to be specifically notified of any proposals by the EA or the Secretary of State to vary a licence that is connected to Havant Thicket Reservoir. This reflects the complexities of the Havant Thicket Reservoir infrastructure where not all licences to fill and abstract from Havant Thicket Reservoir are held by Southern Water. The notice requirement ensures that Southern Water is aware of and has the opportunity to comment on any proposals that would lead to increased abstraction from Havant Thicket Reservoir by third parties, or that may affect abstraction for the purpose of winter filling of the reservoir.
17. Paragraph 11 modifies section 60 of WRA 1991 to provide that an applicant must indemnify the EA for any compensation that becomes payable in the event the EA is required, by the SoS, to grant an abstraction licence that derogates from Southern Water's protected rights to abstract from Havant Thicket Reservoir. As any such derogation would reduce the availability of water for Southern Water's public water supply, it would necessarily serve some greater (public) purpose, and it is therefore appropriate for the promoters of such a project to cover the loss of (any part of) Southern Water's public water supply, rather than the regulator.
18. Finally, paragraph 12 disapplies sections 61ZA and 61ZB of WRA 1991. These sections provide circumstances where compensation will not be payable for a reduction in the licensed abstraction volumes, to reduce unused headroom in a licence or to avoid environmental harm. These sections are disapplied, consistent with the earlier modification restricting any reduction of the licensed abstraction volumes. Any headroom that may not be utilised initially serves to provide long-term resilience and should therefore not be removed. Similarly, the reliance on WRP discharges as a sustainable source of water reduces reliance on environmentally sensitive water sources and a reduction in abstraction availability from Havant Thicket Reservoir could lead to indirect environmental harm.
19. Annex 1 to this Appendix is a 'Keeling Schedule' setting out how the WRA 1991 would apply in relation to the authorised development and the Havant Thicket Reservoir infrastructure with these proposed modifications.

Part 2 – Modifications to the Water Resources (Abstraction and Impounding) Regulations 2006

20. Part 2 modifies the application of the Water Resources (Abstraction and Impounding) Regulations 2006. These Regulations provide detail for how the provisions of the WRA 1991 relating to abstraction and impounding are implemented in practice.

21. Paragraph 14 of Schedule 8 operates to provide an exemption from the requirement to publicise the application for an abstraction licence, where this is made by Southern Water in respect of the Project. The provisions of Part 5 of Schedule 8 set out the key conditions to be incorporated into this licence, and the DCO examination process provides an opportunity for the public and stakeholders to comment on the proposed conditions. In this context, further publication of the application and the opportunity for the public to provide comments on that application would duplicate the consultation and engagement achieved through the DCO examination process. Further, as the provisions of Part 5 of Schedule 8 *must* be incorporated into the licence, there would be no opportunity for responses to such a consultation to affect the form of licence.
22. Paragraph 15 inserts a new Regulation 9A. The purpose of this provision is to ensure that Southern Water is notified of applications made in connection with the impounding or abstraction of water in relation to the Havant Thicket Reservoir infrastructure and that its representations are taken into account. This regulation is broadly based on Regulation 9, which provides enhanced notification requirements for the benefit of the National Park authority or Broads Authority in relation to applications for abstraction or impounding in the area of a national park or the Norfolk and Suffolk Broads respectively. This modification reflects Southern Water's enhanced interest in the use and operation of Havant Thicket Reservoir, whilst the reservoir is not its asset. The consent of Southern Water is required before an application in connection with Havant Thicket Reservoir may be made, in recognition that, as Havant Thicket Reservoir is owned by Portsmouth Water, Southern Water has less opportunity and ability to protect its interests in Havant Thicket Reservoir than would typically be expected were it owned by Southern Water directly. Consent is not required where the application is to renew an existing abstraction licence on the same terms (paragraph (2)(b)) or where the application is made by Portsmouth Water for an abstraction licence for up to 25Ml/d, as envisaged in respect of the wider project (paragraph (2)(a)).
23. Paragraphs 16 to 18 make consequential modifications to require notices to be served on Southern Water in any circumstance where the new Regulation 9A applies, and to require any notice of appeal also to be served on Southern Water where it has provided comments on the application.
24. Paragraph 19 modifies the requirements as to the content of an enforcement notice to remove the need to describe the significant environmental harm being, or likely to be, caused. Instead a statement is required that confirms that the breach poses, or is likely to pose, a risk to a public water supply. These modifications are consequential on the removal and substitution of this condition from section 25A of the WRA 1991.
25. Annex 2 to this Appendix is a 'Keeling Schedule' setting out how the 2006 Regulations would apply in relation to the authorised development and the Havant Thicket Reservoir infrastructure with these proposed modifications.

Part 3 – Modifications to the Environmental Permitting (England and Wales) Regulations 2016

26. Part 3 modifies the Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations) to provide Southern Water with oversight of potential future applications to discharge water into Havant Thicket Reservoir. These modifications are required because Southern Water is not the owner of Havant Thicket Reservoir, and therefore has very limited control over the use of this asset by third parties.
27. Paragraph 21 provides a definition of Havant Thicket Reservoir for use in the modified EP Regulations.
28. Paragraphs 22, 23 and 24 modify the EP Regulations to require the consent of Southern Water for any application for a new water discharge permit, or to vary or revoke an existing water discharge permit. This reflects that Southern Water has an enhanced interest in the water quality in Havant Thicket Reservoir, being required to be maintained at a level suitable for public water supply. Any new discharge (or variation to a permitted discharge) into Havant Thicket Reservoir has the potential to affect that supply. The modifications ensure that any such proposals are fully discussed and agreed with Southern Water before an application is made, in addition to any arrangements agreed with Portsmouth Water as owner and operator of Havant Thicket Reservoir.

29. Paragraph 25 modifies Regulation 31 (which provides for appeals to an appropriate authority) to create a new ground of appeal. The modification enables Southern Water to appeal against the grant of a discharge permit, or the inclusion or absence of conditions from a discharge permit so granted. This ensures that Southern Water may challenge the grant of a discharge permit that it considers to risk its public water supply, and recognises that a permit may be granted in a different form to that which is applied for.
30. Paragraph 26 operates to provide Southern Water with standing to appear before and be heard by the decision-maker in the event an application for a water discharge activity permit in relation to Havant Thicket Reservoir is referred to the appropriate authority for determination. This modification to Regulation 63 ensures that Southern Water may make submissions on an application, whether it is determined by the EA or the SoS.
31. Paragraphs 27 and 28 modify the conditions relating to exempt water discharge activities listed in Schedule 3. The first modification, made by paragraph 27, imposes a condition that notice must be given to Southern Water of any such exempt activity to be carried out in relation to Havant Thicket Reservoir. This ensures that Southern Water is made aware of activities that may affect its public water supply. It is required because maintenance activities, such as vegetation clearance that may constitute exempt activities, would be carried out by or on behalf of Portsmouth Water.
32. The second modification, made by paragraph 28, imposes a condition that any small discharge of sewage effluent will not be exempt if the discharge is to be made into Havant Thicket Reservoir. This ensures that no discharge that could potentially affect the quality of the public water supply can take place under the exemption.
33. Paragraphs 29 to 31 modify Schedule 5 of the EP Regulations, which makes provision in relation to environmental permits, including the process of applying for a permit. Paragraph 29 expands the definition of “public consultee” to expressly include Southern Water as a consultee in relation to an application for a discharge permit, or to modify a discharge permit, in relation to Havant Thicket Reservoir.
34. Paragraph 30 provides a mandatory requirement that Southern Water is given notice of, and invited to make comments on, any application relating to a water discharge activity in relation to Havant Thicket Reservoir. This modification operates with the modified definition of public consultee to ensure that Southern Water is consulted on relevant applications for discharge permits. Without these modifications, it would be discretionary whether a notice was provided, and there is potential for Southern Water to be overlooked as it is not the owner or operator of Havant Thicket Reservoir. Paragraph 31 modifies the provisions around notification of the determination of that application, such that Southern Water must be notified once the application has been decided or determined.
35. Paragraphs 32 and 33 provide consequential modifications to Schedule 6 (which relates to appeals) reflecting the ability of Southern Water to appeal a decision to grant, or grant with conditions, an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir. The modifications provide that, in the event Southern Water were to bring such an appeal, the notice of the appeal must be served on the operator. Similarly, if an appeal is brought by someone other than Southern Water, notice of the appeal must also be served on Southern Water. This ensures that Southern Water is able to participate in any appeal, and its interests are not overlooked as it does not own and operate Havant Thicket Reservoir.
36. Annex 3 to this Appendix is a ‘Keeling Schedule’ setting out how the EP Regulations would apply in relation to the authorised development and the Havant Thicket Reservoir infrastructure with these proposed modifications.

Part 4 – Modification to the Water Supply (Water Quality) Regulations 2016

37. Part 4 makes a limited modification to the Water Supply (Water Quality) Regulations 2016. These Regulations require the sampling of sources of water for a public water supply, to ensure that they do not pose a risk to human health.

38. The modification made by paragraph 34 expands the definition of “abstraction point” so that, whilst the abstraction licences will identify the point of abstraction as a location at Bedhampton Springs, the point of abstraction for the purposes of the Water Quality Regulations is at Havant Thicket Reservoir. This ensures that samples may be taken for the purposes of ongoing water quality checks at the reservoir where specialist sampling equipment is to be located, rather than being required to be taken from pipelines at Bedhampton Springs.
39. Annex 4 to this Appendix is a ‘Keeling Schedule’ setting out how the 2016 Regulations would apply in relation to the authorised development and the Havant Thicket Reservoir infrastructure with this proposed modification.

Part 5 – Statutory Provisions for Inclusion in Licences for Abstraction from Havant Thicket Reservoir

40. Part 5 of Schedule 8 sets out provisions that must be included in the relevant abstraction licences. The intention of each of the provisions in this Part is to ensure that abstraction licensing will not impede the ability of the Project to provide the volumes of water that it has been designed for in order to meet the identified water need. The provisions also set out a framework for how abstraction licensing will operate given the extensive shared infrastructure and the complexity of the physical and commercial interfaces between Southern Water and Portsmouth Water.
41. Paragraph 36 provides a number of definitions, including a definition of “the shared pipelines”. This is the section of the pipelines transporting water between Havant Thicket Reservoir and Bedhampton Springs in both directions, up to the point within Bedhampton Springs at which the water from Havant Thicket Reservoir is directed into either a pipeline serving only Southern Water’s water supply, or a pipeline serving only Portsmouth Water’s water supply. The end of the shared pipeline at Bedhampton Springs represents the first point where the water abstracted from Havant Thicket Reservoir can be distinguished between water abstracted by Southern Water and water abstracted by Portsmouth Water.
42. Paragraph 37 sets out the conditions for inclusion in the licence to be granted to Southern Water. The first condition is that the licence must specify the minimum quantity of water authorised to be abstracted of not less than 115 MI/d, and the equivalent on an annual basis. As noted above, this approach ensures that the full water to be abstracted by both Southern Water and Portsmouth Water will be protected albeit Portsmouth Water’s share, not being required for Portsmouth Water’s water supply, will not be independently ring fenced. This approach futureproofs the full abstraction capacity of Havant Thicket Reservoir for Southern Water, reflecting that it is an integral part of Southern Water’s supply need and maximising the commercial flexibility to agree the terms for Portsmouth Water’s use of the water in Havant Thicket Reservoir without requiring the licence to be varied.
43. The second condition is that the licence must remain in force until it is revoked. This is appropriate given the nature of the project and that Havant Thicket Reservoir will mainly be filled by sustainable, recycled water. The design and intended operating regime of Havant Thicket Reservoir are such that there are not the environmental risks associated with a reservoir filled solely by abstraction from natural sources of water. This approach removes the administrative burden on both Southern Water and the EA from regular renewals of the licence on the same terms, and reduces the risk of inadvertent unlawful abstraction should a renewal be overlooked. The policy rationale for the move to time limited licences is to provide an opportunity for licences to be regularly reviewed in terms of both their need and the environmental impacts of the abstraction. The design of the Project, being to provide sustainable water to meet the identified public water supply, does not engage either policy directive.
44. Paragraph 38 sets out the conditions to be included in any licence for abstraction that is not held by Southern Water. The condition is that no such licence may authorise abstraction of more than 25 megalitres per day. If there is more than one such licence, the limit is to be aggregated across all such licences. This restriction on the volumes permitted for abstraction by third parties reflects the underlying commercial arrangement whereby if and when Portsmouth Water supplies Southern Water up to 21 MI/d from elsewhere in its network, it is entitled to take the same volume of water from Havant Thicket Reservoir plus an allowance for processing losses, etc. The limit is to be aggregated across all third party licences so that the DCO remains agnostic as to how Portsmouth

Water chooses to operate and license its abstraction from Havant Thicket Reservoir. The maximum abstraction level aligns the licences with the underlying commercial position and secures the remaining 90MI/d for the exclusive abstraction by Southern Water, this being the identified public water supply need for Southern Water which the Project is designed to provide.

45. Paragraph 39 provides for conditions to be included in all licences that use the shared pipelines to convey the water. These conditions reflect the physical complexities of the Project and the Havant Thicket Reservoir infrastructure, with specific provision needing to be made to manage the use of shared infrastructure whilst enabling independent monitoring of the volumes of water abstracted by each company.
46. The first condition is that the point of abstraction specified in the licence is to be a location at Bedhampton Springs, being a location that enables and facilitates the recording of abstraction by the individual licence holder. Moving the point of abstraction to Bedhampton Springs enables abstraction to be monitored individually for each licence, something that would not be possible were the point of abstraction to be at Havant Thicket Reservoir due to the shared use of the shared pipelines for all abstractions. It is to support this requirement that the WRA 1991 is proposed to be modified so that the shared pipelines are included as the same source of supply as Havant Thicket Reservoir. This practical solution enables each company to hold a licence for its own abstraction requirements, which in turn provides clarity for the purposes of enforcement should any over-abstraction take place.
47. The second condition is that all licences that utilise the shared pipelines must be subject to a limit on abstraction, aggregated across all relevant licences, of not less than the quantities specified in Southern Water's individual licence. This aggregated limit ensures that total abstraction may not exceed what has been identified for both companies, although the sum of the individual licences will be greater. The aggregated limit is set at the same level as Southern Water's individual licence, reflecting that Southern Water's individual licence will acquire the protected abstraction rights for both it and Portsmouth Water's commercial share.
48. The third condition is that the water abstracted under a licence must be recorded on equipment located as close as is reasonably practicable to the point of abstraction. This condition retains flexibility in the design of the pipework at Bedhampton Springs whilst also ensuring that abstraction flows are recorded accurately and before any unmetered discharges to waste may occur. The inclusion of this condition within the draft DCO enables the detailed design of the infrastructure at Bedhampton Springs to be developed with the metering requirements in mind, thereby reducing the risk of engineering challenges in delivering accurate and independent monitoring of each company's abstraction.
49. The final condition is that the information and data as to the abstraction carried out under an individual licence must be shared with all other licence holders utilising the shared pipeline, both at regular intervals and on request. This condition provides for openness and transparency in how each licence is being utilised, commensurate with the degree of shared infrastructure and reciprocity in the operation of the project and Havant Thicket Reservoir.

Part 6 – Rules for Enforcement of Relevant Licences

50. The final Part of Schedule 8 sets out rules to be applied in the event the shared aggregated limit on abstraction is breached. The rules provide a mechanism for identifying which party is responsible for any over-abstraction, ensuring that enforcement action or prosecution is taken against the culpable party. The rules reflect the underlying commercial position between Southern Water and Portsmouth Water, but do not require the EA to consider any underlying contractual entitlement.
51. The supply of water to Southern Water is to be prioritised in the event both Southern Water and Portsmouth Water require abstraction at the same time. This position has been reflected throughout Schedule 8, including by securing the full aggregated limit within the individual licence for Southern Water.
52. In the event the aggregated limit is exceeded by Southern Water, this would be reflected in an equivalent breach of Southern Water's individual licence. If the aggregated limit is exceeded and the excess is not also recorded on Southern Water's licence, responsibility for the excess must lie with

Portsmouth Water, whether or not that abstraction is in breach of Portsmouth Water's individual licence. This reflects the commercial arrangement whereby Southern Water has priority when drawing on the water from Havant Thicket Reservoir, subject to the limits on abstraction; any abstraction that exceeds the aggregated limit, that is not carried out by Southern Water, would necessarily have been abstracted contrary to the commercial position. This approach to enforcement is also consistent with Portsmouth Water having no identified need for the water in Havant Thicket Reservoir for its water supply, and that its abstraction rights are proposed to be not protected from derogation by Southern Water.

Sections 120 and 150 of the 2008 Act

53. Section 120 of the 2008 Act sets out the matters that may be included in a development consent order. Section 120(3) of the 2008 Act confirms that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. Sections 120(5)(a) and 120(5)(c) of the 2008 Act are clear that a development consent order may modify any statutory provision which relates to any matter for which provision may be made by the order and may include any provision that appears to the Secretary of State to be necessary or expedient to give full effect to any other provision of the order.
54. The fundamental purpose of the Project is to provide resilience to Southern Water's public water supply by making provision for the recycling of water, and for its conveyance to and from Havant Thicket Reservoir for storage, and thereafter for its transfer into Southern Water's public supply. The modifications to the provisions set out above are necessary to safeguard the practical fulfilment of these purposes and so are clearly within the scope of what may be included in a development consent order.
55. Section 150 (removal of consent requirements) of the 2008 Act, when read together with Schedule 2 (prescription of consents) to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 restricts the Secretary of State's capacity to include a provision in a development consent order, the effect of which is to remove a requirement for a prescribed consent, unless the relevant body that would otherwise provide that consent agrees. Licences under the Water Resources Act 1991 to abstract or impound water are prescribed consents for the purposes of section 150 of the 2008 Act.
56. However, the provisions of Schedule 8 do not have the effect of removing a requirement for a prescribed consent. The relevant body, predominantly the Environment Agency (albeit the Secretary of State also exercises some supervisory functions), will retain the capacity to determine such applications, subject to the modifications set out in this Schedule. Therefore, the Environment Agency's consent is not a pre-requisite under section 150 of the 2008 Act to the inclusion of the provisions of this Schedule in the Order, if it is made.

ANNEX 1

The Water Resources Act 1991 as proposed to be modified by the Order

CHAPTER 2

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 or drought permit under Chapter III of this Part, no person shall—

- (a) abstract water from any source of supply; or
- (b) cause or permit any other person so to abstract any water,

except in pursuance of a licence under this Chapter granted by the appropriate agency and in accordance with the provisions of that licence.

(2) Where by virtue of subsection (1) above the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Chapter, no person shall begin, or cause or permit any other person to begin—

- (a) to construct any well, borehole or other work by which water may be abstracted from those strata;
- (b) to extend any such well, borehole or other work; or
- (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,

unless the conditions specified in subsection (3) below are satisfied.

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

- (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Chapter; and
- (b) that—
 - (i) the well, borehole or work, as constructed or extended; or
 - (ii) the machinery or apparatus, as installed or modified,fulfils the requirements of that licence as to the means by which water is authorised to be abstracted.

(4) A person shall be guilty of an offence if

- (a) he contravenes subsection (1) or (2) above; or
- (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.

[\(4A\) Where the contravention of subsection \(1\) occurs in relation to a breach of the aggregated limit for abstraction from Havant Thicket Reservoir, the rules of enforcement in Part 6 of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* must be applied to determine the person that is guilty of the offence for the purposes of paragraph \(4\) and the extent of the contravention by that person.](#)

(5) A person who is guilty of an offence under this section shall be liable on summary conviction, or on conviction on indictment, to a fine.

(6) The restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the 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

Abstraction Licences

24A.—(1) Each licence to abstract water shall be of one of the following three types—

- (a) a licence to abstract water from one source of supply over a period of twenty-eight days or more for any purpose (a “full licence”);
- (b) a licence to abstract water from one source of supply over a period of twenty-eight days or more for the purpose of
 - (i) transferring water to another source of supply; or
 - (ii) transferring water to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations (whether underground or on the surface),in either case without intervening use (a “transfer licence”);
- (c) a licence to abstract water from one source of supply over a period of less than twenty-eight days (a “temporary licence”).

(2) In this Act, a reference (however expressed) to a licence to abstract water is to be taken as a reference to all types of licence, unless it is clear that a different meaning is intended.

Restrictions on impounding

25.—(1) Subject to the following provisions of this Chapter and to any drought order or drought permit under Chapter 3 of this Part, no person shall—

- (a) begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters; or
- (b) cause or permit the flow of any inland waters which are not discrete waters to be obstructed or impeded at any point by means of impounding works,

unless (in either case) the conditions mentioned in subsection (1A) below are satisfied.

(1A) The conditions are—

- (a) a licence under this Chapter granted by the appropriate agency to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;
- (b) the impounding works will not (or, as the case may be, do not) obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and
- (c) any other conditions or requirements imposed by the provisions, as for the time being in force, of the licence (whether as to the provision of compensation water or otherwise) are complied with.

(2) A person shall be guilty of an offence if

- (a) he contravenes subsection (1) above; or
- (b) he is for the purposes of this section the holder of a licence under this Chapter and 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 on summary conviction, or on conviction on indictment, to a fine.

(4) Subject to subsection (5) below, the restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

(5) Subject to subsection (6) below, the restriction on impounding works shall not apply in respect 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,
- (c) 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
- (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.

(9) In relation to impounding works, references to alteration include the removal or partial removal of those works, and cognate expressions shall be construed accordingly.

Enforcement notices

25A.—(1) Subject to the following provisions of this section, where it appears to the appropriate agency that a person is—

- (a) in breach of section 24(1) or (2) or section 25(1) above; or
- (b) for the purposes of section 24 or 25 above a holder of a licence under this Chapter and has not complied with a condition or requirement imposed by the provisions, as for the time being in force, of that licence,

the appropriate agency shall be entitled to serve an enforcement notice on him if the condition in subsection (2) below is satisfied.

(2) The condition is that it appears to the appropriate agency that the breach or failure to comply is causing or is likely to cause significant damage to the environment.

[\(2A\) In relation to a licence to abstract water from Havant Thicket Reservoir, the condition in subsection \(2\) that significant damage to the environment is being caused or is likely to be caused does not apply and the appropriate agency must instead be satisfied that there is being caused or is likely to be caused a risk to the resilience of a public water supply.](#)

[\(2B\) The appropriate agency must not serve an enforcement notice under paragraph \(1\) in relation to a licence for abstraction from Havant Thicket Reservoir, other than in accordance with the rules for enforcement in Part 6 of Schedule 8 to The Hampshire Water Transfer and Water](#)

Recycling Project Development Consent Order 202*, and the proper application of the rules for enforcement will be evidence of the extent of any breach of section 24(1) above.

- (3) An enforcement notice is a notice requiring the person on whom it is served
 - (a) to cease his breach of section 24(1) or (2) or section 25(1) above, or to comply with the condition or requirement in question; and
 - (b) to carry out any works or operations specified in the notice.
- (4) The works or operations which may be specified are works or operations which it appears to the appropriate agency are appropriate for the purpose of remedying or mitigating the effects of the breach or failure to comply, and may include—
 - (a) works or operations for the purpose, so far as it is reasonably practicable to do so, of restoring any affected waters, including any flora and fauna dependent on them, to their state immediately before the breach or failure to comply; and
 - (b) in the case of a breach of section 25(1) above, the removal of any unauthorised impounding works or the reversal of any unauthorised alteration to impounding works.
- (5) An enforcement notice must specify the periods within which the person on whom it is served must do each of the things specified in the notice.
- (6) Before serving an enforcement notice on any person, the appropriate agency shall take reasonable steps to consult that person about the works or operations which are to be specified in the notice.
- (7) The Secretary of State may by regulations make provision for or in connection with—
 - (a) the form or content of enforcement notices;
 - (b) requirements for consultation, before the service of an enforcement notice, with persons other than the person upon whom the notice is to be served;
 - (c) steps to be taken for the purposes of any consultation required under subsection (6) above or regulations made by virtue of paragraph (b) above;
 - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of an enforcement notice.
- (8) An enforcement notice is not invalid, or invalidly served, merely because of a failure to comply with subsection (6) above or with regulations made by virtue of subsection (7)(b) above.
- (9) The Secretary of State may, if he thinks fit in relation to any person, give directions to the appropriate agency as to whether or how it should exercise its powers under this section.
- (10) In proceedings for any offence under section 24 or 25 above against a person upon whom an enforcement notice has been served, the following are not to be taken as evidence that he has committed the offence—
 - (a) the fact that an enforcement notice has been served on him;
 - (b) the fact that he does not appeal against it;
 - (c) the fact that on an appeal against it the notice is confirmed (whether with or without modifications).

Rights of entry and appeals

25B. Sections 161B and 161C below (including any power to make regulations) shall apply in relation to enforcement notices as they apply in relation to works notices under section 161A below.

Consequences of not complying with an enforcement notice

25C.—(1) If a person on whom the appropriate agency serves an enforcement notice fails to comply with any of its requirements, he shall be guilty of an offence.

(2) A person who commits an offence under subsection (1) above shall be liable on summary conviction, or on conviction on indictment, to a fine.

(3) If a person on whom an enforcement notice has been served fails to comply with any of its requirements, the appropriate agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the appropriate agency in doing it.

(4) If the appropriate agency is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the appropriate agency may take proceedings in the High Court for the purpose of securing compliance with the notice.

Rights of navigation, harbour and conservancy authorities

26.—(1) Subject subsection (2) below, the restriction on abstraction shall not apply to any transfer, without intervening use, of water from inland waters described in the first column of the Table below to inland waters described in the corresponding entry in the second column, if the transfer is in the course of, or results from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.

Transfer from

Transfer to

A water system of the authority's.

The same water system.

A water system of the authority's.

Inland waters not forming part of that water system.

A supply reservoir of the authority's.

A water system of the authority's with which that reservoir is connected.

(2) Subsection (1) above shall not apply to a transfer of water from a water system to any inland waters outside that water system in order to

- (a) empty a dry dock; or
- (b) introduce into those inland waters all or part of a quantity of water to be abstracted from any connected inland waters in pursuance of a licence to do so granted under this Chapter.

(3) The restriction on impounding works shall not apply to—

- (a) the construction or alteration of impounding works; or
- (b) the obstruction or impeding of inland waters by means of impounding works,

in the course of the performance by a navigation authority, harbour authority or conservancy authority of their functions as such an authority, unless the construction, alteration, obstruction or impeding affects any inland waters in relation to which the authority does not have functions.

(4) In this section, references to—

- (a) an authority's water system are to a water system in relation to which the authority has functions;
- (b) an authority's supply reservoir are to a reservoir—
 - (i) belonging to a navigation authority;
 - (ii) used for the purposes of supplying that navigation authority's water system; and
 - (iii) which does not discharge to any inland waters other than that water system.

(5) For the purposes of this section, "water system" means the canals, the harbours, or the canals and harbours constituting the system in question—

- (a) together with the locks, docks, balancing reservoirs, weirs and other works associated with the system (other than any supply reservoir as described in subsection (4)(b) above); but
- (b) excluding any part of the system which consists of a navigable river or part of one.

Rights to abstract small quantities

27.—(1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres in any period of twenty-four hours, if the abstraction does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted during the period.

(2) In the case of any abstraction of water from underground strata which falls within subsection (1) above, the restriction imposed by section 24(2) above shall not apply—

- (a) to the construction or extension of any well, borehole or other work; or
- (b) to the installation or modification of machinery or other apparatus,

if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.

(3) Where a person is authorised by a licence under this Chapter to carry on a particular abstraction operation (or series of operations), this section does not permit him to carry it on beyond the authorisation conferred by the licence.

Variation of small quantity threshold

27A.—(1) The Secretary of State may by order made by statutory instrument provide that section 27(1) above is to have effect in relation to

- (a) a geographical area; or
- (b) a class of inland waters; or
- (c) a class of underground strata; or
- (d) a class of inland waters or of underground strata within a geographical area,

(in each case as specified in the order) as if for “twenty cubic metres” there were substituted another quantity specified in the order.

(2) The Secretary of State shall not make such an order except upon the application of the appropriate agency; but he may direct the appropriate agency to make such an application.

(3) Such an order may

- (a) make different provision in relation to the different paragraphs in subsection (1) above; and
- (b) make different provision for different areas, waters or underground strata.

(4) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (1) above and with respect to the making of such orders.

(5) An order under subsection (1) above which specifies a greater quantity than the one which previously had effect in relation to the area, waters or strata in question may make provision for a licence to abstract water granted under this Chapter—

- (a) which is for the time being in force; but
- (b) which by virtue of the order has become wholly or partly unnecessary,
- (c) to cease to have effect, or to cease to have effect to the extent specified in the order.

(6) An order under subsection (1) above may include provision for or in relation to the payment by the appropriate agency of compensation, in cases specified in the order, to a person who—

- (a) immediately before the making of an order under subsection (1) above, had been in a position to carry out an abstraction to which, by virtue of section 27(1) above, the restriction on abstraction did not apply;

- (b) following the making of that order, requires a licence under this Chapter in order to carry out that abstraction; and
- (c) has suffered loss or damage as a result of his having been—
 - (i) refused such a licence in respect of that abstraction; or
 - (ii) granted such a licence, but in respect of an abstraction of more limited extent than the one he had been in a position to carry out.

(7) Paragraphs (e) and (f) of section 219(2) below apply in relation to orders under subsection (1) above as they apply to regulations made under this Act.

(8) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Curtailment of rights under section 27

28. [...]

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.

(1A) The restriction on abstraction shall not apply to any abstraction of water from inland waters within the district of an internal drainage board if—

- (a) the abstraction is carried out by or on behalf of that board in connection with its functions;
- (b) the water abstracted is transferred to another area of inland waters within the board's district without intervening use; and
- (c) the sole or main purpose of the transfer is to augment that other area of inland waters.

(2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within subsection (1) or (1A) above) is an emergency abstraction and the person abstracting the water complies with subsection (2B) below.

(2A) An abstraction of water is an emergency abstraction if, in the opinion of the abstractor, an emergency has arisen which makes the abstraction necessary to prevent immediate danger of interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface) or, in relation to such operations, to prevent an immediate risk—

- (a) to a human being of death, personal injury or harm to health;
- (b) of serious damage to works resulting from any such operations; or
- (c) of serious damage to the environment.

(2B) In the case of any emergency abstraction, the person abstracting the water shall before the end of the period of five days beginning with the date on which the abstraction started give notice to the appropriate agency of

- (a) the abstraction and of the source of supply in question; and
- (b) the reasons for the abstractor's opinion that an emergency had arisen and that the abstraction was necessary.

(2C) The appropriate agency may give notice to the person referred to in subsection (2B) above that in the appropriate agency's opinion an emergency had not arisen, or that the abstraction is not, or is no longer, necessary for any of the reasons set out in subsection (2A) above; and, if the appropriate agency does so, the restriction on abstraction shall apply to the abstraction from the time when the notice is served (and, if applicable, the restriction imposed by section 24(2) above shall apply accordingly).

(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,
 - (c) 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” —
- (a) includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea; but
 - (b) does not include warping, irrigation (including spray irrigation), or transferring water from one source of supply to another (whether with or without intervening use) solely or mainly in order to augment the latter.

Notices with respect to borings not requiring licences

30. [...]

Appeals against conservation notices under section 30

31. [...]

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—

- (a) for extinguishing fires or protecting life and property in the event of fire; or
- (b) for the purpose of testing apparatus used for either of those purposes or of training or practice in the use of such apparatus.

(3) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply—

- (a) to any abstraction of water;
- (b) to the construction or extension of any well, borehole or other work; or
- (c) to the installation or modification of machinery or other apparatus,

if the abstraction, construction, extension, installation or modification is for any of the purposes specified in subsection (4) below and takes place with the consent of the appropriate agency and in compliance with any conditions imposed by the appropriate agency.

(4) The purposes mentioned in subsection (3) above are—

- (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
- (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work or any inland waters.

Power to provide for further rights to abstract

33. [...]

Power to provide for further exemptions

33A.—(1) The Secretary of State may make regulations providing for further cases in which—

- (a) the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions imposed by section 24 above); or
- (b) the restriction on impounding works,

shall not apply; and in this section such a case is referred to as an “exemption”.

- (2) The regulations may, in particular, make provision, in relation to an exemption—
- (a) for the exemption to apply only for a prescribed period;
 - (b) for the exemption not to apply unless prescribed conditions are satisfied, or continue to be satisfied;
 - (c) for the appropriate agency to be notified, or its consent obtained—
 - (i) before any particular abstraction operation or series of such operations begins; or
 - (ii) in connection with such an operation or series of operations relating to the abstraction of water in underground strata, before any other thing which is mentioned in section 24(2) above is done; or
 - (iii) before any impounding works are constructed or altered, in reliance on the exemption.
- (3) The regulations may provide for an exemption to apply generally or to relate to—
- (a) a prescribed geographical area;
 - (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 above); or
 - (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works).
- (4) Subject to subsection (5) below, if regulations under this section provide for an exemption falling within subsection (1)(a) above, the regulations shall—
- (a) if appropriate, make provision for the exemption not to permit a person who is authorised by a licence under this Chapter to carry on an abstraction operation (or series of operations) to carry it on beyond the authorisation conferred by the licence; and
 - (b) make provision as to whether or not, in relation to any abstraction, the exemption provided for by the regulations is to be counted cumulatively with any other exemption which a person has by virtue of this section or section 27 above.
- (5) The regulations may make provision for a licence granted under this Chapter and which is for the time being in force to cease to have effect, or to cease to have effect to the extent specified in the regulations, if it authorises an activity which falls to any extent within the exemption provided for by the regulations.

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, be accompanied by such reports, and be verified by such evidence, as may be prescribed.

(2) The Secretary of State may by regulations make provision as to the manner in which applications for the grant of licences under this Chapter are to be dealt with, including provisions requiring the giving of notices of, and information relating to, the making of such applications or decisions on such applications, and provision for making such applications available for public inspection.

(3) Without prejudice to the generality of subsection (2) above, provision shall be made by regulations under this section for securing that, in such circumstances as may be prescribed (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park authorities)—

- (a) notice of any such application will be given to such one or more National Park authorities as may be determined in accordance with the regulations; and
- (b) the matters to which the appropriate agency or, as the case may be, the Secretary of State is to have regard in dealing with the application will include any representations made by any such National Park 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.

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, as respects the place (or, if more than one, as respects each of the places) at which the proposed abstractions are to be effected, he satisfies the appropriate agency that—

- (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land contiguous to the inland waters at that place (or those places); and
- (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).

(3) In relation to abstractions from underground strata, a person shall be entitled to make the application if he satisfies the appropriate agency that—

- (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of or comprising those underground strata; and
- (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).

(3A) The appropriate agency may, in particular, take evidence of a person's occupation of land to be evidence of his right of access to it.

(4) Any reference in this section to a person who will have a right of access to land of any description—

- (a) includes a reference to a person who satisfies the appropriate agency that he has entered into negotiations for the acquisition of an interest in land of that description such that, if the interest is acquired by him, he will be entitled to a right of access to that land; and
- (b) without prejudice to the application of paragraph (a) above to a person who is or can be authorised to acquire land compulsorily, also includes any person who satisfies the appropriate agency 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. [...]

Applications: types of abstraction licences

36A.—(1) The appropriate agency may decide that—

- (a) an application for a full licence, a transfer licence or a temporary licence ought to be for one of the other types of licence;
- (b) a number of applications for licences (of any type or types) to abstract water from a particular source of supply ought to be treated as an application for a single such licence (of any type);
- (c) an application for a single licence (of any type) to abstract water from a particular source of supply ought to be treated as a number of applications for such licences (of any type or types); or
- (d) any such application as is referred to above ought to be accompanied by an application for revocation of an existing licence to abstract water.

(2) The appropriate agency may arrive at the decision referred to in paragraph (a), (b), (c) or (d) of subsection (1) above on the basis of its assessment of any one or more of the following—

- (a) the likely effect of the abstraction (or abstractions) for which the applicant has applied for a licence (or licences);
- (b) the likely effect of that abstraction (or those abstractions) taken together with abstractions under any other licence held by the applicant, or abstractions which would be authorised under any other licence for which the applicant has applied;
- (c) any other prescribed matter.

(3) If the appropriate agency does so decide, it shall serve a notice of its decision on the applicant; and, subject to subsections (4) to (8) below, shall deal with the application (or applications) accordingly (which, if the appropriate agency made the decision referred to in paragraph (d) of subsection (1) above in relation to any application (or applications), means not publishing any notice under section 37 below, or taking any further step in connection with the application (or applications), until the application for revocation has been received).

(4) The applicant may by notice appeal to the Secretary of State against the decision, and shall serve a copy of any such notice on the appropriate agency.

(5) That notice, and the copy of it, shall be served in such manner and within such period as may be prescribed.

(6) If the appropriate agency serves a notice under subsection (3) above, it shall not publish any notice under section 37 below, or take any further step in connection with the application (or applications), before—

- (a) the end of the period within which notice of an appeal may be served on the Secretary of State; or
- (b) if notice of an appeal is so served, the appeal has been determined.

(7) The Secretary of State—

- (a) may allow or dismiss the appeal, or vary any part of the decision of the appropriate agency, whether the appeal relates to that part of the decision or not; and
- (b) shall direct the appropriate agency to deal with the application, or applications, accordingly (which, if the appropriate agency's decision was made under paragraph (d) of subsection (1) above in relation to any such application, and that decision is upheld, may mean not publishing any notice under section 37 below, or taking any further step in connection with the application, until the application for revocation has been received).

(8) Subsections (2) and (7) of section 44 below apply in relation to an appeal under this section as they apply in relation to an appeal under section 43 below.

(9) This section is subject to section 1 of the 1995 Act (delegation or reference of appeals).

Publication of application for licence

37.—(1) The appropriate agency shall publish a notice of an application for—

- (a) a full licence or a transfer licence; or

- (b) a licence under this Chapter to obstruct or impede the flow of any inland waters by means of impounding works,

in the prescribed way or (if no way is prescribed) in a way calculated to bring the application to the attention of persons who in the appropriate agency's view are likely to be affected by the licence.

(2) Not later than the date on which that notice is first published, the appropriate agency shall also serve a copy of it on the persons referred to in subsection (3) below (except the applicant, if the applicant is one of those persons).

(3) Those persons are—

- (a) any water undertaker within whose area any proposed point of abstraction or impounding is situated;
- (b) any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at any such proposed point; and
- (c) the drainage board for any internal drainage district within which any such proposed point is situated,

but paragraphs (b) and (c) above do not apply if the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters.

(4) A notice for the purposes of the preceding provisions of this section shall—

- (a) be in the prescribed form and shall include any prescribed matters; and
- (b) state that any person may make representations in writing to the appropriate agency with respect to the application at any time before the end of a period specified in the notice.

(5) The period referred to in subsection (4)(b) above—

- (a) begins on the date the notice referred to in subsection (1) above is first published as mentioned there; and
- (b) shall not end before the end of the period of twenty-eight days beginning with that date.

(6) The Secretary of State may make regulations providing for—

- (a) the requirements of subsection (2) above, or of both subsections (1) and (2) above, not to apply in prescribed cases;
- (b) notices of applications to exclude prescribed classes of information, either generally or as respects prescribed classes of application.

(7) In this section, "proposed point of abstraction or impounding", in relation to an application for a licence referred to in subsection (1) above, means a place where a licence, if granted in accordance with the application, would authorise—

- (a) water to be abstracted; or
- (b) the flow of inland waters to be obstructed or impeded by means of impounding works,

(as the case may be).

(8) This section is subject to section 37A below.

Power to dispense with publication requirements

37A.—(1) The Secretary of State may by regulations make provision for—

- (a) enabling the appropriate agency; or
- (b) him, in the case of applications referred to him in accordance with section 41 below,

to direct or determine that the requirements of subsections (1) and (2) of section 37 above may in any case (except where the appropriate agency is the applicant) be dispensed with, if in that case it appears to the appropriate agency (or, as the case may be, the Secretary of State) to be appropriate to do so.

General consideration of applications

38.—(1) The appropriate agency shall not determine any application for a licence under this Chapter before the end of the period specified in the notice referred to in section 37(4)(b) above.

(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—

- (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
- (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.

(1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).

(1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.

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

- (a) may grant a licence containing such provisions as the appropriate agency considers appropriate; or
- (b) if, having regard to the provisions of this Chapter, the appropriate agency considers it necessary or expedient to do so, may refuse to grant a licence.

(3) Without prejudice to section 39(1) below, the appropriate agency, in dealing with any application for a licence under this Chapter, shall have regard to all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to—

- (a) any representations in writing relating to the application which are received by the appropriate agency before the end of the period mentioned in subsection (1) above; and
- (b) the requirements of the applicant, in so far as they appear to the appropriate agency to be reasonable requirements;

and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the appropriate agency under section 20C above.

(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if in relation to the application in question the requirements of section 37(1) above do not apply by virtue of section 37(6)(a) above or have been dispensed with by virtue of section 37A above.

Obligation to have regard to existing rights and privileges

39.—(1) Subject to subsection (1A) below, the appropriate agency shall not, except with the consent of the person entitled to the rights, grant a licence 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 any rights which, at the time when the application is determined by the appropriate agency, are protected rights for the purposes of this Chapter.

(1A) Subsection (1) above does not apply when—

- (a) the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- (b) the determination of an application is being concluded in accordance with subsection (1C) of that section.

(2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the appropriate agency, in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.

(3) [...]

(4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—

- (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 (as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there.

(5) For the purposes of subsection (2) above the appropriate agency shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—

- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
- (b) that decision has not been quashed or reversed.

Protected rights for the purposes of this Chapter

39A. ~~(1) For the purposes of this Chapter, a right is a protected right if—~~

(1) Subject to subsection (1A), for the purposes of this Chapter, a right is a protected right if—

- (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
- (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
- (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
- (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
- (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
- (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.

(1A) A right of Portsmouth Water Limited as holder of a full licence to abstract water from Havant Thicket Reservoir is not taken to be, by virtue of section 48(1) below, a protected right for the purposes of this Chapter.

(1B) For the purposes of an application for a full licence for Portsmouth Water Limited to abstract not more than 25 megalitres of water per day from Havant Thicket Reservoir, where no such licence has previously been granted it is deemed that the grant of the licence will not constitute a derogation from any protected rights held by Southern Water Services Limited in respect of abstraction from Havant Thicket Reservoir.

(2) A person who is in a position to carry out an abstraction of a quantity of water which—

- (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
- (b) also falls within subsection (4) or (5) below,

shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.

(3) The maximum quantity is the lower of the following—

- (a) twenty cubic metres;
- (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).

(4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—

- (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
- (b) it is abstracted for use on that holding for either or both of the following purposes—
 - (i) the domestic purposes of the occupier’s household;
 - (ii) agricultural purposes other than spray irrigation.

(5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.

(6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.

(7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—

- (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
- (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,

and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.

(8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—

- (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
- (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.

(9) The period referred to in subsection (8)(a) above is—

- (a) four years; or
- (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the appropriate agency may determine on the application of the holder of the old licence.

(10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.

(11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.

(12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.

Register of certain protected rights

39B.—(1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the appropriate agency, of one or more registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.

(2) The regulations may, in particular, provide for—

- (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
- (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
- (c) the form and contents of the register, and its inspection by members of the public;
- (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
- (e) cases in which it is the duty of the appropriate agency to include a protected right in the register without an application for inclusion having been made.

(3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.

(4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.

(5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.

(6) An order under subsection (3) above may be made only on the application of the appropriate agency; but the Secretary of State may direct the appropriate agency to make such an application.

(7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.

(8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.

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 appropriate agency, in dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.

(3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined

under Chapter I of this Part, the appropriate agency, in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—

- (a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or
 - (b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.
- (4) Without prejudice to sections 38(3) and 39(1) above, where—
- (a) an application for a licence under this Chapter relates to abstraction from underground strata; and
 - (b) it appears to the appropriate agency that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are not discrete waters,

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

Secretary of State's power to call in applications

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

- (2) A direction under this section—
- (a) may relate either to a particular application or to applications of a class specified in the direction; and
 - (b) may except from the operation of the direction such classes of applications as may be specified in the direction in such circumstances as may be so specified.
- (3) An application may not be referred to the Secretary of State under this section—
- (a) if in relation to the application the appropriate agency is still considering whether to make any such decision as is referred to in subsection (1) of section 36A above, or if it has made such a decision but has not yet served the notice referred to in subsection (3) of that section; or
 - (b) where the appropriate agency has served a notice on the applicant under subsection (3) of that section, until the period for appealing under that section has expired or (if the applicant appeals) the appeal has been determined.

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 appropriate agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the appropriate agency to be heard with respect to the application.

[\(2A\) If the application relates to abstraction or impounding in connection with Havant Thicket Reservoir, any opportunity to appear and to be heard afforded to the applicant under paragraph \(b\) of subsection \(2\) must also be afforded to Southern Water Services Limited, and if Southern](#)

Water Services Limited makes a request to be heard with respect to the application, the Secretary of State must act as mentioned in paragraph (a) or (b) of subsection (2).

(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 appropriate agency, except the references in sections 37 and 38(3)(a), were a reference to the Secretary of State; and
- (b) any reference to section 39(1) above were a reference to subsection (4) below.

(4) Subject to subsection (4A) below, in determining any called-in application and, in particular, in determining what (if any) directions 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 authorised—

- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- (c) 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.

(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.

(5) Where the decision of the Secretary of State on a called-in application is that a licence is to be granted, the decision shall include a direction to the appropriate agency to grant a licence containing such provisions as may be specified in the direction.

(6) The decision of the Secretary of State on any called-in application shall be final.

(7) In this section “called-in application” means an application referred to the Secretary of State in accordance with directions under section 41 above.

Appeals to the Secretary of State.

43.—(1) Where an application has been made to the appropriate agency for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—

- (a) the applicant is dissatisfied with the decision of the appropriate agency on the application; or
- (b) the appropriate agency fails within the period specified in subsection (2) below to give to the applicant either—
 - (i) notice of the appropriate agency’s decision on the application; or
 - (ii) notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.

(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).

(2) The period mentioned in subsection (1)(b) above is—

- (a) except in a case falling within paragraph (b) below, such period as may be prescribed; and
- (b) where an extended period is at any time agreed in writing between the applicant and the appropriate agency, the extended period.

(3) A notice of appeal under this section shall be served—

- (a) in such manner as may be prescribed; and
- (b) within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
 - (i) the date on which the decision to which it relates was notified to the applicant; or

- (ii) the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.

(4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the appropriate agency.

(5) Where any representations in writing with respect to an application were made within the period specified in any such notice as is referred to in section 37(4)(b) above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the appropriate agency to serve a copy of the notice of appeal on each of the persons who made those representations.

(6) Where the application referred to in subsection (1) relates to abstraction or impounding in connection with Havant Thicket Reservoir, Southern Water Services Limited may take such action as the applicant is permitted to do under this section, provided always that the notice of appeal must be served on the applicant for the licence at the same time as it is served on the appropriate agency under subsection (4).

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 appropriate agency, whether the appeal relates to that part of the decision or not; and
- (b) may deal with the application as if it had been made to him in the first 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 appropriate agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the appropriate agency to be heard with respect to the appeal.

(2A) If the appeal relates to abstraction or impounding in connection with Havant Thicket Reservoir, any opportunity to appear and be heard afforded to the applicant under paragraph (b) of subsection (2) must also be afforded to Southern Water Services Limited, and if Southern Water Services Limited makes a request to be heard with respect to the appeal, the Secretary of State shall act as mentioned in paragraph (a) or (b) of subsection (2).

(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) Subject to subsection (4A) below, in determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—

- (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.

(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.

(5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—

- (a) any reference in those provisions to the appropriate agency, were a reference to the Secretary of State; and
- (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.

(6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the appropriate agency, as the case may be—

- (a) to grant a licence containing such provisions as may be specified in the direction;
- (b) to vary the licence so as to contain such provisions as may be so specified; or
- (c) to revoke the licence.

(7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

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 of the appropriate agency under section 36A above or on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.

(2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park authorities)—

- (a) notice of any appeal against the decision on such an application, will be served on any National Park 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.

(2A) Subsection (2) above does not apply in relation to appeals against decisions of the appropriate agency under section 36A above.

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

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 full licence under this Chapter shall, and any other licence under this Chapter to abstract water may, make—

- (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Chapter; and

- (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.

(2A) For the purposes of section 61(4A) below—

- (a) every full licence under this Chapter which is for a term exceeding twelve years shall; and
- (b) any transfer licence under this Chapter which is for a term exceeding twelve years may,

specify a minimum value for the quantity referred to in subsection (2)(a) above.

(3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.

(4) Every licence under this Chapter to abstract water shall also specify the purposes for which water abstracted in pursuance of the licence is to be used.

~~(5) Every licence under this Chapter to abstract water shall state—~~

~~(a) the date on which it takes effect; and~~

~~(b) the date on which it expires.~~

(5) Every licence under this Chapter to abstract water shall state—

(a) the date on which it takes effect; and

(b) the date on which it expires or that the licence will remain in force until revoked.

(5A) Every licence under this Chapter to obstruct or impede any inland waters shall remain in force until revoked.

(6) Different provision may be made by the same licence with respect to any one or more of the following matters, that is to say—

- (a) the abstraction of water during different periods;
- (b) the abstraction of water from the same source of supply but at different points or by different means;
- (c) the abstraction of water for use for different purposes;

and any such provision as is mentioned in subsection (2) above may be made separately in relation to each of the matters for which (in accordance with this subsection) different provision is made in the licence.

(7) Nothing in subsection (6) above shall be construed as preventing two or more licences from being granted to the same person to be held concurrently in respect of the same source of supply, if the licences authorise the abstraction of water at different points, by different means or for different purposes.

(8) Every full licence for abstraction from Havant Thicket Reservoir must contain such provisions as appear to the appropriate agency to correspond as nearly as may be to the provisions of Part 5 of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*.

Limited extension of abstraction licence validity

46A.—(1) If the condition in subsection (2) below is met, a full licence or a transfer licence whose term exceeded twelve months but whose expiry date (“the expiry date”) has passed shall be treated for all the purposes of this Act as not expiring until the date mentioned in subsection (4) below.

(2) The condition is that the appropriate agency receives, not later than the beginning of the period of three months ending on the expiry date (or such later date before the expiry date as the appropriate agency agrees), a valid application for a new licence—

- (a) for abstraction from the same point as the abstraction licensed by the expiring licence;
- (b) whose holder would be the same as the holder of the expiring licence; and

(c) which would take effect immediately after the expiry date.

(3) For the purposes of subsection (2) above, a “valid” application is one which complies with all the requirements of this Act in relation to the making of applications for licences of the type in question.

(4) The date referred to in subsection (1) above is whichever is the later of—

- (a) if a new licence is granted (whether or not on the terms applied for), the date on which it takes effect;
- (b) otherwise—
 - (i) except where the Secretary of State calls in an application under section 41 above, the expiry of the period for appealing under section 43 above, or if an appeal is brought, the date of its withdrawal; or
 - (ii) where the Secretary of State decides (under section 42 or 44 above) that no licence is to be granted, the date on which that decision is notified to the applicant.

Power to impose general conditions with respect to licensed activity by water companies

46B.—(1) The appropriate national authority may by regulations make provision for the purpose of securing that water industry licences under this Chapter have effect subject to—

- (a) conditions specified in the regulations, or
- (b) rules of general application specified in or made under the regulations.

(2) A condition or rule to which a licence is subject by virtue of regulations under this section is to be treated for the purposes of this Chapter as a provision of the licence.

(3) For the purposes of this section, a licence under this Chapter is a “water industry licence” if it is held by—

- (a) a water undertaker or a sewerage undertaker, or
- (b) it is held by a water supply licensee or sewerage licensee, within the meaning of the Water Industry Act 1991, for the purposes of the activities to which its water supply licence or sewerage licence relates;

and regulations under this section may apply to water industry licences granted before the coming into force of this section.

(4) In this section, “the appropriate national authority” means—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.

(5) Section 219 (general provision about regulations) applies to the power of the Welsh Ministers under this section as it applies to that of the Secretary of State, with the necessary modifications (including the substitution of “Senedd Cymru” for “either House of Parliament” in subsection (1)).

Holders of licence.

47.—(1) Every licence under this Chapter 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 is the holder of the licence for the purposes of this Act, subject to sections 59A to 59C and 67 below.

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.

(2) In any action brought against a person in respect of the abstraction of water from a source of supply (other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply), it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—

- (a) that the water was abstracted in pursuance of a licence under this Chapter; and
- (b) that the provisions of the licence were complied with.

(3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—

- (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
- (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
- (c) that the other requirements of the licence (if any) were complied with.

(4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

Civil remedies for loss or damage due to water abstraction

48A.—(1) Subject to subsection (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.

(2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.

(3) Such a claim shall be treated as one in tort for breach of statutory duty.

(4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public, or would put public health or safety at risk.

(5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.

(6) Nothing in this section prevents or affects a claim for negligence or breach of contract.

(7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage—

- (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section);
- (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59C(6) below) disapplying that duty; or
- (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence,

but without prejudice to the application of section 48 above.

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

49. [...]

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

50. [...]

Modification on application of licence holder.

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

(1A) The holder of a licence under this Chapter to obstruct or impede the flow of inland waters (an “impounding licence”) may apply to the appropriate agency to revoke the licence and, on any such application, the appropriate agency may revoke the licence accordingly.

(1B) The appropriate agency may require conditions to be met to its satisfaction before revocation of the impounding licence takes effect, and those conditions may in particular include conditions—

- (a) requiring the removal of all or part of the impounding works;
- (b) as to the restoration of the site of the impounding works to a state which is satisfactory to the appropriate agency;
- (c) relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.

(1C) The person making an application under subsection (1A) above (“the applicant”) may by notice appeal to the Secretary of State if—

- (a) he is dissatisfied with the decision of the appropriate agency as to—
 - (i) whether his licence may be revoked; or
 - (ii) any conditions imposed by virtue of subsection (1B) above; or
- (b) the appropriate agency fails to give notice of its decision to the applicant within the prescribed period or within such extended period as may be agreed in writing between the appropriate agency and the applicant.

(1D) The Secretary of State may by regulations make provision with respect to—

- (a) the manner in which notices of appeal under subsection (1C) above shall be served;
- (b) the period within which such notices shall be served;
- (c) the procedure on any such appeal.

(1E) Where an appeal is brought under subsection (1C) above, the Secretary of State may—

- (a) allow or dismiss the appeal or reverse or vary any part of the decision of the appropriate agency, whether the appeal relates to that part of the decision or not; and
- (b) may deal with the application as if it had been made to him in the first place.

(1F) The decision of the Secretary of State on any appeal under subsection (1C) above shall be final.

(1G) Subsections (1C) to (1F) above are subject to section 114 of the 1995 Act (delegation or reference of appeals).

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

(2A) An application may not be made under subsection (2) above to convert an abstraction licence of one type into an abstraction licence of a different type.

(3) Subject to subsection (4) below, the provisions of sections 37 to 44 above shall apply (with the necessary modifications) to applications under subsection (2) above, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Chapter.

(4) Where the variation proposed in an application under subsection (2) above is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods—

- (a) sections 37 and 38(1) above shall not apply by virtue of subsection (3) above; and

- (b) sections 43 and 44 above, as applied by that subsection, shall have effect as if subsection (5) of section 43 and paragraph (a) of section 44(3) were omitted.

Proposals for modification at instance of the appropriate agency or Secretary of State.

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

(1ZA) The proposals formulated under subsection (1) must not have the effect of reducing the minimum quantity of water authorised to be abstracted by Southern Water Services Limited from Havant Thicket Reservoir below the quantities specified in paragraph 37(a) of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, unless with the consent of Southern Water Services Limited.

(1A) In the case of a licence to obstruct or impede any inland waters, a variation may take the form of a requirement that the impounding works be modified in ways specified in the proposed new provision of the licence.

(2) Where—

- (a) it appears to the Secretary of State (either in consequence of representations made to the Secretary of State or otherwise) that a licence under this Chapter ought to be reviewed; but
- (b) no proposals for revoking or varying the licence have been formulated by the appropriate agency under subsection (1) above,
- (c) the Secretary of State may, as he may consider appropriate in the circumstances, give the appropriate agency a direction under subsection (3) below.

~~(3) A direction under this subsection may—~~

- ~~(a) direct the appropriate agency to formulate proposals for revoking the licence in question; or~~
- ~~(b) direct the appropriate agency to formulate proposals for varying that licence in such manner as may be specified in the direction.~~

(3) A direction under this subsection may—

- (a) direct the appropriate agency to formulate proposals for revoking the licence in question; or
- (b) direct the appropriate agency to formulate proposals for varying that licence in such manner as may be specified in the direction.

save that no direction may be given, the effect of which would be to reduce the minimum quantity of water authorised to be abstracted by Southern Water Services Limited from Havant Thicket Reservoir below the quantities specified in paragraph 37(a) of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, other than with the consent of the licence holder.

~~(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 prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.~~

(4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence that relates to or is connected with Havant Thicket Reservoir must—

- (a) be served on the holder of the licence;
- (b) be served on Southern Water Services Limited; and

(c) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.

(5) If—

- (a) a licence with respect to which any proposals are formulated under this section relates to any inland waters; and
- (b) the proposals provide for variation of that licence,

a copy of the notice for the purposes of subsection (4) above shall, not later than the date on which it is first published as mentioned in subsection (4)(b) above, be served on any navigation authority, harbour authority or conservancy authority having functions in relation to those waters at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.

(6) A notice for the purposes of subsection (4) above shall—

- (a) include any prescribed matters; and
- (b) state that, before the end of a period specified in the notice—
- (c) the holder of the licence may give notice in writing to the appropriate agency objecting to the proposals; and
- (d) any other person may make representations in writing to the appropriate agency with respect to the proposals.

(7) The period referred to in subsection (6)(b) above—

- (a) begins on the date the notice referred to in subsection (4) above is first published as mentioned there; and
- (b) shall not end before the end of the period of twenty-eight days beginning with that date.

Modification in pursuance of proposals under section 52.

53.—(1) Subject to the following provisions of this section, where the appropriate agency has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—

- (a) if the proposals are for the revocation of the licence, revoke the licence; and
- (b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.

(2) The appropriate agency shall not proceed with any proposals formulated under section 52 above before the end of the period specified, in accordance with subsection (7) of that section, for the purposes in relation to those proposals of subsection (6) of that section.

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

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

(5) Where the appropriate agency proceeds with any proposals under subsection (3) above and the proposals are proposals for varying the licence, the provisions of sections 38(3), 39(1) and (2) and 40 above shall apply (with the necessary modifications) to any action of the appropriate agency in proceeding with the proposals as they apply to the action of the appropriate agency in dealing with an application for a licence.

Reference to modification proposals to the Secretary of State

54.—(1) Where any proposals of the appropriate agency with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—

- (a) the proposals;
- (b) the objection of the holder of the licence; and
- (c) any representations in writing relating to the proposals which were received by the appropriate agency before the end of the period mentioned in subsection (2) of that section,

and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.

(2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—

- (a) cause a local inquiry to be held; or
- (b) afford to the holder of the licence and the appropriate agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the appropriate agency 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 appropriate agency were a reference to the Secretary of State;
- (b) any reference to the application were a reference to the proposals; and
- (c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.

(5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the appropriate agency to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.

(6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

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 appropriate agency and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the Secretary of State with respect to the application.

(5) In this section and section 56 below “fishing rights”, in relation to any inland waters, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in those waters, where the right in question—

- (a) constitutes or is included in an interest in land; or
- (b) is exercisable by virtue of an exclusive licence granted for valuable consideration;

and any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights.

(6) In this section any reference to a right included in an interest in land is a reference to a right which is exercisable only by virtue of, and as a right incidental to, the ownership of that interest.

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 appropriate agency or from the holder of the licence.

(2) Before determining on an application under section 55 above whether a licence should be revoked or varied the Secretary of State may, if he thinks fit—

- (a) cause a local inquiry to be held; or
- (b) afford to the applicant, the holder of the licence and the appropriate agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant, the holder of the licence or the appropriate agency to be heard with respect to the proposals.

(3) Subject to subsections (4) and (5) below, on an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied unless—

- (a) the grounds of the application, as mentioned in subsection (3) of that section, are established to his satisfaction; and
- (b) he is satisfied that the extent of the loss or damage which the application 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 appropriate agency.

(5) Where the Secretary of State determines, on an application under section 55 above, that a licence shall be varied, the variation shall be limited to that which, in the opinion of the Secretary of State, is requisite having regard to the loss or damage which the applicant has sustained as mentioned in subsection (3) of that section.

(6) Where the decision of the Secretary of State on an application under section 55 above in respect of any licence is that the licence should be revoked or varied, the decision shall include a direction to the appropriate agency to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.

(7) A decision of the Secretary of State on an application under section 55 above shall be final.

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 appropriate agency that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.

(2) Subject to subsections (3) and (4) below, where this section applies the appropriate agency may serve a notice on the holder of any of the licences reducing, during such period as may be specified in the notice, the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply for use for the purpose of spray irrigation; and, in relation to that period, the licence shall have effect accordingly subject to that reduction.

(3) The appropriate agency shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the appropriate agency that such abstraction is likely to affect the flow, level or volume of any inland waters which are not discrete waters.

(4) In the exercise of the power conferred by this section in a case where there are two or more licences under this Chapter in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the appropriate agency, are not far distant from each other—

- (a) the appropriate agency shall not serve a notice under this section on the holder of one of the licences unless a like notice is served on the holders of the other licences in respect of the same period; and
- (b) the reductions imposed by the notices on the holders of the licences shall be so calculated as to represent, as nearly as appears to the appropriate agency to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.

(5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

Revocation of licence for non-payment of charges.

58. [...]

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.

Transfer of licence

59A.—(1) The following licences—

- (a) a full licence;
- (b) a transfer licence; or
- (c) a licence to obstruct or impede the flow of inland waters by means of impounding works,

may be transferred by the holder of the licence to another person (“the transferee”) in accordance with the following provisions of this section.

(2) The holder and the proposed transferee shall give notice (a “transfer notice”) to the appropriate agency of their agreement that the licence should be transferred.

(3) The transfer notice shall include—

- (a) such information as the appropriate agency reasonably requires; and
- (b) (in the case of the transfer of a full licence or of a transfer licence) a declaration by the proposed transferee that—
 - (i) he has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction; and
 - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),

and may specify the date on which the holder and the transferee wish the transfer to take effect.

(4) If the holder is a person in whom the licence has vested under section 59B below, a transfer notice shall be of no effect unless the notice required by section 59B(4) has been given.

(5) Subject to subsection (4) above, if the appropriate agency receives a transfer notice which complies with the requirements of subsections (2) and (3) above, the appropriate agency shall amend the licence by substituting the name of the transferee as holder of the licence.

(6) The transfer shall take effect—

- (a) from the date on which the appropriate agency amends the licence; or
- (b) from the date specified in the transfer notice, if later.

(7) Nothing in this section shall affect the liability of the holder of the licence for any failure by him, before the transfer took effect, to comply with any condition or requirement of that licence.

(8) In this section—

“point of abstraction” means a place where the licence authorises water to be abstracted from inland waters or (as the case may be) a place consisting of or comprising underground strata from which the licence authorises water to be abstracted; and

“right of access” means, in relation to a point of abstraction, a right of access to land of the kind referred to in subsection (2)(a) or, as the case may be, (3)(a) of section 35 above; and references to a person who will have such a right of access shall be construed in accordance with that section (including subsections (4) to (6)).

Vesting of licence on death or bankruptcy of holder

59B.—(1) On the death of the holder of a licence under this Chapter, the licence shall be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representatives.

(2) If a bankruptcy order is made against the holder of a licence under this Chapter, the licence shall be regarded for the purposes of any of the Second Group of Parts of the Insolvency Act 1986 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the trustee in bankruptcy.

(3) A person in whom a licence vests under this section shall become the holder of the licence, in place of the prior holder, from the date of the vesting.

(4) Where a licence other than a temporary licence vests in any person under this section, that person shall give notice of that fact to the appropriate agency not later than the end of the period of fifteen months beginning with the date of the vesting.

(5) If—

(a) a licence vests in any person under this section; but

(b) that person fails to give the notice required by subsection (4) above within the period mentioned there,

the licence shall cease to have effect.

Apportionment of licence to abstract

59C.—(1) The holder of a full licence or of a transfer licence (the "old licence") may apply to the appropriate agency for the division of the holder's right to abstract water in accordance with the old licence and for the transfer—

(a) to another person of part, or to a number of other persons of parts not amounting to the whole; or

(b) to a number of other persons of parts amounting in all to the whole,

of that right.

(2) The holder of the old licence and any person proposing to carry on a part of the abstraction authorised by the old licence in place of the holder (a "successor") shall give notice to the appropriate agency of their agreement to the division and transfer (an "apportionment notice").

(3) The apportionment notice shall, in relation to the abstraction authorised by the old licence—

(a) specify, for each proposed successor, what quantity of water he proposes to abstract, and (if the holder of the old licence is to continue the abstraction in part) what quantity of water he proposes to abstract;

(b) specify the purpose or purposes for which those persons referred to in paragraph (a) above who would require a new licence granted under subsection (5) below would abstract water (being one or more of the purposes for which abstraction is authorised under the old licence);

(c) specify the point (or points) of abstraction from which it is proposed that the persons referred to in paragraph (a) above would abstract water (being one or more of the points from which abstraction is authorised under the old licence);

(d) include a declaration by each of those persons who requires a licence under this Chapter in order to carry on the abstraction that—

(i) he has, or at the time when the proposed grant to him of a new licence under subsection (5) below is to take effect will have, a right of access in relation to each such point of abstraction; and

(ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner); and

(e) include such other information as the appropriate agency reasonably requires, and may specify the date on which the holder and the successor (or successors) wish the division and transfer (or transfers) to take effect.

(4) The apportionment notice shall be accompanied by an application on the part of the holder of the old licence for its revocation.

(5) Subject to subsection (9) below, if the appropriate agency receives an apportionment notice and the application for revocation referred to in subsection (4) above, the appropriate agency shall—

- (a) revoke the old licence;
- (b) if the holder is to continue the abstraction in part and a licence is required under this Chapter for that purpose, grant to the holder of the old licence a licence relating to that part of the abstraction; and
- (c) grant to each successor who requires a licence under this Chapter in order to carry on his part of the abstraction a licence relating to that part of the abstraction.

(6) Sections 34 to 45 above shall not apply to the grant of a new licence under subsection (5) above.

(7) Subject to section 46 above and to any provision of regulations made under section 59D(1) below, each new licence to be granted under subsection (5) above shall be granted subject to provisions which correspond as nearly as practicable to those of the old licence in relation to the part of the abstraction to be authorised by the new licence.

(8) The revocation of the old licence and the grant of the new licences shall take effect—

- (a) from the date on which the appropriate agency revokes the old licence and grants the new ones; or
- (b) from the date specified in the apportionment notice, if later.

(9) The appropriate agency shall not grant a new licence to the holder of the old licence or to a successor if, by virtue of an exemption, the restriction on abstraction would not apply to that part of the abstraction proposed in relation to him in the apportionment notice.

(10) For the purposes of this Chapter, a person (whether the holder of the old licence or a successor) who proposes to carry on a part of the abstraction in the circumstances mentioned in subsection (9) above shall, if the old licence was a full licence, be taken to have the right to do so in relation to that part, subject to subsection (11) below.

(11) For the purposes of this Chapter, a person shall cease to be taken to have a right, by virtue of subsection (10) above, to carry on an abstraction if—

- (a) during a period mentioned in subsection (12) below that person does not carry out any such abstraction; or
- (b) following an order under section 27A(1) above or regulations under section 33A above, that person is granted a full licence in respect of abstraction from the same point.

(12) The period referred to in subsection (11)(a) above is—

- (a) four years; or
- (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the appropriate agency may determine on the application of the person in question.

(13) For the purposes of section 39A above, a new licence granted under subsection (5) above shall be treated—

- (a) as if it had been granted at the time the old licence was granted; and
- (b) as if it and any other new licence granted by virtue of the relevant apportionment notice had been granted in place of the old licence.

(14) In this section—

“exemption” means the disapplication of the restriction on abstraction under or by virtue of section 27 or 33A above; and

“point of abstraction” and “right of access” have the same meanings as in section 59A above.

Apportionment of licence to abstract: supplementary

59D.—(1) The Secretary of State may make regulations about the provisions to be contained in licences granted under section 59C above.

(2) Nothing in section 59C above shall affect the liability of the holder of the old licence for any failure by him, before the revocation of that licence took effect, to comply with any condition or requirement of that licence.

(3) If the holder of the old licence is a person in whom the old licence has vested under section 59B above, an apportionment notice shall be of no effect unless the notice required by section 59B(4) has been given.

(4) In this section, “apportionment notice” and “old licence” have the same meanings as in section 59C above.

Liability of the appropriate agency 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 appropriate agency.

(2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the appropriate agency for damages for breach of statutory duty.

(3) Where under any provision of this Chapter, the appropriate agency is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—

- (a) the grant or variation of the licence shall, as between the appropriate agency and the person entitled to those rights, have effect as a breach on the part of the appropriate agency of a statutory duty not to authorise derogation from those rights; and
- (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.

[\(6A\) In any action brought against the appropriate agency in relation to the grant of a licence that derogates from the protected right to abstract water from Havant Thicket Reservoir held by Southern Water Services Limited, the applicant for that licence must indemnify the appropriate agency for its liability under this section.](#)

(4) Subsection (3) above shall be without prejudice to the duty of the appropriate agency, to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.

(5) In any action brought against the appropriate agency in pursuance of this section it shall be a defence for the appropriate agency to show that the fact, as the case may be—

- (a) that the abstraction of water authorised by the licence, as granted or varied by the appropriate agency, derogated from the plaintiff’s protected right; or
- (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff’s protected right,

was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the appropriate agency.

(6) This section has effect subject to the provision made by Schedule 7 to this Act.

(7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—

- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,

as to derogate from rights which, at the time of the authorisation, are protected rights for the purposes of this Chapter.

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

61.—(1) Where a licence held by a person other than a water undertaker or sewerage undertaker is revoked or varied in pursuance of a direction under section 54 or 56 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 appropriate agency 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 four years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.

(4A) No compensation shall be payable under this section in respect of the variation of a full licence, or of a transfer licence which specifies a minimum value under section 46(2A) above, so as to reduce the quantity of water which the holder of the licence is authorised by the licence to abstract from the source of supply to which the licence relates if—

- (a) the ground for varying the licence is that the Secretary of State is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the licence relates;
- (b) the variation does not reduce the quantity of water which the holder of the licence is authorised by the licence to abstract to less than the minimum value specified in the licence under section 46(2A) above for the purposes of this subsection; and
- (c) the conditions set out in subsection (4B) below are satisfied.

(4B) Those conditions are that—

- (d) the licence was granted after the coming into force of section 19 of the Water Act 2003;
- (e) the variation is made no sooner than the end of the period of six years beginning with the date on which the licence took effect; and
- (f) the variation takes effect no sooner than the end of the period of six years beginning with the date of the variation.

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

(6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with subsection (6) above, is subject to a mortgage—

- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
- (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.

No compensation where modification to protect environment: England

61ZA.—(1) This section applies where—

- (a) a relevant licence is revoked or varied on or after 1 January 2028 in pursuance of a direction under section 54 or 56, and
- (b) the ground for revoking or varying the licence is that the Secretary of State is satisfied the revocation or variation is necessary—
 - (i) having regard to a relevant environmental objective, or
 - (ii) to otherwise protect the water environment from damage.

(2) A "relevant licence" is a licence to abstract water that—

- (a) is to abstract water in England only, and
- (b) is to remain in force until revoked.

(3) Where this section applies, no compensation is payable under section 61 in respect of the revocation or variation of the licence.

(4) In this section the "water environment" means—

- (a) any inland waters (including, in relation to a lake, pond, river or watercourse that is for the time being dry, its bottom, channel or bed),
- (b) any water contained in underground strata,
- (c) any underground strata themselves,

or any flora or fauna dependent on any of them.

(5) In this section "relevant environmental objective" means an environmental objective within the meaning of whichever of the following is applicable—

- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407);
- (b) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);
- (c) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245).

No compensation where variation to remove excess headroom: England

61ZB.—(1) This section applies if a relevant licence is varied in pursuance of a direction under section 54 on or after 1 January 2028 so as to reduce the quantity of water the holder is authorised to abstract.

- (2) A "relevant licence" is a licence to abstract water that—
- (a) is to abstract water in England only, and
 - (b) is to remain in force until revoked.
- (3) No compensation is payable under section 61 if—
- (a) in each year during the 12 year period ending with the relevant date, the quantity of water abstracted in pursuance of the licence did not exceed 75% of the quantity of water the holder was authorised to abstract in that year, and
 - (b) the ground for varying the licence is that the Secretary of State is satisfied the variation does not reduce the quantity of water the holder is authorised to abstract to a level below that which the holder reasonably requires.
- (4) In subsection (3) the "relevant date" is the date on which the notice of the proposals for varying the licence was served on the holder of the licence.

Recovery of compensation from new licence-holder

61A. [...]

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 appropriate agency in respect of the loss or damage which he has sustained as mentioned in subsection (3) of that section.

(2) Where, on an application under section 55 above for the revocation or variation of a licence, the Secretary of State determines—

- (a) that the grounds of the application (as mentioned in subsection (3) of that section) have been established to his satisfaction; but
- (b) that the licence shall not be revoked or varied in pursuance of that application,

he shall certify accordingly for the purposes of the following provisions of this section.

(3) Unless within the period of six months from the date on which a certificate under subsection (2) above is granted either—

- (a) notice to treat for the acquisition of the fishing rights of the applicant, or of an interest in land which includes those rights, has been served by the appropriate agency; or
- (b) an offer has been made by the appropriate agency to the owner of those rights to acquire them on compulsory purchase terms or, where the rights subsist only as rights included in an interest in land, to acquire that interest on such terms,

the owner of the fishing rights shall be entitled to compensation from the appropriate agency.

(4) The amount of the compensation payable under subsection (3) above in respect of any fishing rights shall be the amount by which—

- (a) the value of those rights; or
- (b) where they subsist only as rights included in an interest in land, the value of that interest,

is depreciated by the operation of section 48(2) above in relation to the licence to which the application related.

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

(6) For the purposes of this section a right or interest is acquired on compulsory purchase terms if it is acquired on terms that the price payable shall be equal to and shall, in default of agreement, be determined in like manner as the compensation which would be payable in respect thereof if the right or interest were acquired compulsorily by the appropriate agency.

(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 appropriate agency within the period of six months from the date on which that certificate is granted,

then, for the purpose of assessing compensation in respect of any compulsory acquisition in pursuance of that notice to treat, no account shall be taken of any depreciation of the value of the fishing rights, or of the interest in question, which is applicable to the operation, in relation to that licence, of section 48(2) above.

(8) Subsections (5) and (6) of section 55 above shall apply for construing references in this section to fishing rights or to rights included in an interest in land as they have effect for construing such references in that section.

Secretary of State to indemnify appropriate agency in certain cases.

63.—(1) Where—

- (a) the appropriate agency is liable under section 60 above to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Secretary of State; and
- (b) the appropriate agency pay to that person any sum in satisfaction of that liability,

then, whether an action for recovery of those damages has been brought or not, the Secretary of State may, if he thinks fit, pay to the appropriate agency the whole or such part as he considers appropriate of the relevant amount.

(2) If—

- (a) proposals for revoking or varying the licence, in a case falling within subsection (1) above, are formulated by the appropriate agency, or an application with respect to any licence is made under section 55 above;
- (b) in consequence of those proposals or that application, the licence is revoked or varied; and
- (c) compensation in respect of the revocation or variation is payable by the appropriate agency under section 61 above,

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

(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 appropriate agency under section 62 above,

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

(4) In this section “the relevant amount” means—

- (a) for the purposes of subsection (1) above, the amount of the sum paid by the appropriate agency and, if an action has been brought against the appropriate agency in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the appropriate agency in connection with the action (including any costs of the plaintiff which the appropriate agency was required to pay); and

- (b) for the purposes of subsections (2) and (3) above, the amount of the compensation and, if any question relating to that compensation is referred to the Upper Tribunal, the amount of any costs reasonably incurred by the appropriate agency in connection with that reference (including any costs of the claimant which the appropriate agency is required to pay).

Abstracting and impounding by the appropriate agency.

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

- (a) in relation to the abstraction of water by the appropriate agency from sources of supply; and
- (b) in relation to—
 - (i) the construction or alteration by the appropriate agency of impounding works; and
 - (ii) the obstruction or impeding by the appropriate agency of the flow of inland waters by means of impounding works,

subject to such exceptions and modifications as may be prescribed.

(2) Regulations under this section may, in particular, provide for securing—

- (a) that any licence required by the appropriate agency 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 appropriate agency;
- (b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the appropriate agency shall be deemed to be granted by the Secretary of State unless the Secretary of State requires an application for the licence to be made to him by the appropriate agency; and
- (c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the appropriate agency shall give such notice of that fact as may be prescribed.

(3) Without prejudice to the preceding provisions of this section, section 52 above shall not apply in relation to any licence which by virtue of any regulations under this section is granted or deemed to have been granted by the Secretary of State, except in accordance with regulations under this section.

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.

Inland waters owned or managed by Canal & River Trust.

66.—(1) This section applies to all inland waters owned or managed by Canal & River Trust, except any such inland waters to which the Secretary of State may by order made by statutory instrument direct that this section shall not apply.

(2) In respect of abstraction from any inland waters to which this section applies—

- (a) no person other than Canal & River Trust shall be entitled to apply for a licence under this Chapter;
- (b) in relation to any application by Canal & River Trust for a licence under this Chapter—
 - (i) section 35 above shall not apply; and
 - (ii) section 37 above shall apply as if paragraphs (b) and (c), and the succeeding words, of subsection (3) of that section were omitted.

(3) Before making an order under subsection (1) above, the Secretary of State shall consult Canal & River Trust and the appropriate agency.

Ecclesiastical property.

67.—(1) Where the relevant land is vested in the incumbent of a benefice or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land—

- (a) an application for a licence under this Chapter may be made by the Diocesan Board of Finance for the diocese in which the land is situated if the benefice is for the time being vacant; and
- (b) any reference in this Chapter to the applicant for a licence shall be construed—
 - (i) in relation to any time when the benefice in question is vacant, as a reference to the Diocesan Board of Finance for the diocese in which the land is situated; and
 - (ii) in relation to any time when there is an incumbent of the benefice, as a reference to that incumbent.

(2) Where the relevant land is vested in the incumbent of a benefice or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land, any licence under this Chapter shall provide that (notwithstanding anything in the preceding provisions of this Chapter) whoever is for the time being the incumbent of the benefice shall be the holder of the licence.

(3) Where a licence under this Chapter provides as mentioned in subsection (2) above—

- (a) the licence shall not be required to specify the person to whom the licence is granted; and
- (b) the licence shall be deemed to be held by the Diocesan Board of Finance for the diocese in which the land is situated 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 inland which is ecclesiastical property,

shall be paid (where the fee simple is vested in any person other than the Diocesan Board of Finance for the diocese in which the land is situated) to it, instead of to the person in whom the fee simple is vested.

(5) Any sums paid under subsection (4) above to the Diocesan Board of Finance with reference to any land shall—

- (a) if the land is not consecrated, be applied by it for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; and
- (b) if the land is consecrated be applied by it as if the land had been sold under the Pastoral Measure 1983.

(6) Where—

- (a) a Diocesan Board of Finance is required, by virtue of subsection (3)(b) above, to pay any fee or other charge in respect of a licence under this Chapter; and
- (b) any moneys are then payable by the Board to the incumbent of the benefice in question or subsequently become so payable,

the Board shall be entitled to retain out of those moneys an amount not exceeding the amount of that fee or other charge.

(7) Where under any provision of this Chapter a document is required to be served on an owner of land and the land is ecclesiastical property, a copy of the document shall be served on the Diocesan Board of Finance for the diocese in which the land is situated.

(8) In this section—

“benefice” means an ecclesiastical benefice of the Church of England;

“ecclesiastical property” means land which—

- (a) belongs to a benefice;
 - (b) is or forms part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject; or
 - (c) is or forms part of a burial ground so subject; and
- “the relevant land”, in relation to a licence under this Chapter or an application for such a licence, means—
- (a) the land to which an applicant for a licence to abstract water is required by section 35 above to have a right of access; or
 - (b) in the case of a licence for the purposes of section 25 above or an application for such a licence—
 - (i) the land on which any part of the impounding works is, or 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. [...]

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 appropriate agency or the other party desires to question the validity of the decision of the Secretary of State on the grounds—

- (a) that the decision is not within the powers of this Act; or
- (b) that any of the requirements of, or of any regulations made under, this Chapter which are applicable to the appeal or reference have not been complied with,

the appropriate agency or, as the case may be, the other party may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this section.

(3) On any application under this section, the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.

(4) If the High Court is satisfied, on an application under this section—

- (a) that the decision to which the application relates is not within the powers of this Act; or
- (b) that the interests of the person making the application under this section have been substantially prejudiced by a failure to comply with any of the requirements mentioned in subsection (2)(b) above,

the High Court may quash the decision.

(5) [...]

(6) In this section—

“decision” includes a direction; and

“other party” —

- (a) in relation to an appeal, means the appellant;

- (b) in relation to a reference in pursuance of a direction under section 41 above, means the applicant for the licence or, where that section applies by virtue of section 51(3) above, for the revocation or variation; and
- (c) in relation to a reference in pursuance of section 53(4) above, means (subject, without prejudice to their application to the other provisions of this Chapter, to subsections (6) and (7) of section 25 above) the holder of the licence.

Civil liability under Chapter II

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 and 25 above shall not be construed as—

- (a) conferring a right of action of 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.

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 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.

(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;

“full licence” has the meaning given in section 24A above;

“Havant Thicket Reservoir” means the reservoir located at grid reference SU 715 097 and for the purposes of Chapter 2 of Part 2 of this Act is deemed to include as the same source of supply the pipes for the transfer of water to and from the Bedhampton Waterworks, Meyrick Road, Havant, PO9 1NN (known as Bedhampton Springs);

“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 39A above;

“the restriction on abstraction” means the restriction imposed by section 25(1) above;

“the restriction on impounding works” means the restriction imposed by section 25(1)(a) and (b) above;

“spray irrigation” means (subject to subsection (5) below) the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray;

“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); and

“temporary licence” and “transfer licence” have the meanings given in section 24A above.

(2) References in this Chapter to a watercourse shall not include references—

(a) to any sewer or part of a sewer vested in—

(i) a sewerage undertaker;

(ii) a local authority or joint planning board;

(iii) the new towns residuary body or a development corporation for a new town;

(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.

(2A) In subsection (2)(a)(iii) “new towns residuary body” means—

(a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008 or the Greater London Authority so far as exercising its new towns and urban development functions; and

(b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.

(3) Any reference in this Chapter to the doing of anything in pursuance of a licence under this Chapter is a reference to its being done—

(a) by the holder of such a licence; or

(b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by this Chapter.

(4) For the purposes of this Chapter land shall be taken to be contiguous to any inland waters notwithstanding that it is separated from those waters by a towpath or by any other land used, or

acquired for use, in connection with the navigation of the inland waters, unless that other land comprises any building or works other than a lock, pier, wharf, landing-stage or similar works.

(5) The Ministers may by order direct that references to spray irrigation in this Chapter, and in any other enactments in which “spray irrigation” is given the same meaning as in this Chapter, or such of those references as may be specified in the order—

- (a) shall be construed as not including spray irrigation if carried out by such methods or in such circumstances or for such purposes as may be specified in the order; and
- (b) without prejudice to the exercise of the power conferred by virtue of paragraph (a) above, shall be construed as including references to the carrying out, by such methods or in such circumstances or for such purposes as may be specified in the order, of irrigation of any such description, other than spray irrigation, as may be so specified.

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

ANNEX 2

The Water Resources (Abstraction and Impounding) Regulations 2006 as proposed to be modified by the Order

PART 1 PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Water Resources (Abstraction and Impounding) Regulations 2006.

(2) Regulation 15 shall come into force on the date on which section 7(3) of the Water Act 2003 comes into force, and all other provisions of these Regulations shall come into force on 1st April 2006.

Interpretation

2.—(1) In these Regulations—

“abstraction licence” means a licence under Chapter 2 of Part 2 of the Act to abstract water(a);

“the Act” means the Water Resources Act 1991;

“Agency application” means an application by the Agency for an abstraction licence or an impounding licence, or for the variation of such a licence, prepared in accordance with paragraph 1 of Schedule 2;

“the Assembly” means the National Assembly for Wales;

“called-in application” means an application referred to the Secretary of State or the Assembly (as the case may be) in accordance with directions given under section 41(b) (Secretary of State’s power to call in applications);

“impounding” means the obstruction or impeding of the flow of inland waters by means of impounding works(c) or the construction or alteration of impounding works;

“impounding licence” means a licence(d) under Chapter 2 of Part 2 of the Act to obstruct or impede the flow of inland waters by means of impounding works;

“register” means a register kept by the Agency in accordance with section 189(e) (register of abstraction and impounding licences);

“relevant date” has the meaning given by regulation 5; and

“valid application” means an application for an abstraction licence or an impounding licence that complies with the requirements of regulations 3 and 4.

(2) Unless the contrary intention appears, any reference in these Regulations to a section is a reference to a section of the Act.

-
- (a) A reference to a licence to abstract water is to be taken as a reference to all types of licence (i.e., full, transfer or temporary licences) unless it is clear that a different meaning is intended (section 24A(2)), and “full licence”, “temporary licence” and “transfer licence” have the meanings given in section 24A(1) (section 72(1)).
- (b) Section 41 was amended by the Environment Act 1995 (c. 25) (“the EA”), section 120 and Schedule 22, paragraph 128, and the Water Act 2003 (2003 c. 37) (“the WA”), section 13(2). Functions of the Secretary of State under section 41 so far as exercisable in relation to Wales have been transferred to the Assembly (National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, article 2 and Schedule 1).
- (c) For the definition of “impounding works” see sections 25(8) and 72(1)
- (d) For the definition of “licence” in this context, see sections 25(6) and (7) and section 72(1).
- (e) Section 189 was amended by the EA, section 120 and Schedule 22, paragraph 128, and the WA, section 23(3).

PART 2

APPLICATIONS AND APPEALS

Information to be included in an application

- 3.**—(1) An application for an abstraction licence or an impounding licence—
- (a) must include such information, including maps, and
 - (b) must be accompanied by such reports,
- as the Agency reasonably requires in order to determine it.

Manner of application

- 4.**—(1) An application for an abstraction licence or an impounding licence—
- (a) must be made to the Agency on a form issued by the Agency for the purpose of the application being made;
 - (b) must be accompanied by any fee payable under section 41(1)(a) of the Environment Act 1995(a) in relation to making the application; and
 - (c) may be made electronically in a form accessible by the Agency.
- (2) The information and reports referred to in regulation 3 and the form referred to in paragraph (1)(a) of this regulation must be provided in duplicate unless—
- (a) the Agency agrees to accept a single copy; or
 - (b) they are provided electronically.

The relevant date

- 5.**—(1) The relevant date in relation to an application for a full licence, a transfer licence(b) or an impounding licence is—
- (a) except in the cases mentioned in sub-paragraph (b), the date 21 days after the day on which the Agency receives a valid application or such earlier date after the day on which the Agency receives a valid application as the Agency may determine; and
 - (b) in a case where, within 21 days beginning on the day the Agency receives a valid application for a full licence or transfer licence, the Agency serves notice on the applicant of a decision under subsection (1) of section 36A(c) (applications: types of abstraction licence)—
 - (i) if no notice of appeal is served, the date of the day after the end of the period within which notice of appeal against that decision may be served; or
 - (ii) if notice of appeal is so served, the date of the day on which the Agency receives notice of the determination or withdrawal of that appeal.
- (2) The relevant date in relation to an application for a temporary licence(d) is the date on which the Agency receives a valid application.
- (3) The relevant date in relation to an application under section 51(2)(e) is the date on which the Agency receives the application.

(a) 1995 c. 25.

(b) For the definitions of “full licence” and “transfer licence” see section 24A(1) (inserted by section 1(1) of the Water Act 2003, and section 72(1)).

(c) Section 36A was inserted by the WA, section 13(1).

(d) For the definition of “temporary licence” see section 24A(1) (inserted by section 1(1) of the Water Act 2003, and section 72(1)).

(e) Section 51(2) was amended by the EA, section 120 and Schedule 22, paragraph 128.

Advertisement of an application

6.—(1) Where the requirements of subsection (1) of section 37(a) (publication of application for licence) (including that section as applied by section 51(3), subject to the modifications made by section 51(4)) apply in relation to an application(b), and those requirements have not been dispensed with under regulation 7(4), notice of that application must be published—

- (a) in at least one newspaper circulating in the locality of the proposed point of abstraction or impounding; and
- (b) on the Agency's website.

(2) Except in the cases specified in paragraphs (3) to (5), the notice of application must be published by the date 28 days after the relevant date.

(3) In a case where, after the relevant date but on or before the date referred to in sub-paragraph (a), the Agency serves notice on the applicant of a decision under section 36A(1), the notice of the application must be published—

- (a) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that decision may be served; and
- (b) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal of the appeal.

(4) In a case where a matter in relation to a valid application falls to be determined under section 191A(e) (exclusion from registers of information affecting national security), the notice of the application must be published by the date 28 days after the day on which Agency receives notice of that determination.

(5) In a case where a matter in relation to a valid application falls to be determined under section 191B(d) (exclusion from registers of certain confidential information) the notice of the application must be published—

- (a) if the Agency determines under section 191B(4) that the information in question might be commercially confidential, by the date 28 days after the day on which Agency serves notice on the applicant of that determination; and
- (b) if the Agency determines under section 191B(4) that the information in question is not commercially confidential—
 - (i) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that determination may be served; or
 - (ii) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal of the appeal.

(6) Subject to paragraph (7), the notice must—

- (a) state the name of the applicant;
- (b) specify—
 - (i) the type of application being made including, if appropriate, the type of licence being applied for;
 - (ii) the purpose of the proposed abstraction or impounding;
 - (iii) the proposed point of abstraction or impounding(e);
 - (iv) in the case of an application for an abstraction licence, the period over which abstraction would take place;

(a) Section 37 was substituted by the WA, section 14(1).

(b) The requirements of section 37(1) and (2) apply in relation to any application for a full, transfer or impounding licence (section 37(1)), and to certain applications by the holder of a licence to vary such a licence (section 51(3) and (4)(a)), except as otherwise provided by regulation 7.

(c) Section 191A was inserted by the EA, section 120 and Schedule 22, paragraph 170.

(d) Section 191B was inserted by the EA, section 120 and Schedule 22, paragraph 170.

(e) For the definition of "proposed point of abstraction or impounding" see section 37(7) (inserted by section 14(1) of the Water Act 2003).

- (v) in the case of an application for a full licence, the quantity of water to be abstracted; and
- (vi) in the case of an application for an impounding licence, the proposed means of impounding;
- (c) include such other particulars (if any) as the Agency considers necessary to explain the application; and
- (d) state—
 - (i) where and when the application documents and the register containing details of the application may be inspected, and that such inspection is free of charge; and
 - (ii) the address to which any representations in relation to the application should be sent.

(7) The notice must not include any information that is not to be included in a register by virtue of section 191A (exclusion from registers of information affecting national security) or 191B (exclusion from registers of information of certain confidential information).

Exemption from advertising requirements

7.—(1) The requirements of section 37(1) and (2) do not apply to an application for a full licence or transfer licence if—

- (a) the proposed point of abstraction in relation to the application is the place where an existing licence held by the applicant authorises water to be abstracted; and
- (b) the licence to which the application relates—
 - (i) would take effect immediately after the expiry of the existing licence;
 - (ii) would not permit a greater quantity of water to be abstracted than may be abstracted under the existing licence; and
 - (iii) would otherwise be subject to materially the same terms as the existing licence; and
- (c) [the application is made by Southern Water Services Limited for a licence in relation to proposed abstraction from Havant Thicket Reservoir.](#)

(2) The requirements of section 37(1) and (2) do not apply to an application under section 51(2) (which provides for variation on application of licence holder) in relation to an existing abstraction licence that is to remain in force until revoked if—

- (a) the application is for the existing licence to be varied so as to specify a date on which that licence will expire;
- (b) the varied licence would not permit the quantity of water that may be abstracted under the existing licence to be increased; and
- (c) the varied licence would otherwise be subject to materially the same terms as the existing licence.

(3) The requirements of section 37(1) and (2) do not apply to an application for a full licence, a transfer licence or an impounding licence, or the variation of such a licence, if the relevant authority notifies the Agency that complying with those requirements in relation to that application would be contrary to the interests of national security.

(4) The requirements of section 37(1) and (2) may be dispensed with if it appears to the Agency or, in the case of a called-in application, the Secretary of State or the Assembly (as the case may be) that the proposed abstraction or impounding would have no appreciable adverse effect on—

- (a) the environment;
- (b) any licensed abstraction; or
- (c) any abstraction to which the restriction on abstraction does not apply(a).

(5) In paragraph (3) “the relevant authority” means—

(a) For the definition of “restriction on abstraction” see section 72(1).

- (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and
- (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

Acknowledgement of receipt

8.—(1) The Agency must serve on the applicant an acknowledgement in writing—

- (a) in a case of an application for a full licence, a transfer licence or an impounding licence, other than a case falling within sub-paragraph (c), by the date 28 days after the relevant date;
- (b) in a case of an application under section 51(2) (which provides for variation on an application by the licence holder), by the date 28 days after the relevant date; and
- (c) in a case of an application for a full licence or transfer licence where, after the relevant date but on or before the date referred to in sub-paragraph (a), the Agency serves notice on the applicant of a decision under subsection (1) of section 36A (applications: types of abstraction licence)—
 - (i) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that decision may be served; or
 - (ii) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal or that appeal.

[\(1A\) The Agency must serve on Southern Water Services Limited an acknowledgement in writing in a case of an application to which Regulation 9A\(2\)\(b\) applies.](#)

(2) The acknowledgement must state—

- (a) the relevant date;
- (b) whether a notice of the application has been, or is to be, published in accordance with section 37(1);
- (c) the date, if known, by which the application is required to be determined; and
- (d) the applicant’s entitlement to appeal should the Agency fail, within the period referred to in paragraph (2), (3) or (4) (as the case may be) of regulation 10, to serve on the applicant notice in accordance with that regulation of the Agency’s decision on the application or its reference to the Secretary of State or the Assembly.

Applications in National Parks or the Broads

9.—(1) Subject to paragraph (5), where an application relates to abstraction or impounding in the area of a National Park or the Norfolk or Suffolk Broads, the Agency must serve notice in writing of the application on the National Park authority for that National Park or the Broads Authority (as the case may be) within 14 days beginning on the relevant date.

(2) Subject to paragraph (3), the notice must include—

- (a) a copy of the application; and
- (b) a statement that the authority may make representations in writing to the Agency in relation to the application within 28 days beginning on the date on which the notice is served.

(3) The notice must not include any information which appears to the Agency to be information that is commercially confidential.

(4) The Agency or, in the case of a called-in application, the Secretary of State or the Assembly (as the case may be)—

- (a) must not determine the application until after the end of the period referred to in paragraph (2)(b); and

- (b) in determining the application, must have regard to any representations duly made by the authority in relation to the application.
- (5) Paragraph (1) does not apply if—
 - (a) the application is one to which section 51(4) applies; or
 - (b) in the case of an application in relation to abstraction or to impounding works, the relevant authority notifies the Agency that giving such notice in relation to that application would be contrary to the interests of national security.
- (6) In paragraph (5) “the relevant authority” means—
 - (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and
 - (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

Applications relating to the Havant Thicket Reservoir

9A.—(1) An application in relation to abstraction or impounding in connection with Havant Thicket Reservoir may only be made with the consent of Southern Water Services Limited.

- (2) Paragraph (1) does not apply where—
 - (a) the application is for a full licence as described in subsection (1B) of section 39A of the Act; or
 - (b) the application is for a full licence which, if granted, would—
 - (i) take effect immediately after the expiry of an existing licence of the same type (“the existing licence”);
 - (ii) be held by the same person as the holder of the existing licence;
 - (iii) not permit a different quantity of water to be abstracted than may be abstracted under the existing licence; and
 - (iv) not in any other respect be different from the existing licence.
- (3) Where an application relates to abstraction or impounding in connection with the Havant Thicket Reservoir, the Agency must serve notice in writing of the application on Southern Water Services Limited within 14 days beginning on the relevant date.
- (4) The notice must include—
 - (a) a copy of the application; and
 - (b) a statement that Southern Water Services Limited may make representations in writing to the Agency in relation to the application within 28 days beginning on the date on which the notice is served.
- (5) The Agency or, in the case of a called-in application, the Secretary of State—
 - (a) must not determine the application until after the period referred to in paragraph (4)(b); and
 - (b) in determining the application, must have regard to any representations duly made by Southern Water Services Limited in relation to the application.
- (6) Paragraphs (1) and (3) do not apply if the application is made by Southern Water Services Limited.
- (7) An application will be in connection with Havant Thicket Reservoir if it relates to—
 - (a) the abstraction of water from Havant Thicket Reservoir;
 - (b) the abstraction of water for the purposes of transferring it to Havant Thicket Reservoir; or
 - (c) the impounding of water within, adjacent to or as an extension of Havant Thicket Reservoir.

Duties of the Agency in dealing with applications

- 10.**—(1) The Agency must serve notice in writing on the applicant of—
- (a) its decision on the application; or
 - (b) the reference of the application to the Secretary of State or the Assembly under section 41 (Secretary of State’s power to call in applications).
- (2) In the case of an application for a temporary licence, the notice referred to in paragraph (1) must be served—
- (a) except in a case mentioned in sub-paragraph (b)—
 - (i) in a case where, in accordance with regulation 9(1), notice of that application is served on a National Park authority or the Broads Authority, by the date 14 days after the end of the period referred to in paragraph (2)(b) of that regulation; and
 - (ii) in a case where no notice under regulation 9(1) is served, by the date 28 days after the relevant date; and
 - (b) in a case where, on or before the date referred to in sub-paragraph (a)(i) or (ii) (as the case may be), the Agency serves notice on the applicant under section 201(a) (power to require information in respect of water resources functions) that it requires him to provide information in relation to the application, by the date 28 days after that information is received by the Agency.
- (3) In a case where regulation 6(1) applies, the notice referred to in paragraph (1) must be served by the date four months after the relevant date or (if later)—
- (a) in a case where, on or before the date four months after the relevant date, the Agency serves notice on the applicant under section 201 that it requires him to provide information in relation to the application, the date two months after that information is received by the Agency;
 - (b) in a case referred to in paragraph (3) of regulation 6, the date two months after the date calculated in accordance with that paragraph; and
 - (c) in a case referred to in paragraph (4) or (5) of regulation 6, the date two months after the date calculated in accordance with the relevant paragraph.
- (4) Except in a case mentioned in paragraph (2) or (3), the notice referred to in paragraph (1) must be served by the date three months after the relevant date or (if later)—
- (a) in a case where, on or before the date three months after the relevant date, the Agency serves notice on the applicant under section 201 that it requires him to provide information in relation to the application, the date two months after that information is received by the Agency; and
 - (b) in a case where, on or before the date three months after the relevant date, the Agency serves notice on the applicant of a decision under section 36A(1)—
 - (i) if no notice of appeal is served, the date two months after the end of the period within which notice of appeal against that decision may be served; or
 - (ii) if notice of appeal is so served, the date two months after the day on which the Agency receives notice of the determination or withdrawal of the appeal.
- (5) Where the Agency grants a licence subject to conditions or on terms which are different in any material respect from the application, or it refuses an application, the notice referred to in paragraph (1)(a) must—
- (a) include a statement of the Agency’s reasons for doing so; and
 - (b) state the applicant’s entitlement to appeal to the Secretary of State or the Assembly (as the case may be) if he is dissatisfied with the Agency’s decision on the application.

(a) Section 201 was substituted by the WA, section 70.

(6) Where the Agency refers an application to the Secretary of State or the Assembly under section 41, the notice referred to in paragraph (1)(b) must state—

- (a) the reasons, if any, given by the Secretary of State or the Assembly for directing that reference to be made;
- (b) the applicant's entitlement to request to appear before, and be heard by, a person appointed for the purpose of determining the application; and
- (c) that the decision on the application shall be final.

(7) In a case where regulation 9A applies—

(a) the notice referred to in paragraph (1) must be served on Southern Water Services Limited at the same time as it is served on the applicant; and

(b) where paragraph (6) applies, the notice must be accompanied by a statement that Southern Water Services Limited is entitled to request to appear before, and be heard by, a person appointed for the purpose of determining the application.

Application by the holder for revocation of impounding licence: time limit for determination

11. The period referred to in section 51(1C)(b) within which the Agency must give notice of its decision on an application under subsection (1A) of section 51(a) (modification of licence on application of licence holder), except where a longer period is agreed, is four months beginning on the date on which the application is received by the Agency.

Time limits for bringing appeals

12.—(1) The period within which any notice of appeal under subsection (4) of section 36A (applications: types of abstraction licence) must be served is 28 days beginning on the date on which notice of the decision to which the appeal relates is served on the applicant.

(2) The period referred to in subsection (3)(b) of section 43(b) (appeals to the Secretary of State) within which any notice of appeal under section 43(1) must be served is 28 days.

(3) The period referred to in section 51(1D)(b) (which relates to appeals against the revocation of an impounding licences) within which any notice of appeal under section 51(1C) must be served is—

- (a) in a case falling within section 51(1C)(a), 28 days beginning on the date on which the decision to which the notice relates is served on the applicant; and
- (b) in a case falling within section 51(1C)(b), 28 days beginning on the date which is the day after the expiry of the period referred to in regulation 10(3) or (4) (as the case may be) by which the Agency must serve notice under regulation 10(1).

Notice of appeal

13.—(1) A notice of appeal under section 36A(4), 43 or 51(1C) must—

- (a) state the grounds on which the appeal is being made; and
- (b) be accompanied by a copy of—
 - (i) the application to which the appeal relates;
 - (ii) any information or report submitted to the Agency with the application;
 - (iii) the notice of the decision on the application, if any; and
 - (iv) all other relevant correspondence with the Agency.

~~(2) The Agency must, within 14 days beginning on the date on which it receives a notice of appeal under section 43, serve a copy of that notice on—~~

(a) Section 51 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, section 21.

(b) Section 43 was amended by the EA, section 120 and Schedule 22, paragraphs 128 and 134, and the WA, section 14(3)(c).

- ~~(a) any person who, within the period referred to in subsection (4)(b) of section 37 (publication of application for licence), made representations in writing in relation to the application; and~~
- ~~(b) any authority served with a notice in accordance with regulation 9(1) that, within the period referred to in regulation 9(2)(b), made representations in writing in relation to the application.~~

(2) The Agency must, within 14 days beginning on the date on which it receives a notice of appeal under section 43, serve a copy of that notice on—

- (a) any person who, within the period referred to in subsection (4)(b) of section 37 (publication of application for licence), made representations in writing in relation to the application;
- (b) any authority served with a notice in accordance with regulation 9(1) that, within the period referred to in regulation 9(2)(b), made representations in writing in relation to the application; and
- (c) Southern Water Services Limited if, within the period referred to in regulation 9A(2)(b), it made representations in writing in relation to the application.

(3) The period referred to in subsection (3)(a) of section 44 (determination of appeals) and subsection (2)(b) of section 45(a) (regulations with respect to appeals) within which the recipient of a copy of a notice of appeal may make further representations in writing is, in each case, 21 days beginning on the date on which that notice is served on that person.

(4) When serving a copy of a notice of appeal in accordance with paragraph (2), the Agency must notify the recipient in writing—

- (a) that he may make further representations in writing in relation to the appeal;
- (b) of where any such representations must be sent; and
- (c) of the date by which those representations must be received.

PART 3

ABSTRACTION AND IMPOUNDING BY THE AGENCY

[Not reproduced]

PART 4

ENFORCEMENT, WORKS AND CONSERVATION NOTICES

Content of enforcement notices

25. An enforcement notice under section 25A(b) (enforcement notices) must—

- (a) state the name and address of the person on whom the notice is served;
- (b) describe the breach or failure to comply to which the notice relates;
- (ba) include a statement that the breach poses or is likely to pose a risk to a public water supply.
- ~~(c) describe the significant damage to the environment which is being, or is likely to be, caused by that breach or failure;~~
- ~~(d) identify the source of supply or inland waters that are subject, or likely to be subject, to that damage;~~

(a) Section 45 was amended by the EA, section 120 and Schedule 24, and by the WA, section 13(3).
(b) Section 25A was inserted by the WA, section 30.

- (e) specify the works or operations (if any) required to be carried out and give the Agency's reasons for requiring those works or operations to be carried out;
- (f) inform the person on whom the notice is served of—
 - (i) his right to appeal under section 161C(a) (appeals against works notices), as applied by section 25B(b) (rights of entry and appeals), including the time for appealing; and
 - (ii) the requirements imposed by regulation 3 of the Anti-Pollution Works Regulations 1999(c), as applied by regulation 28, in relation to the exercise of that right; and
- (g) set out the provisions of section 25C(d) (consequences of not complying with an enforcement notice).

Enforcement notices: abstraction and impounding by the Agency

26. Sections 25A, 25B and 25C (which relate to enforcement notices) do not apply in relation to any breach or failure to comply by the Agency, being a breach of the kind referred to in section 25A(1)(a) or (b).

Content of works notices

27. A works notice under section 4 of the Water Act 2003 (existing impounding works: works notices) must—

- (a) state the name and address of the person on whom the notice is served;
- (b) specify the impounding works to which the notice relates;
- (c) specify the works or operations required to be carried out and give the Agency's reasons for requiring those works or operations to be carried out;
- (d) state why it appears to the Agency to be necessary to serve the notice;
- (e) inform the person on whom the notice is served of—
 - (i) his right to appeal under section 161C (appeals against works notices), as applied by section 4(3) of the Water Act 2003, and of the time for appealing; and
 - (ii) the requirements imposed by regulation 3 of the Anti-Pollution Works Regulations 1999, as applied by regulation 28, in relation to the exercise of that right; and
- (f) set out the provisions of section 4(4) to (7) of the Water Act 2003 (which provide for consequences of not complying with a works notice).

Enforcement notices and works notices: appeals

28. Regulations 3 to 7 (appeals, written representations, hearings, notification of determination, and compensation for grant of rights under section 161B) of the Anti-Pollution Works Regulations 1999 apply in relation to—

- (a) an enforcement notice under section 25A, and
- (b) a works notice under section 4 of the Water Act 2003,

as they apply to a works notice under section 161A(e) (notices requiring persons to carry out anti-pollution works and operations).

(a) Section 161C was inserted by the EA, section 120 and Schedule 22, paragraph 162.
 (b) Section 25B was inserted by the WA, section 30.
 (c) S.I. 1999/1006.
 (d) Section 25C was inserted by the WA, section 30.
 (e) Section 161A was inserted the EA, section 120 and Schedule 22, paragraph 162.

Notice of mining operations which may affect water conservation

29. The notice required by subsection (1) of section 199(a) (notice etc. of mining operations which may affect water conservation) must be given in such form as the Agency determines.

Conservation notices: appeals

30. Regulations 3 to 6 of the Anti-Pollution Works Regulations 1999 apply in relation to an appeal under section 199A(b) (appeals against conservation notices under section 199) as if—

- (a) in regulation 3 (appeals)—
 - (i) paragraph (1) were omitted;
 - (ii) the references to the notice of appeal were a reference to a notice of appeal under section 199A(1);
 - (iii) in paragraph (2)(a), the words “and of all persons to be served with a copy of the notice of appeal” were omitted; and
 - (iv) in paragraph (4), the word “and” in sub-paragraph (a) and sub-paragraph (b) were omitted;
- (b) in regulation 4(1) (written representations), the words “, and any party to the appeal other than the appellant,” were omitted;
- (c) in regulations 4(4) and (5) and 5(1), (2) and (6) any reference to a party to the appeal were a reference to the appellant and the Agency; and
- (d) in regulation 6(2) (notification of determination), the words “and to every other party to the appeal.” were omitted.

PART 5

MISCELLANEOUS

Advertisement of Agency proposals to modify a licence

31.—(1) Subject to paragraph (2), where proposals have been formulated under section 52 (proposals for modification at instance of the Agency or Secretary of State) (including that section as modified by regulation 19), the notice referred to in subsection (4) of that section must—

- (a) explain the general effect of the proposals;
- (b) in the case of proposals for varying the licence, specify—
 - (i) the current point of abstraction or impounding and, if different, that which is proposed;
 - (ii) in relation to a full licence, the proposed quantity of water to be abstracted; and
 - (iii) in relation to an impounding licence, the object and means of impounding;
- (c) state—
 - (i) where and when the register containing brief particulars about the proposals may be inspected and that such inspection is free of charge; and
 - (ii) the address to which any representations with respect to the proposals may be sent; and
- (d) be published—
 - (i) in at least one newspaper circulating in the locality of the current (and, if different, proposed) point of abstraction or impounding; and

(a) Section 199 was amended by the WA, section 8(5).

(b) Section 199A was inserted by the WA, section 8(6).

- (ii) on the Agency’s website.
- (2) The notice must not include any information—
 - (a) that is not to be included in a register by virtue of section 191A (exclusion from registers of information affecting national security) or 191B (exclusion from registers of certain confidential information); or
 - (b) of which, in the case of proposals in relation to a licence relating to abstraction or impounding, the relevant authority has notified the Agency that publication would be contrary to the interests of national security.
- (3) In paragraph (2) “the relevant authority” means—
 - (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and
 - (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

Notice of certain applications to modify an abstraction licence

32. The notice required by subsection (4) of section 55 (application for modification of licence by owner of fishing rights) must be given in such form as the Agency determines.

Licensing of existing impounding works: notices of appeal

33.—(1) Any notice of appeal served under section 3(4) of the Water Act 2003 (which provides for appeals against notices requiring existing impounding works to be licensed) must be served within 21 days beginning on the date of service of the notice served under section 3(2) of that Act.

(2) Regulations 3 to 6 of the Anti-Pollution Works Regulations 1999 apply in relation to an appeal under section 3(4) of the Water Act 2003 as if—

- (a) in those regulations, references to the Secretary of State were references to the appropriate authority^(a); and
- (b) in regulation 3, references to a notice of appeal were references to a notice of appeal under section 3(4) of the Water Act 2003.

Register of abstraction and impounding licences

34.—(1) The register must contain—

- (a) in the case of every application made to the Agency for an abstraction licence or an impounding licence, or the revocation or variation of such a licence, and every Agency application—
 - (i) the name and address of the applicant, the date of the application and brief particulars of its proposals;
 - (ii) particulars of the decision, if any, of the Agency, the Secretary of State or the Assembly on the application (including the decision on any appeal), and the date of that decision;
 - (iii) any notice of appeal served in relation to the application; and
 - (iv) particulars of any licence granted or deemed to be granted, or revocation or variation effected, by virtue of a decision on the application and any appeal, including the date (if any) on which a licence expires;
- (b) in the case of a licence transferred in accordance with section 59A (transfer of licence)—
 - (i) the name and address of the transferee;

^(a) For the definition of “appropriate authority” see section 3(12) of the Water Act 2003.

- (ii) the date on which the Agency received (or, in the case of the transfer of a licence held by the Agency, served) the transfer notice;
- (iii) particulars of the transfer notice; and
- (iv) the date on which the transfer took effect;
- (c) in the case of a licence vesting in accordance with section 59B(a) (vesting of licence on death or bankruptcy of holder) in relation to which notice has been given to the Agency under subsection (4) of that section—
 - (i) the name and address of the person in whom the licence has vested; and
 - (ii) the date of the vesting; and
- (d) in the case of a licence granted in accordance with section 59C(5)—
 - (i) the name and address of the holder;
 - (ii) particulars of the licence granted;
 - (iii) the date on which it was granted;
 - (iv) the date from which it has effect; and
 - (v) the date on which it expires.
- (2) The Agency must—
 - (a) within 14 days beginning on—
 - (i) in relation to an application mentioned in paragraph (1)(a), the relevant date, or
 - (ii) in relation to a case mentioned in paragraphs (1)(b), (c) or (d), the date on which the particulars in question become available to the Agency,
 enter the appropriate particulars referred to in paragraph (1) on the register; and
 - (b) keep records on the register showing the date on which those entries are made.
- (3) Paragraphs (1) and (2) do not apply to any information required to be excluded from the register by or under section 191A (exclusion from registers of information affecting national security) or section 191B (exclusion from registers of certain confidential information).
- (4) The Agency may keep the register, or any part of it, electronically.

Revocations

35. Subject to regulation 36, the following instruments are revoked—

- (a) the Water Resources (Licences) Regulations 1965(b);
- (b) the Water Resources (Miscellaneous Provisions) Regulations 1965(c); and
- (c) the Water Resources (Licences) (Amendment) Regulations 1989(d).

Transitional and saving provisions

36. The Regulations revoked by regulation 35(a) and (c) continue to have effect in relation to any application under Chapter 2 of Part 2 of the Act a notice of which, before the coming into force of these Regulations, was published by the applicant in accordance with section 37 of the Act.

(a) Section 59B was inserted by the WA, section 23(1).
 (b) S.I. 1965/534; amended by S.I. 1989/336.
 (c) S.I. 1965/1092.
 (d) S.I. 1989/336.

ANNEX 3

The Environmental Permitting (England and Wales) Regulations 2016 as proposed to be modified by the Order

PART 2

Environmental permits

CHAPTER 1

Application to the Crown and requirement for an environmental permit

Application to the Crown

11. Schedule 4 (application of these Regulations to the Crown) has effect.

Requirement for an environmental permit

12.—(1) A person must not, except under and to the extent authorised by an environmental permit—

- (a) operate a regulated facility, or
- (b) cause or knowingly permit a water discharge activity or groundwater activity.

(1A) Paragraph (1)(a) does not apply in relation to the operation of a medium combustion plant, mobile medium combustion plant or a specified generator comprising—

- (c) a new medium combustion plant, before 20th December 2018;
- (d) an existing medium combustion plant with a rated thermal input greater than 5 megawatts, before 1st January 2024;
- (e) an existing medium combustion plant with a rated thermal input of less than or equal to 5 megawatts, before 1st January 2029;
- (f) a specified generator, before the permitting date,

unless that medium combustion plant, mobile medium combustion plant or specified generator, is required to have a permit by virtue of forming part of another class of regulated facility.

(1B) For the purposes of paragraph (1A)—

- (g) existing medium combustion plant” and “new medium combustion plant” have the meanings given in paragraph 2(1) of Schedule 25A;
- (h) permitting date” has the meaning given in paragraph 3(2) of Schedule 25B.

(2) Paragraph (1)(b) does not apply if the water discharge activity or groundwater activity is an exempt facility.

(3) In respect of a radioactive substances activity, paragraph (1) does not apply to a person to whom a radioactive substances exemption applies for that activity.

(4) Paragraph (5) applies to a person (“A”) who—

- (a) receives radioactive waste from another person (“B”) for the purposes of A disposing of that waste, and
- (b) subsequently disposes of that waste.

(5) Where this paragraph applies, A does not require an environmental permit—

- (a) for the receipt of waste from B, where B holds an environmental permit which allows B to dispose of the waste to A, or

- (b) for the subsequent disposal of that waste by A, where the waste is disposed of in accordance with the permit held by B.

CHAPTER 2

Grant of an environmental permit

Grant of an environmental permit

13.—(1) On the application of an operator, the regulator may grant the operator a permit (an “environmental permit”) authorising—

- (a) the operation of a regulated facility, and
- (b) that operator as the person authorised to operate that regulated facility.

(2) Regulation 17 applies in relation to the grant of a single permit authorising the operation of more than one regulated facility by the same operator.

(3) Part 1 of Schedule 5 applies in relation to an application for the grant of an environmental permit.

[\(4\) An application for an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir may only be made with the consent of Southern Water Services Limited.](#)

Content and form of an environmental permit

14.—(1) An environmental permit must specify—

- (a) the regulated facility whose operation it authorises, and
- (b) the operator of that regulated facility.

(2) An environmental permit that authorises the operation of a regulated facility (“regulated facility A”) need not specify any regulated facility of another class that is carried on as part of the operation of regulated facility A.

(3) An environmental permit may be in electronic form.

(4) An environmental permit must include a map, plan or other description of the site showing the geographical extent of the site of the regulated facility.

(5) But if there is more than one regulated facility on the site, the map, plan or other description need show only the combined extent of all the facilities.

(6) Paragraphs (4) and (5) do not apply to an environmental permit authorising—

- (a) the operation of mobile plant, or
- (aa) the keeping of radioactive material or the accumulation or removal of radioactive waste under paragraph 11(2) of Part 2 of Schedule 23, where—
 - (i) the activity is described in standard rules published under regulation 26(5); and
 - (ii) the permit authorises the carrying on of that activity at more than one site; or
- (b) the carrying on of a radioactive substances activity described in paragraph 11(5) of Part 2 of Schedule 23.

Conditions in relation to certain land

15.—(1) Conditions in an environmental permit may require the operator to carry out works or do other things in relation to land which the operator is not entitled to do or carry out without obtaining the consent of another person.

(2) If an environmental permit contains such a condition, the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition.

(3) Part 2 of Schedule 5 (compensation) applies where such rights are granted.

(4) Conditions in an environmental permit authorising the carrying on of a flood risk activity have effect as a local land charge where those conditions—

- (a) in accordance with the power in paragraph 6 of Part 1 of Schedule 25, relate to—
 - (i) the operation or maintenance of any structure or works, or
 - (ii) access to any structure, works or watercourse by the regulator, and
- (b) are expressed to apply from time to time.

(5) Where the Agency proposes to grant an application in relation to a flood risk activity in England subject to a condition which has effect in accordance with paragraph (4), the regulator must give notice of the proposed condition and the period within which representations on the proposed condition are to be made (which period must not expire less than 20 days after the day on which the notice is served) to—

- (a) the landowner, lessee and occupier, where none is the applicant;
- (b) the landowner and lessee, where the occupier is the applicant;
- (c) the landowner and occupier, where the lessee is the applicant;
- (d) the lessee and occupier, where the landowner is the applicant.

(6) Where the NRBW proposes to grant an application in relation to a flood risk activity in Wales subject to a condition which has effect in accordance with paragraph (4), the regulator must not issue the relevant permit unless the applicant has demonstrated to the satisfaction of the regulator that consent for that permit to be issued subject to such a condition has been given by—

- (a) the landowner, lessee and occupier, where none is the applicant;
- (b) the landowner and lessee, where the occupier is the applicant;
- (c) the landowner and occupier, where the lessee is the applicant;
- (d) the lessee and occupier, where the landowner is the applicant.

(7) In paragraphs (5) and (6), “landowner” means the person, other than a mortgagee not in possession, who—

- (a) is receiving the rack rent of the land, whether on the person's own account or as agent or trustee for another person, or
- (b) would receive the rack rent if the land were let at a rack rent.

Mobile plant operating on the site of another regulated facility: conflict of permit conditions

16. If—

- (a) an environmental permit (“permit A”) authorises the operation of mobile plant on the site of another regulated facility the operation of which is authorised under a separate environmental permit (“permit B”), and
- (b) there is an inconsistency between the requirements imposed by permit A and those imposed by permit B,

the requirements imposed by permit B prevail.

Single site permits etc.

17.—(1) Except as otherwise provided by this regulation, a regulator may not authorise the operation of more than one regulated facility under a single environmental permit.

(2) The regulator may authorise, under a single environmental permit, the operation by the same operator—

- (a) of more than one mobile plant,
- (b) of more than one radioactive substances activity described in paragraph 11(5) of Part 2 of Schedule 23,
- (c) of more than one regulated facility on the same site,

- (d) of more than one standard facility on more than one site,
- (e) of more than one flood risk activity on more than one site, or
- (f) of more than one radioactive substances activity described in paragraph 11(6) of Part 2 of Schedule 23 on more than one site, where all such activities are in respect of the use or potential use of the same premises for underground disposal (within the meaning of paragraph 11(7) of that Schedule).
- (g) of more than one medium combustion plant on more than one site,
- (h) of more than one specified generator on more than one site,
- (i) of more than one Part B installation that contains at least one medium combustion plant on more than one site.

(3) But if a groundwater activity is carried on as part of a radioactive substances activity by the same operator on the same site, the regulator must authorise the carrying on of the groundwater activity under the same environmental permit that authorises the carrying on of the radioactive substances activity.

Consolidation of an environmental permit

18—(1) Paragraph (2) applies if the same operator is authorised by more than one environmental permit to operate—

- (a) more than one mobile plant,
- (b) more than one flood risk activity on the same site or on more than one site,
- (c) more than one standard facility, or
- (d) more than one regulated facility on the same site.

(2) The regulator may replace the environmental permits (“old permits”) with a consolidated environmental permit—

- (a) applying to the same regulated facilities, and
- (b) subject to the same conditions that applied to the old permits, but varied as the regulator thinks fit.

(3) The regulator may replace a consolidated environmental permit (“old permit”) with two or more environmental permits (“new permits”).

(4) Each of the new permits is subject to whichever conditions of the old permit are relevant, varied as the regulator thinks fit.

(5) The regulator may replace a single environmental permit (“old permit”) which has been varied with a consolidated environmental permit subject to the same conditions that applied to the old permit.

(6) A variation made by a regulator under this regulation—

- (a) is taken to be a regulator-initiated variation under regulation 20(1), and
- (b) may only be made in accordance with regulation 20.

(7) Paragraphs 17 to 19 of Part 1 of Schedule 5 apply in relation to the decision to make a regulator-initiated variation and the notification of such a decision.

Subsistence of an environmental permit

19. Once granted, an environmental permit continues in force until—

- (a) it is revoked in whole in accordance with regulation 22,
- (b) it is surrendered in whole in accordance with—
 - (i) regulation 24, or
 - (ii) regulation 25 and Part 1 of Schedule 5,
- (c) it is replaced with a consolidated permit in accordance with any of the following—

- (i) regulation 18(2);
- (ii) regulation 22(5);
- (iii) paragraph 19(2) of Part 1 of Schedule 5, or
- (d) it ceases to have effect in accordance with regulation 71(3) or (4).

CHAPTER 3

Variation, transfer, revocation and surrender of an environmental permit

Variation of an environmental permit

20.—(1) The regulator may vary an environmental permit on the application of the operator or on its own initiative.

(2) A variation under this regulation must not reduce the extent of the site of a regulated facility.

[\(2A\) An application to vary an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir may not be made other than with the consent of Southern Water Services Limited.](#)

(3) Paragraph (2) does not apply if the variation relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) a stand-alone water discharge activity or stand-alone groundwater activity.

(4) With respect to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity, a regulator must not, without the agreement of the operator, on its own initiative—

- (a) within 4 years after the grant of the permit, vary any condition of the permit that relates to the water discharge activity, or
- (b) within 4 years after the variation of a condition of the permit that relates to the water discharge activity, further vary that condition.

(5) Paragraph (4) does not apply if—

- (a) the regulated facility is a standard facility,
- (b) the regulator, on its own initiative, varies an environmental permit, or any condition of a permit, in order to comply with—
 - (i) an obligation under assimilated law, or
 - (ii) a direction given by the appropriate authority under regulation 62, or
- (c) the regulator, on its own initiative, varies an environmental permit, or any condition of a permit, in consequence of a transfer or partial transfer of an environmental permit under regulation 21.

(6) Part 1 of Schedule 5 applies in relation to an application for the variation of an environmental permit or a proposal to vary an environmental permit on the initiative of the regulator under paragraph (1).

(7) With respect to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone flood risk activity, the regulator must not, without the agreement of the operator, of its own initiative vary any condition of the permit that relates to the flood risk activity unless—

- (a) in the opinion of the regulator, the circumstances in which the activity is or is to be carried on have changed such that any of the objectives in paragraph 5 of Part 1 of Schedule 25 would no longer be met, and
- (b) in the case of a variation that relates to an activity that involves any construction or works, the variation relates to aspects of the construction or works which have not yet been completed.

(8) Paragraph (7) does not apply if the regulator, of its own initiative, varies an environmental permit, or any condition of a permit, in order to comply with—

- (a) an obligation under assimilated law, or
- (b) a direction given by the appropriate authority under regulation 62.

Transfer of an environmental permit

21.—(1) The regulator may transfer to a proposed transferee an environmental permit or any part of an environmental permit—

- (a) if the operator is one individual (A) and the regulator is satisfied that A cannot be found, on the application of the proposed transferee only,
- (b) if the operator is two or more individuals (A and B) and the regulator is satisfied that A cannot be found, on the joint application of B and the proposed transferee, or
- (c) otherwise, on the joint application of the operator and the proposed transferee.

(2) Part 1 of Schedule 5 applies in relation to an application for the transfer of an environmental permit in whole or in part.

(3) Paragraph (1) does not apply to an environmental permit (or any part of a permit) that authorises the carrying on of a stand-alone water discharge activity, stand-alone groundwater activity or a stand-alone flood risk activity.

(4) The regulator may transfer to a proposed transferee an environmental permit to which paragraph (1) does not apply, or any part of that permit—

- (a) if the operator is one individual (A) and the regulator is satisfied that A cannot be found, on the notification of the proposed transferee only,
- (b) unless sub-paragraph (c) applies, if the operator is two or more individuals (A and B) and the regulator is satisfied that A cannot be found, on the joint notification of B and the proposed transferee,
- (c) if the operator is two or more individuals (A and B) and the proposed transferee is two or more individuals (B and C), where B is both an operator and a proposed transferee—
 - (i) on the joint notification of A and C, or
 - (ii) if the regulator is satisfied that A cannot be found, on the notification of C only, or
- (d) otherwise, on the joint notification of the operator and the proposed transferee.

(5) A notification must—

- (a) be made on the form provided by the regulator,
- (b) include such information as is specified on the form, and
- (c) specify a date on which the transfer is to take place, which must be not less than 20 working days after the date on which the notification is given.

(6) A transfer following a notification takes effect on the date specified in the notification.

(7) In the case of a partial transfer following a notification, the regulator must grant a new environmental permit to the transferee subject to the same conditions as the original permit, varied in consequence of the partial transfer.

(8) If—

- (a) an enforcement notice or a suspension notice is in force in respect of an environmental permit, and
- (b) the permit is transferred to another person, either in whole or in part,

the duty to comply with the enforcement notice or, as the case may be, the suspension notice is also transferred to the other person to the extent that it relates to the permit or part transferred.

(9) Unless a proposed transferee makes a joint application or gives a joint notification, the regulator may not transfer to the proposed transferee an environmental permit or any part of an

environmental permit in respect of a regulated facility that ceased to be in operation more than 6 months before the proposed date of transfer.

Revocation of an environmental permit: general

22.—(1) The regulator may revoke an environmental permit in whole or in part.

(2) If the regulator revokes an environmental permit in part, it may vary the permit conditions to the extent that it considers necessary to take account of the revocation.

[\(2A\) An environmental permit for a water discharge activity in relation to Havant Thicket Reservoir may not be revoked in whole or in part other than with the consent of Southern Water Services Limited.](#)

(3) Where the regulator decides to revoke an environmental permit it must serve a notice on the operator specifying—

- (a) the reasons for the revocation,
- (b) in the case of a partial revocation—
 - (i) the extent to which the environmental permit is being revoked, and
 - (ii) any variation to the conditions of the environmental permit, and
- (c) the date on which the revocation will take place, which must not be less than 20 working days after the date on which the notice is served.

(4) Unless the regulator withdraws a revocation notice, an environmental permit ceases to have effect on the date specified in the notice—

- (a) in the case of a revocation in whole, entirely,
- (b) in the case of a partial revocation, to the extent of the part revoked.

(5) In the case of a partial revocation, the regulator may replace the environmental permit with a consolidated environmental permit reflecting the variation.

(6) Any variation made by a regulator under this regulation—

- (a) is taken to be a regulator-initiated variation under regulation 20(1), and
- (b) may only be made in accordance with regulation 20.

(7) Paragraphs 17 to 19 of Part 1 of Schedule 5 apply in relation to the decision to make a regulator-initiated variation and the notification of such a decision.

(8) Where an environmental permit authorises in whole or in part an operation which becomes an exempt operation, that part of the permit which authorises the exempt operation is revoked on the date that the operation is registered as an exempt operation.

(9) In paragraph (8), “operation” means a waste operation, stand-alone water discharge activity or stand-alone groundwater activity.

Revocation of an environmental permit: steps to be taken after the revocation takes effect

23.—(1) This regulation applies where the regulator has decided to revoke an environmental permit, or part of a permit, and the regulator considers that, after the revocation takes effect, it is appropriate for the operator to take steps—

- (a) to avoid a pollution risk resulting from the operation of the regulated facility, or
- (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.

(2) But this regulation does not apply if the revocation relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) mobile plant;

(c) a stand-alone water discharge activity or stand-alone groundwater activity.

(3) If the operator is already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator's view under paragraph (1) and state that paragraph (4) applies.

(4) The environmental permit continues to have effect to the extent that it requires the steps to be taken until the regulator issues a certificate stating that it is satisfied that all the steps have been taken.

(5) If the operator is not already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator's view under paragraph (1) and the steps to be taken.

(6) If paragraph (5) applies, unless the regulator issues a certificate stating that it is satisfied that all the steps have been taken, the steps must be treated as if they were conditions of an environmental permit for the purposes of—

- (a) regulation 20,
- (b) regulation 36, and
- (c) the offence in regulation 38(2).

Notification of the surrender of an environmental permit

24.—(1) This regulation applies to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description or class—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) mobile plant;
- (c) a solvent emission activity;
- (d) in relation to Wales, a stand-alone water discharge activity or stand-alone groundwater activity;
- (e) a stand-alone flood risk activity, except where the environmental permit has been granted subject to a condition that is to operate beyond the time when the activity is complete.
- (f) a medium combustion plant;
- (g) a specified generator
- (h) in relation to England, a stand-alone water discharge activity or stand-alone groundwater activity other than a discharge to a well or borehole—
 - (i) which is used for hydrocarbon exploration or extraction, and
 - (ii) which intersects a hydrocarbon formation.

(2) By notification to the regulator, the operator may surrender that part of an environmental permit (or if applicable, the whole permit) to which this regulation applies.

(3) A notification must—

- (a) be made on the form provided by the regulator,
- (b) include such information as is specified in the form, and
- (c) specify the date on which the surrender is to take place, which—
 - (i) in all cases, must not be less than 20 working days after the date on which the notification is given, and
 - (ii) in the case of a stand-alone flood risk activity where the regulator has specified in the environmental permit a date by which the activity must be completed, must not be earlier than the day after that date.

(4) Subject to paragraph (7), the environmental permit ceases to have effect on the date specified in the notification to the extent specified there.

(5) Paragraphs (6) and (7) apply to a partial surrender if the regulator considers it necessary to vary the environmental permit conditions to take account of that surrender.

(6) The regulator must serve a notice on the operator specifying—

- (a) the regulator's view under paragraph (5),
- (b) the variation, and
- (c) the date the variation takes effect.

(7) If the date specified in the notice under paragraph (6)(c) is later than the date specified in the notification under paragraph (3)(c), the variation and partial surrender both take effect on the later date.

Application for the surrender of an environmental permit

25.—(1) This regulation applies to an environmental permit, or any part of a permit, to which regulation 24 does not apply.

(2) By application to the regulator, an operator may surrender an environmental permit, or that part of a permit, to which this regulation applies.

(3) Part 1 of Schedule 5 applies in relation to an application for the surrender of an environmental permit in whole or in part.

CHAPTER 4

Standard rules

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CHAPTER 5

Appeals in relation to environmental permits

Appeals to an appropriate authority

31.—(1) Subject to paragraphs (2) and (3), the following persons may appeal to the appropriate authority—

- (a) a person whose application is refused;
- (b) a person who is aggrieved by a decision to impose an environmental permit condition following that person's application;

(ba) Southern Water Services Limited, where the regulator grants an application for an environmental permit or varies or revokes an existing environmental permit authorising a water discharge activity in relation to Havant Thicket Reservoir and Southern Water Services Limited is aggrieved by that decision or by any condition (or absence of condition) in the environmental permit so granted;

- (c) a person who is aggrieved by a decision to impose a condition on an environmental permit held by that person—
 - (i) as a result of a regulator-initiated variation, or
 - (ii) to take account of the partial transfer, partial revocation or partial surrender of that environmental permit;
- (d) a person who is aggrieved by the deemed withdrawal under paragraph 4(2) of Part 1 of Schedule 5 of that person's duly-made application;
- (e) a person who is aggrieved by a decision relating to an environmental permit held by that person not to authorise the closure procedure mentioned in—
 - (i) Article 13 of the Landfill Directive after a request referred to in Article 13(a)(ii) of that Directive, or
 - (ii) Article 12 of the Mining Waste Directive after a request referred to in Article 12(2)(b) of that Directive;

- (f) a person on whom an enforcement notice, a revocation notice, suspension notice, prohibition notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice, flood risk activity notice of intent or flood risk activity remediation notice is served.
- (2) Paragraph (1) does not apply where—
- (a) the relevant decision or notice implements a direction of the appropriate authority given under—
 - (i) regulation 62(1),
 - (ii) regulation 63(1) or (6), or
 - (iii) paragraph (6) of this regulation, or
 - (b) an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility is refused pursuant to paragraph 14(2) of Schedule 20.
- (3) Paragraph (1)(f) does not apply to the extent that a revocation notice or suspension notice is served because of a failure to pay a charge prescribed in a scheme made under regulation 66(1) in respect of the subsistence of an environmental permit.
- (4) On the determination of an appeal in respect of a notice, the appropriate authority—
- (a) may quash or affirm the notice, and
 - (b) if it affirms the notice, may affirm it with or without modifications.
- (5) When determining an appeal in respect of a decision, the appropriate authority has the same powers as the regulator had when making the decision.
- (6) On the determination of an appeal in respect of a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator under paragraph 6(2)(a) of Schedule 6.
- (7) Except as otherwise provided by this regulation—
- (a) an appeal does not have the effect of suspending a decision or notice; but
 - (b) if an appeal is brought against a revocation notice, the notice does not take effect until the final determination or the withdrawal of the appeal.
- (8) Subject to paragraph (11), paragraph (7)(b) does not apply if the revocation notice—
- (a) relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity, and
 - (b) states that, in the opinion of the regulator, the revocation is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.
- (9) If an appeal is brought under paragraph (1)(c)(i) in respect of a decision to impose a condition on an environmental permit in relation to a stand-alone water discharge activity, the imposition of the environmental permit condition does not take effect, subject to paragraphs (10) and (11), until the final determination or the withdrawal of the appeal.
- (10) Paragraph (9) does not apply if the notice effecting the decision includes a statement that, in the opinion of the regulator, the imposition of the condition is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.
- (11) If the appropriate authority, on the application of the appellant, determines that the regulator acted unreasonably in excluding the application of paragraph (7)(b) or (9), then—
- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (7)(b) or (9) applies to the decision or notice from the end of that day,
 - (b) the appellant is entitled to recover compensation from the regulator in respect of any loss suffered in consequence of that exclusion, and
 - (c) any dispute as to a person's entitlement to such compensation or as to the amount of it is to be determined by a single arbitrator appointed—
 - (i) by agreement between the parties to the dispute, or

(ii) in the absence of agreement, by the appropriate authority.

(12) Schedule 6 (appeals to the appropriate authority) has effect in relation to the making and determination of appeals under this regulation.

(13) In this regulation—

“application” has the meaning given in paragraph 1 of Part 1 of Schedule 5;

“person” includes a person to whom an environmental permit is transferred after—

- (a) an application or a decision mentioned in paragraph (1) is made, or
- (b) a notice mentioned in that paragraph is served.

[Not reproduced]

PART 6

Powers and functions of the regulator and the appropriate authority

Power of the regulator to prevent or remedy pollution

57.—(1) If the regulator considers that a risk of serious pollution exists as a result of the operation of a regulated facility or an exempt facility, it may arrange for steps to be taken to remove that risk.

(2) The regulator may arrange for steps to be taken to remedy the effects of pollution if—

- (a) the commission of an offence under regulation 38(1), (2) or (3) causes pollution, or
- (b) the regulator suspects that an offence under that regulation is being or has been committed and that pollution is being or has been caused as a result.

(3) If the regulator intends to arrange for steps to be taken under paragraph (2), it must notify the operator of the steps not less than 5 working days before they are taken.

(4) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the relevant person.

(5) But costs are not recoverable under paragraph (4)—

- (a) if the steps referred to in paragraph (1) are taken and the relevant person shows that there was no risk of serious pollution, or
- (b) to the extent that the relevant person shows that the costs were unnecessarily incurred by the regulator.

(6) In this regulation, “the relevant person” means—

- (a) an operator,
- (b) an establishment or undertaking carrying on an exempt waste operation, or
- (c) a person carrying on a water discharge activity or groundwater activity.

Power of the regulator to prevent or remedy effects of flood risk activities

58.—(1) If the regulator considers that the carrying on of an exempt flood risk activity or a flood risk activity under an environmental permit involves a risk specified in paragraph (2), it may arrange for steps to be taken to remove that risk.

(2) The following are risks specified for purposes of paragraph (1)—

- (a) risk of serious flooding;
- (b) risk of serious detrimental impact on drainage;
- (c) risk of serious harm to the environment.

(3) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator.

- (4) But costs are not recoverable under paragraph (3)—
- (a) if the steps referred to in paragraph (1) are taken in relation to a risk specified in paragraph (2) and the operator shows there was no such risk, or
 - (b) to the extent that the operator shows that the costs were unnecessarily incurred by the regulator.

Appropriate agency: notices in relation to emissions to water

59.—(1) This regulation applies to Part A installations for which a local authority is the regulator.

(2) At any time the appropriate agency may give notice to the local authority specifying the emission limit values or the conditions it considers appropriate for preventing or reducing emissions into water from the installation or mobile plant.

(3) If such a notice is issued, the local authority must exercise its functions under these Regulations to ensure the environmental permit for the installation or mobile plant includes—

- (a) the emission limit values or conditions specified in the notice, or
- (b) such stricter limit values or more onerous conditions as the authority thinks fit.

(4) In this regulation, “emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which must not be exceeded during a period of time.

Appropriate agency: public participation statement

60.—(1) The appropriate agency must prepare and publish a statement of its policies for complying with its public participation duties.

(2) In preparing or revising the statement the appropriate agency must consult such persons as it considers are affected by, are likely to be affected by, or have an interest in, the statement.

(3) The appropriate agency must—

- (a) keep the statement under review,
- (b) revise the statement when it considers necessary, and
- (c) publish any revised statement.

(4) The appropriate agency must comply with any published statement when exercising its functions under the public participation provisions.

(5) The duty in paragraph (2) may be satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) In this regulation, “public participation duties” means the duties in the following provisions—

- (a) regulation 26;
- (b) regulation 29;
- (c) paragraphs 6 and 8(2) of Part 1 of Schedule 5.

Power to require the provision of information

61.—(1) For the purposes of discharging its functions under these Regulations, an appropriate authority, regulator, exemption registration authority or exemption authority, by notice served on any person, may require that person to provide such information in such form and within such period as is specified in the notice.

(2) A notice under paragraph (1) may require a person to provide any information on emissions where that requirement is reasonable, including the provision of information—

- (a) not in the person's possession, and

(b) which would not usually come into the person's possession.

(3) For the purposes of this regulation the discharge by the appropriate authority of—

(a) an obligation under assimilated law, or

(b) an international obligation of the United Kingdom,

must be treated as a function of the authority under these Regulations.

(4) For the purposes of this regulation the compilation of an inventory of emissions (whether or not from a regulated facility) must be treated as a function of the regulator under these Regulations.

Directions to regulators, exemption registration authorities and exemption authorities: general

62.—(1) An appropriate authority may give directions to a regulator, exemption registration authority or exemption authority of a general or specific character with respect to the carrying out of its functions under these Regulations.

(2) Without prejudice to the generality of the power in paragraph (1), a direction may direct the regulator, exemption registration authority or exemption authority to exercise or not to exercise—

(a) specified powers,

(b) its powers in specified circumstances, or

(c) its powers in a specified manner.

(3) Except in an emergency, an appropriate authority may give a direction to the appropriate agency under paragraph (1) only after consultation with the appropriate agency.

(4) The regulator, exemption registration authority or exemption authority must comply with a direction given to it under these Regulations.

Reference of applications to an appropriate authority

63.—(1) An appropriate authority may give directions to a regulator requiring that a particular application or class of application be referred to it for determination.

(2) The regulator must—

(a) inform the applicant of the fact that the application is being referred to the appropriate authority, and

(b) forward to the appropriate authority any representations made in respect of the application.

~~(3) When an application is referred to an appropriate authority, the appropriate authority—~~

~~(a) may afford the applicant and the regulator an opportunity of appearing before and being heard by a person appointed by the appropriate authority, and~~

~~(b) must do so in any case where a request is duly made by the applicant or the regulator to be so heard.~~

(3) When an application is referred to an appropriate authority, the appropriate authority—

(a) may afford the applicant and the regulator and, where the application relates to an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir, Southern Water Services Limited, an opportunity of appearing before and being heard by a person appointed by the appropriate authority, and

(b) must do so in any case where a request is duly made by the applicant or the regulator or, as the case may be, Southern Water Services Limited, to be so heard.

(4) A request under paragraph (3)(b) must be made in writing within 15 working days after the day on which the applicant is informed that the application is being referred to the appropriate authority.

(5) A hearing under paragraph (3) is subject to paragraphs 5(2) to (6) and 6 of Schedule 6 (except paragraph 5(3)(c)) as if it were a hearing under paragraph 5(1) of that Schedule with the following modifications—

- (a) “the appellant” is to be read as “the applicant”;
- (b) “the appeal” is to be read as “the application”.

(6) On determining an application referred to it under this regulation the appropriate authority must give to the regulator a direction as to whether the regulator is to grant the application and, if so, the conditions that are to be attached to the environmental permit.

(7) In this regulation, “application” means an application—

- (a) for the grant of an environmental permit, or
- (b) for the variation of an environmental permit.

Directions to the appropriate agency: installations outside the United Kingdom

64.—(1) This regulation applies where an appropriate authority receives information from a member State in relation to the operation of an installation outside the United Kingdom which is likely to have a significant negative effect on the environment of England or Wales.

(2) The appropriate authority must direct the appropriate agency to take such steps as it considers appropriate to—

- (a) bring the information to the attention of persons likely to be affected by the operation of the installation, and
- (b) provide them with an opportunity to comment on the information.

(3) In paragraph (1), “member State” has the meaning given in paragraph 10(4) of Schedule 5.

Guidance to regulators, exemption registration authorities and exemption authorities

65.—(1) An appropriate authority may issue guidance to a regulator, exemption registration authority or exemption authority with respect to the exercise of its functions under these Regulations.

(2) In the exercise of those functions the regulator, exemption registration authority or exemption authority must have regard to the guidance.

Fees and charges in relation to the exercise of regulator's functions by local authorities

An appropriate authority may make, and from time to time revise, a scheme prescribing—

66.—(1) fees payable to a regulator in respect of applications—

- (a) for the grant of an environmental permit,
- (b) for the variation of an environmental permit,
- (c) for the transfer of an environmental permit in whole or in part,
- (d) for the surrender of an environmental permit in whole or in part,
- (e) fees payable to a regulator in respect of a regulator-initiated variation, and
- (f) charges payable to a regulator in respect of the subsistence of an environmental permit.

(2) A scheme may in particular—

- (a) prescribe specific fees and charges or the methods by which they are to be calculated,
- (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities,
- (c) subject to the requirements of these Regulations, provide for the time when, and the manner in which, payments required by the scheme are to be made, and
- (d) make such incidental, supplementary and transitional provision as appears necessary or expedient to the appropriate authority.

(3) In making or revising a scheme, so far as practicable the appropriate authority must ensure that the fees and charges payable are sufficient to cover expenditure by a regulator—

- (a) in exercising its functions under these Regulations;
- (b) in making payment to any person who prepares guidance in relation to an installation or mobile plant that is—
 - (i) mentioned in regulation 32(5), or
 - (ii) specified in a direction under regulation 33;
- (c) in making payment to the appropriate agency in relation to the exercise of the appropriate agency's functions under regulation 59.

(4) A scheme must provide for the payment of sums by the regulator to the appropriate agency where those sums are related to expenditure by the appropriate agency under regulation 59 or in preparing guidance referred to in paragraph (3)(b).

(5) If a regulator considers that an operator has failed to pay a charge specified in a scheme in respect of the subsistence of the operator's permit, the regulator may revoke or suspend the permit. A revocation or suspension must be by way of notice served under regulation 22(3) or regulation 37.

(6) In this regulation, “regulator” means a local authority on which functions are conferred by regulation 32 or by a direction under regulation 33.

Plans relating to emissions

67.—(1) Subject to paragraph (3), an appropriate authority may make plans for—

- (a) the setting of limits on the total amount, or the total amount in any period, of emissions from all or any description of source, or
- (b) the allocation of quotas relating to such emissions.

(2) If the appropriate authority allocates a quota in a plan made under paragraph (1) it may also make a scheme for the trading or other transfer of that quota.

(3) This regulation does not apply to an emission plan or to the Transitional National Plan.

(4) In this regulation—

“emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land;

“emission plan” has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007 as those Regulations were in force on 31st March 2016;

“Transitional National Plan” has the meaning given in regulation 2 of the Large Combustion Plants (Transitional National Plan) Regulations 2015.

Consultation in relation to works affecting flood and coastal erosion risks

68.—(1) Before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010) in Wales, the Agency must consult the NRBW.

(2) Before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk in England, the NRBW must consult the Agency.

SCHEDULE 3

Regulation 4

Exempt facilities and waste operations to which section 33(1)(a) of the 1990 Act does not apply: descriptions and conditions

PART 2

Exempt water discharge activities: descriptions and conditions

Vegetation management activities

1.—(1) For the purpose of paragraphs 5(a)(i) and 6(a)(i) of Schedule 2, the description is cutting or uprooting a substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them, where it is not reasonable to take steps to remove the vegetation from those waters.

(2) For the purpose of paragraphs 5(a)(ii) and 6(a)(ii) of that Schedule, the conditions in relation to a water discharge activity described in sub-paragraph (1) are that—

- (a) prior notice of the dates of the water discharge activity is given to persons likely to be affected by such an activity, including—
 - (i) the owner of any structure within or on the watercourse,
 - (ii) the owner of any designated site within or on the watercourse,
 - (iii) fisheries interests,
 - (iv) boating interests,
 - (v) the appropriate agency,
 - (vi) the local authority,
 - (vii) the internal drainage board (which has the same meaning as in the Land Drainage Act 1991),
 - (viii) in relation to a water discharge activity that relates to Havant Thicket Reservoir, Southern Water Services Limited and any other person or body having the benefit of The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* in relation to its provisions applying to the Havant Thicket Reservoir infrastructure, and
- (b) the activity is not carried on if there is insufficient flow to convey the vegetation.

(3) In sub-paragraph (2)(a)(ii), "designated site" means—

- (a) a European site (which has the meaning given in regulation 8 of the Conservation of Habitats and Species Regulations 2017),
- (b) a Ramsar site (which has the same meaning as in section 37A of the Wildlife and Countryside Act 1981),
- (c) a site of special scientific interest (which has the meaning given in section 52(1) of the Wildlife and Countryside Act 1981), or
- (d) a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949.

Small discharges of sewage effluent: Wales

2.—(1) For the purpose of paragraph 5(a)(i) of Schedule 2, the description is the discharge from a sewage treatment plant of 5 cubic metres per day or less of sewage effluent into inland freshwaters, coastal waters or relevant territorial waters.

(2) For the purpose of paragraph 5(a)(ii) of that Schedule, the conditions in relation to a water discharge activity described in sub-paragraph (1) are—

- (a) in the case of a discharge which takes place for the first time on or after the date on which these Regulations come into force, that all works and equipment used for the treatment of sewage effluent and its discharge comply with the requirements specified in the document entitled “Guidance for the registration of small sewage effluent discharges”, issued by the NRBW and dated July 2011 and updated in September 2016, in relation to—
 - (i) design and manufacturing standards,
 - (ii) construction, installation and operation specifications,
 - (iii) siting and installation, and
 - (iv) the capacity of the works and equipment;
- (b) that the discharge cannot reasonably, at the time it is first made, be made to the foul sewer;
- (c) that the discharge does not contain trade effluent;
- (d) that all works and equipment used for the treatment of sewage effluent and its discharge are maintained in accordance with the manufacturer’s specification;
- (e) that records of maintenance work are kept by the person who is the occupier of the land on which the discharge is made (“the occupier”) for at least 5 years after the work is carried out;
- (f) that the occupier must notify the exemption registration authority if an exempt water discharge activity ceases to be in operation;
- (g) that the occupier must ensure that all works and equipment used for the treatment of sewage effluent and its discharge are appropriately decommissioned when the exempt facility ceases to be in operation so that there is no risk of pollutants entering inland freshwaters or coastal waters;
- (h) that, before an occupier ceases to be in occupation of land on which an exempt water discharge activity is carried on, the occupier must give to the person who will next be in occupation of the land a written notice—
 - (i) stating that an exempt water discharge activity is being carried on on the land,
 - (ii) containing a description of the exempt facility,
 - (iii) stating the conditions that must be satisfied in relation to the exempt facility, and
 - (iv) accompanied by any records of maintenance mentioned in paragraph (e).

Small discharges of sewage effluent: England

3.—(1) For the purpose of paragraph 6(a)(i) of Schedule 2, the description is the discharge from a sewage treatment plant of 5 cubic metres per day or less of sewage effluent into inland freshwaters, coastal waters or relevant territorial waters.

(2) For the purpose of paragraph 6(a)(ii) of that Schedule, the conditions in relation to a water discharge activity described in sub-paragraph (1) are that an operator of the sewage treatment plant ensures that—

- (a) all works and equipment used for the treatment of sewage effluent and its discharge comply with the requirements specified in the document entitled “General binding rules for small sewage discharges (SSDs) with effect from 2nd October 2023” published by the Agency on 23rd March 2023 in relation to—
 - (i) design and manufacturing standards,
 - (ii) construction, installation and operation specifications,
 - (iii) siting and installation, and
 - (iv) the capacity of the works and equipment;
- (b) in the case of a discharge which takes place for the first time on or after 1st January 2015, the discharge could not reasonably be made to the foul sewer;
- (c) the discharge does not contain trade effluent;

- (d) all works and equipment used for the treatment of sewage effluent and its discharge are maintained in accordance with the manufacturer's specification;
- (e) all works and equipment used for the treatment of sewage effluent and its discharge are appropriately decommissioned when the exempt facility ceases to be in operation so that there is no risk of polluting matter entering inland freshwaters or coastal waters;
- (f) before the land or part of the land on which the sewage treatment plant is situated or being used is sold, an owner of the land or part of the land gives to the purchaser a written notice—
 - (i) stating that an exempt water discharge activity is being carried on on the land, and
 - (ii) containing a description of the exempt facility;
- (g) the discharge is not made into Havant Thicket Reservoir.

(3) For the purposes of this paragraph, an operator is a person who has control over the operation of the sewage treatment plant by reason of—

- (a) being an owner of the land on which the sewage treatment plant is situated or being used, or
- (b) having entered into a written agreement with the owner of the land on which the sewage treatment plant is situated or being used to be responsible for the maintenance of the sewage treatment plant.

SCHEDULE 5

Regulations 13(3) and 15(3)

Environmental permits

PART 1

Grant, variation, transfer and surrender of environmental permits

Interpretation

1.—(1) In this Part—

“applicant” means—

- (a) in the case of an application for the transfer of an environmental permit in whole or in part—
 - (i) the operator and the proposed transferee, or
 - (ii) the proposed transferee;
- (b) in every other case, the operator;

“application” means an application—

- (c) for the grant of an environmental permit under regulation 13(1),
- (d) by an operator for the variation of an environmental permit under regulation 20(1),
- (e) for the transfer, in whole or in part, of an environmental permit under regulation 21(1), or
- (f) for the surrender, in whole or in part, of an environmental permit under regulation 25(2);

~~“public consultee” means a person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, an application.~~

“public consultee” means a person who the regulator considers is affected by, is likely to be affected by, or has an interest in, an application and in relation to an application for the grant, variation or transfer of an environmental permit authorising a water discharge activity in relation to Havant Thicket Reservoir, includes Southern Water Services Limited and any other

[person or body having the benefit of The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* in relation to its provisions applying to the Havant Thicket Reservoir infrastructure.](#)

Making an application

2.—(1) An application must—

- (a) be made by the applicant on the form provided by the regulator, and
- (b) include—
 - (i) such information as is specified on the form, and
 - (ii) any additional information required by the regulator.

(2) An application under regulation 13(1) for the grant of an environmental permit for a flood risk activity referred to in paragraph 3(1)(a) to (c) of Part 1 of Schedule 25 must be accompanied by—

- (a) a fee of £50 for each flood risk activity to which the application relates, unless the regulator has made a charging scheme under section 41 of the 1995 Act, or
- (b) where the regulator has made such a charging scheme, the fee prescribed under that scheme.

(3) Any other application must be accompanied by any fee prescribed in a charging scheme made by the regulator under section 41 of the 1995 Act or by the appropriate authority under regulation 66.

Withdrawing an application

3.—(1) A duly-made application may be withdrawn by the applicant before it is determined.

(2) If an application is withdrawn the applicant is not entitled to the return of any fee which accompanied it.

Further information in respect of a duly-made application

4.—(1) If the regulator considers that it requires further information to determine a duly-made application, it may serve a notice on the applicant specifying the further information and the period within which it must be provided.

(2) If the applicant fails to provide the further information in accordance with the notice, the regulator may serve a further notice on the applicant stating that the application is deemed to be withdrawn, upon which the application is deemed to be withdrawn.

(3) If an application is deemed to be withdrawn, the applicant is not entitled to the return of any fee which accompanied it.

Public participation: scope

5.—(1) Paragraph 6 applies to every application for the grant of an environmental permit except an application in relation to—

- (a) mobile plant,
- (b) a radioactive substances activity described in paragraph 11(5) of Part 2 of Schedule 23,
- (c) a standard facility,
- (d) a mining waste operation not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies, or
- (e) a stand-alone flood risk activity—
 - (i) which is not likely to have a significant adverse effect on the environment, or

- (ii) in respect of which public consultation has been carried out under another statutory requirement where that consultation addresses the potential environmental impact of the flood risk activity.
 - (f) a medium combustion plant or a specified generator, unless the regulator determines that the operation of the medium combustion plant or specified generator may have significant negative effects on human beings or the environment.
- (2) Paragraph 6 applies to every application for the variation of an environmental permit if—
- (a) it would entail a substantial change, or
 - (b) the regulator determines that the paragraph should apply.
- (3) Paragraph 8 applies to every regulator-initiated variation if—
- (a) it would entail a substantial change, or
 - (b) the regulator determines that the paragraph should apply.
- (4) But paragraphs 6 and 8 do not apply to the extent that the application or regulator-initiated variation relates to—
- (a) the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts,
 - (b) dry cleaning,
 - (c) the unloading of petrol into stationary storage tanks at a service station if it is an activity within paragraph (c) of Part B of Section 1.2 of Part 2 of Schedule 1,
 - (d) any motor vehicle refuelling activity within paragraph (d), (e) or (f) of Part B of Section 1.2 of Part 2 of Schedule 1, or
 - (e) a stand-alone flood risk activity—
 - (i) which is not likely to have a significant adverse effect on the environment, or
 - (ii) in respect of which public consultation has been carried out under another statutory requirement where that consultation addresses the potential environmental impact of the flood risk activity.
- (5) In this paragraph—
- “change in operation” means a change in the nature or functioning, or an extension, of an installation, which may have consequences for the environment;
- “dry cleaning” means an industrial or commercial activity using volatile organic compounds to clean garments, furnishing and similar consumer goods excluding the manual removal of stains and spots in the textile or clothing industry;
- “substantial change” means a change in operation of an installation which in the regulator's opinion may have significant negative effects on human beings or the environment and includes—
- (a) in relation to a Part A installation, a change in operation which in itself meets the thresholds, if any, set out in Part 2 of Schedule 1, and
 - (b) in relation to a waste incineration plant or waste co-incineration plant for non-hazardous waste, a change in operation which would involve the incineration or co-incineration of hazardous waste.
- (6) When assessing whether a change in operation of a Part B installation has significant effects on the environment, the regulator must consider only its emissions to air.
- (7) When assessing whether the operation of a medium combustion plant or a specified generator may have significant negative effects on human beings or the environment, the regulator must consider only its emissions to air.

Public participation in relation to certain applications

6.—(1) Subject to sub-paragraphs (2) and (3), if this paragraph applies the regulator must, within the consultation communication period—

- (a) take the steps it considers appropriate to inform the public consultees of the application and the place and times its public register can be inspected free of charge,
- (b) invite the public consultees to make representations on the application, and
- (c) specify to the public consultees the address to which and the period within which representations are to be made.

(1A) Where this paragraph applies, the application relates to a water discharge activity in relation to Havant Thicket Reservoir and the applicant is not Southern Water Services Limited, the regulator must, within the consultation communication period—

- (a) send written notice to Southern Water Services Limited identifying the nature of the application and the place and times its public register and any information to be excluded from the public register may be inspected,
- (b) invite Southern Water Services Limited to make representations on the application, and
- (c) specify to Southern Water Services Limited the address to which and the period within which representations are to be made.

(2) The regulator must not inform the public consultees of information which is to be excluded from a public register in the interests of national security unless the appropriate authority directs that it must do so.

(3) The regulator must not inform the public consultees of information which is to be excluded from a public register because it is confidential information, unless the public consultee is—

- (a) a public authority and the information is necessary for the exercise of its functions, or
- (b) a sewerage undertaker and the information relates to the release of any substance into a sewer vested in that undertaker.

Calculation of the consultation communication period

7.—(1) In paragraph 6, “the consultation communication period” means a period of 30 working days starting on the day the regulator receives a duly-made application.

(2) But the period starts on—

- (a) the determination date, if a determination in relation to national security or confidentiality is made under regulation 47 or 50, or
- (b) the day an information subject gives notice under regulation 49(2)(a) consenting to the regulator including information on the public register.

(3) In sub-paragraph (2), “determination date” means—

- (a) the date of a determination under regulation 47(3) or (7),
- (b) the date of a determination under regulation 50 that information must be excluded from the public register, or
- (c) if the regulator determines under regulation 50 that information must be included on the public register—
 - (i) if an appeal is brought, the date of determination or withdrawal of that appeal, or
 - (ii) if no appeal is brought, the date on which the period for bringing an appeal expires.

Public participation in relation to regulator-initiated variations

8.—(1) If this paragraph applies, the regulator must notify the operator—

- (a) that the public participation procedures in sub-paragraph (2) apply,
- (b) of the variation it proposes to the environmental permit, and
- (c) of any fee prescribed in respect of this paragraph in a charging scheme made by the regulator under section 41 of the 1995 Act or by the appropriate authority under regulation 66.

(2) The regulator must—

- (a) take the steps it considers appropriate to inform the public consultees of the proposed variation,
- (b) invite the operator and the public consultees to make representations on the proposed variation, and
- (c) specify to the operator and the public consultees the address to which and the period within which representations are to be made.

Consultation: conditions mentioned in regulation 15(1)

9.—(1) This paragraph applies if the regulator proposes to include a condition mentioned in regulation 15(1) in an environmental permit, other than a condition to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a condition that does not specifically identify the land in relation to which the operator is required to carry out works or, as the case may be, do other things.

(3) If this paragraph applies, the regulator must serve a notice which complies with sub-paragraph (4) on every person appearing to it to fall within sub-paragraph (5).

(4) The notice must specify—

- (a) the proposed condition,
- (b) the works or other things which the condition would require, and
- (c) the address to which and the period within which representations on the proposed condition are to be made (which period must not expire less than 20 working days after the day the notice is served).

(5) A person falls within this sub-paragraph if—

- (a) the person is the owner, lessee or occupier of land, and
- (b) regulation 15(2) would require the person to grant the rights mentioned there if the proposed condition were included in the environmental permit.

(6) In sub-paragraph (5)(a), “owner” means the person who—

- (a) is receiving the rack-rent of the land, whether on the person's own account or as agent or trustee for another person, or
- (b) would receive the rack-rent if the land were let at a rack-rent,
- (c) but does not include a mortgagee not in possession.

Consultation with member States

10.—(1) This paragraph applies if—

- (a) an appropriate authority is aware that the grant of a relevant application or regulator-initiated variation is likely to have significant negative effects on the environment of a member State, or
- (b) a member State requests information about a relevant application or about a proposal for a regulator-initiated variation.

(2) As soon as is reasonably practicable the appropriate authority must—

- (a) send the particulars of the relevant application or regulator-initiated variation to that member State,
- (b) inform that member State of the relevant information,
- (c) notify the operator and the regulator that it has complied with paragraphs (a) and (b), and
- (d) comply with sub-paragraph (2A).

(2A) The appropriate authority must—

- (e) consult the authorities of that member State, and

- (f) allow such reasonable period as may have been agreed with those authorities for them to ensure that the authorities and the public concerned in that member State are given an opportunity to forward their representations on the relevant information supplied.
- (3) If a regulator receives notification under sub-paragraph (2)(c), it must not determine the application or make the regulator-initiated variation until the appropriate authority has—
- (a) notified it that the consultation described in sub-paragraph (2A)(a) has been completed, and
 - (aa) notified it that the period described in sub-paragraph (2A)(b) has ended, and
 - (b) sent it any representations made by the member State.
- (4) In this paragraph—
- “member State” includes Iceland, Liechtenstein and Norway but only to the extent that there is a relevant application or regulator-initiated variation which relates to the carrying on at an installation of an activity listed in Annex I to the Industrial Emissions Directive;
- “relevant application” means an application for the grant or variation of an environmental permit in relation to an installation described in sub-paragraph (5) or a Category A mining waste facility;
- “relevant information” means—
- (a) where the relevant application or regulator-initiated variation relates to an installation described in sub-paragraph (5), a matter in paragraph 1 of Annex IV to the Industrial Emissions Directive;
 - (b) where it relates to a Category A mining waste facility, the information described in Article 7(2) of the Mining Waste Directive.
- (5) The description in this sub-paragraph is an installation where an activity listed in Annex 1 to the Industrial Emissions Directive is carried on.

Duty to consider representations

11. Before it determines an application or makes a regulator-initiated variation, the regulator must consider any representation—
- (a) made pursuant to paragraph 6(1)(b), 8(2)(b) or 9(4)(c), or
 - (b) sent to it under paragraph 10(3)(b).

Duty to determine an application

- 12.—(1) The regulator must grant or refuse a duly-made application.
- (2) Except in the case of an application for the surrender of an environmental permit in whole, the regulator may grant an application subject to such conditions as it sees fit.
- (3) But—
- (a) variations of an environmental permit in relation to the grant of an application for variation, transfer in whole or in part, or partial surrender must be in consequence of the variation, transfer or partial surrender, as the case may be and
 - (b) if granting an application for partial transfer, the regulator must grant a new environmental permit to the transferee subject to the same conditions as the original permit, varied in consequence of the partial transfer.

Identity and competence of the operator

- 13.—(1) Subject to sub-paragraph (3), the regulator must refuse an application for the grant of an environmental permit or for the transfer in whole or in part of an environmental permit if it considers that, if the permit is granted or transferred, the requirements in sub-paragraph (2) will not be satisfied.

(2) The requirements are that the applicant for the grant of an environmental permit, or the proposed transferee, on the transfer of an environmental permit (in whole or in part), must—

- (a) be the operator of the regulated facility, and
- (b) operate the regulated facility in accordance with the environmental permit.

(3) The requirement in sub-paragraph (2)(b) does not apply to an applicant for the grant of an environmental permit authorising the carrying on of only a stand-alone water discharge activity, stand-alone groundwater activity or stand-alone flood risk activity.

Surrender applications

14.—(1) The regulator must accept an application for the surrender of an environmental permit in whole or in part under regulation 25(2) if it is satisfied that the necessary measures have been taken—

- (a) to avoid a pollution risk resulting from the operation of the regulated facility and, in the case of a permit authorising the carrying on of a flood risk activity (in whole or in part), to avoid any of the risks specified in sub-paragraph (3), and
- (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.

(2) Sub-paragraph (1) does not apply to an application for the surrender of any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a radioactive substances activity at a nuclear site.

(3) The risks specified in this sub-paragraph are—

- (a) risk of flooding;
- (b) risk of harm to the environment;
- (c) risk of detrimental impact on drainage.

Time limits for determination

15.—(1) If—

- (a) the regulator has not determined an application within the relevant period, and
- (b) the applicant serves a notice on the regulator which refers to this paragraph,

the application is deemed to have been refused on the day on which the notice is served.

(2) Sub-paragraph (1) does not apply—

- (a) to an application for the grant of an environmental permit that, if granted, would authorise the carrying on of a radioactive substances activity at a nuclear site, or
- (b) to an application for the transfer of an environmental permit where the permit authorises the carrying on of a radioactive substances activity at a nuclear site.

(3) In sub-paragraph (1) “the relevant period” means a period, calculated in accordance with paragraph 16, of—

- (a) in the case of an application for the transfer of an environmental permit in whole or in part, 2 months,
- (b) in the case of an application for the grant or variation, in whole or in part, of an environmental permit relating to a stand-alone flood risk activity only, 2 months,
- (c) in a case where paragraph 6 applies, 4 months, or
- (d) in any other case, 3 months,

or in any case, a longer period than the period in paragraphs (a) to (d), if it is agreed by the regulator and the applicant.

Calculation of the relevant period

- 16.—(1) This paragraph provides for the calculation of a period referred to in paragraph 15(3).
- (2) The period starts—
- (a) in the case of an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility—
 - (i) on the day the regulator is notified by the fire and rescue authority of the matters referred to in paragraph 14(1) of Schedule 20, and for these purposes “fire and rescue authority” has the meaning given in paragraph 2 of that Schedule, or
 - (ii) if paragraph 10 of this Schedule applies, on the day mentioned in sub-paragraph (i) of this paragraph or, if the day on which the appropriate authority complies with paragraph 10(3) of this Schedule is later, on that day;
 - (b) if paragraph 10 of this Schedule applies and the application is not one covered by paragraph (a), on the day the appropriate authority complies with paragraph 10(3) of this Schedule;
 - (c) in all other cases, on the day the regulator receives a duly-made application.
- (3) In calculating the period the following periods must be ignored—
- (a) a period beginning with the service of a notice requiring further information under paragraph 4(1) to the receipt by the regulator of that information;
 - (b) a period for representations mentioned in paragraph 9(4)(c) to the extent that it does not overlap with a period for representations mentioned in paragraph 6(1)(c);
 - (c) a period of 20 days after the service of a notice under regulation 15(5);
 - (d) where regulation 15(6) applies, a period beginning with the day on which the regulator informs the applicant of the proposed condition and ending when the regulator is satisfied that the landowner has consented to that condition;
 - (e) a period during which national security or confidentiality is being considered in relation to the application, that is to say—
 - (i) any period during which a determination under regulation 47(3) or (7) or 50 is being considered (including any appeal), or
 - (ii) a period of 15 working days after the service of a notice under regulation 49(1);
 - (f) if the regulator informs the public in relation to a draft decision in accordance with paragraph 1(d) of Annex IV to the Industrial Emissions Directive, a period of 20 working days.

Notification of a determination or decision

17.—(1) As soon as is reasonably practicable after it determines an application or decides to make a regulator-initiated variation, the regulator must comply with sub-paragraphs (2) and (2A).

~~(2) The regulator must—~~

- ~~(a) notify the applicant or, for a regulator-initiated variation, the operator of—~~
 - ~~(i) its determination or decision,~~
 - ~~(ii) the rights of appeal the applicant or operator has under regulation 31, and~~
 - ~~(iii) the requirements relating to the exercise of those rights in paragraphs 2 and 3 of Schedule 6, and~~
- ~~(b) if paragraph 10 applies, notify the appropriate authority of the determination or decision.~~

(2) The regulator must—

- (a) notify the applicant or, for a regulator-initiated variation, the operator of—
 - (i) its determination or decision,
 - (ii) the rights of appeal the applicant or operator has under regulation 31, and

(iii) the requirements relating to the exercise of those rights in paragraphs 2 and 3 of Schedule 6; and

(b) if paragraph 10 applies, notify the appropriate authority of the determination or decision; and

(c) notify Southern Water Services Limited where the application or regulator-initiated variation relates to a water discharge activity in relation to Havant Thicket Reservoir of—

(i) its determination or decision.

(ii) the rights of appeal that Southern Water Services Limited has under regulation 31, and

(iii) the requirements relating to the exercise of those rights in paragraphs 2 and 3 of Schedule 6.

(2A) Where paragraph 10 applies to an application or regulator-initiated variation relating to an installation described in paragraph 10(5), the regulator must—

(a) notify the authorities of the member State consulted in accordance with paragraph 10(2A)(a) of the determination or decision, and

(b) provide those authorities with the information described in Article 24(2) of the Industrial Emission Directive.

(3) In this paragraph, “determination” and “decision” include the reasons for the determination or decision.

Date of effect of certain determinations and decisions

18.—(1) This paragraph applies to—

(a) a determination by which the regulator grants an application which—

(b) varies an environmental permit in consequence of an application for variation, transfer in whole or in part, or partial surrender, or

(i) grants a new environmental permit in consequence of an application for partial transfer, and

(ii) a decision to make a regulator-initiated variation.

(2) The determination or decision must specify any variation and the date it is to take effect.

(3) If the regulator grants an application for the transfer of an environmental permit in whole or in part, the determination must specify the date agreed between the regulator and the applicant that the transfer is to take effect.

Form of certain determinations and decisions: consolidation of permits

19.—(1) This paragraph applies to every determination and decision to which paragraph 18 applies.

(2) A determination or decision may comprise—

(a) a consolidated permit reflecting the variations, and

(b) a notice specifying the variations included in that consolidated permit.

(3) Only the variations specified are subject to the right of appeal in regulation 31(1)(b) or (c).

Incidents and accidents: deemed condition of a permit

20. Every environmental permit in relation to a regulated facility to which Schedule 7, 13 or 14 applies is deemed to contain the following conditions, unless such conditions are included in the permit—

(a) in the event that the operation of a regulated facility gives rise to an incident or accident which significantly affects the environment, the operator of that regulated facility must immediately—

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

PART 2

Compensation in relation to conditions affecting certain interests in land

[Not reproduced]

SCHEDULE 6

Regulation 31(12)

Appeals to the appropriate authority

Interpretation

1. In this Schedule—

“appeal” means an appeal to the appropriate authority;

“appointed person” means the person appointed under paragraph 5;

“determination” includes the reasons for the determination.

Making an appeal

2.—~~(1) A person making an appeal must—~~

~~(a) send the appropriate authority written notice of the appeal and the documents specified in sub-paragraph (2), and~~

~~(b) at the same time send the regulator copies of the notice and documents.~~

(1) A person making an appeal must—

(a) send the appropriate authority written notice of the appeal and the documents specified in sub-paragraph (2),

(b) at the same time send the regulator copies of the notice and documents, and

(c) if the appeal is brought under regulation 31(1)(ba), at the same time send the applicant or (in the case of a regulator-initiated variation) the operator copies of the notice and documents.

(2) The documents are—

(a) a statement of the grounds of appeal,

(b) a copy of any relevant application,

(c) a copy of any relevant environmental permit,

- (d) a copy of any relevant correspondence between the appellant and the regulator,
- (e) a copy of any decision or notice which is the subject matter of the appeal, and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be dealt with by way of written representations.

(3) An appellant may withdraw an appeal by notifying the appropriate authority in writing and must send a copy of that notification to the regulator.

Time limit for making an appeal

3.—(1) A notice of appeal must be given—

- (a) in relation to an appeal against a revocation notice, before the revocation notice takes effect;
- (b) in relation to the withdrawal of a duly-made application under paragraph 4(2) of Part 1 of Schedule 5, not later than 15 working days after the date of the further notice served under that paragraph;
- (c) in relation to an enforcement notice, a regulator-initiated variation, suspension notice, mining waste facility closure notice, landfill closure notice, flood risk activity emergency works notice, flood risk activity notice of intent or flood risk activity remediation notice, not later than 2 months after the date of the variation or notice;
- (d) in relation to a prohibition notice, not later than 21 days after the date of the notice;
- (e) in any other case, not later than 6 months after the date of the decision or deemed decision.

(2) The appropriate authority may in a particular case allow notice of appeal to be given after the periods mentioned in sub-paragraph (1)(b) to (e) have expired.

Notice to affected and interested persons

~~4.—(1) The regulator must, within 10 working days after receipt of a copy of a notice of appeal, give notice of it to any person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, the subject matter of the appeal.~~

(1) The regulator must, within 10 working days after receipt of a copy of a notice of appeal, give notice of it to any person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, the subject matter of the appeal, and give notice and provide a copy of the documents to Southern Water Services Limited where the appeal relates to a water discharge activity in relation to Havant Thicket Reservoir.

(2) A notice must include—

- (a) a description of the subject matter of the appeal, and
- (b) a statement that representations in writing may be made to the appropriate authority within a period of 15 working days after the date of the notice.

(3) The regulator must notify the appropriate authority of the persons to whom, and the date on which, such a notice was sent, within 10 working days after sending it.

(4) The regulator must give notice of the withdrawal of an appeal to every person given such a notice.

Hearing before an appointed person

5.—(1) Before determining an appeal the appropriate authority may give the appellant and the regulator an opportunity of appearing before and being heard by a person appointed by the appropriate authority, and must do so in a case where a request is duly made by the appellant or the regulator to be so heard.

(2) If the appointed person so decides, a hearing may be held wholly or to any extent in private.

(3) The persons entitled to be heard at a hearing are—

- (a) the appellant,
- (b) the regulator, and
- (c) a person who has made representations to the regulator in respect of the subject matter of the appeal within the period mentioned in paragraph 4(2)(b).

(4) The appointed person may permit other persons to be heard and such permission must not be unreasonably withheld.

(5) After the hearing, the appointed person must make a report in writing to the appropriate authority which must include the appointed person's—

- (a) conclusions, and
- (b) recommendations or reasons for not making recommendations.

(6) Subsections (2) to (5) of section 250 of the Local Government Act 1972 apply to hearings held under this paragraph by an appointed person as they apply to inquiries caused to be held under that section by a Minister with the following modifications—

- (a) the substitution in subsection (2) for the reference to the person appointed to hold the inquiry with a reference to the appointed person;
- (b) the substitution in subsection (4) for the references to the Minister causing the inquiry to be held with references to the appropriate authority;
- (c) the substitution of the reference in that subsection to a local authority with a reference to the regulator;
- (d) the substitution in subsection (5) for the reference to the Minister causing the inquiry to be held with a reference to the appropriate authority.

Notice of determination of an appeal

6.—(1) The appropriate authority must give notice to the appellant of its determination and provide the appellant with a copy of the report mentioned in paragraph 5(5).

(2) At the same time the appropriate authority must send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to the regulator, and
- (b) a copy of its determination to any person who made representations in respect of the subject matter of the appeal to the authority, or at any hearing.

Procedure following the quashing of a determination of an appropriate authority

7.—(1) If a determination is quashed in proceedings before a court, the appropriate authority—

- (a) must send to the persons notified of its determination under paragraph 6 a statement of the matters in relation to which further representations are invited,
- (b) must give those persons the opportunity of making written representations in respect of those matters within 20 working days after the date of the statement, and
- (c) may cause a hearing to be held or reopened.

(2) If a hearing is held or reopened under sub-paragraph (1)(c), paragraphs 5(2) to 5(6) apply as they apply to a hearing held under paragraph 5(1).

(3) Paragraph 6 applies to the redetermination of an appeal as it applies to the determination of that appeal.

ANNEX 4

The Water Supply (Water Quality) Regulations 2016 as proposed to be modified by the Order

PART 6

Drinking water protected areas

Drinking water abstraction points: monitoring sites

17.—(1) Every water undertaker or wholesale licensee must identify every point from which it abstracts water for supply for regulation 4(1) purposes.

(2) At every abstraction point, the relevant water undertaker or wholesale licensee must take or cause to be taken such samples, and analyse or cause to be analysed those samples for such properties, organisms and substances as it considers necessary in order to comply with regulations 26 to 28.

(3) In relation to any abstraction point, the Secretary of State may, by notice served on the relevant water undertaker or wholesale licensee, require the relevant water undertaker or wholesale licensee—

- (a) to take or cause to be taken such numbers of samples of water per year as may be specified, and
- (b) to analyse or cause to be analysed those samples for such concentrations or values of such properties, organisms and substances as may be specified and at such frequencies as may be specified.

(4) The Secretary of State may, by notice served on the relevant undertaker or wholesale licensee, revoke or vary a notice served under paragraph (3).

(5) Every analysis required under—

- (a) paragraph (2), in relation to every body of surface water which provides more than 100 cubic metres of water per day as an average, must be carried out at no less than the following frequencies—
 - (i) 4 per year, where the population so served by the body of surface water is less than 10,000 people;
 - (ii) 8 per year, where the population so served is from 10,000 to 30,000 people;
 - (iii) 12 per year, where the population so served is greater than 30,000 people;
- (b) paragraphs (2) and (3) must be in accordance with such relevant standards as may be specified by the Secretary of State by notice served on the water undertaker or wholesale licensee.

(6) For the purposes of—

- (a) paragraphs (2) and (3) and this paragraph—

~~“abstraction point” means an abstraction point identified under paragraph (1);~~

“abstraction point” means—

- (i) an abstraction point identified under paragraph (1); or
- (ii) Havant Thicket Reservoir, being a reservoir located at grid reference SU 715 097, where water is abstracted by a water undertaker pursuant to a licence granted under Chapter 2 of Part 2 of the Water Resources Act 1991, as modified by The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*.

“relevant water undertaker or wholesale licensee” means the water undertaker or wholesale licensee which identifies the abstraction point;

- (b) paragraph (3), “specified” means specified in the notice served under that paragraph;
- (c) paragraph (5), “body of surface water” has the meaning given in Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

(7) A notice given under regulation 16A(3) of the 2000 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under paragraph (3) of this regulation.

(8) A notice given under regulation 16A(5)(b) of the 2000 Regulations which had effect immediately before the coming into force of these Regulations is taken to be a notice given under paragraph (5)(b) of this regulation.



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The Southern Water logo graphic consists of three white, stylized wavy lines that resemble water waves, positioned to the right of the word "Water".