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**PROPOSED WATER
PROTECTION ZONE
(RIVER DEE CATCHMENT)
DESIGNATION ORDER**

AAC



NRA

*National Rivers Authority
Welsh Region*

ENVIRONMENT AGENCY



014351



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NRA Wales

STATUTORY INSTRUMENTS

1994 No.

WATER, ENGLAND AND WALES

The Water Protection Zone (River Dee Catchment) Designation Order

Made - - - - - 1994
Laid before Parliament - - - - - 1994
Coming into force - - - - - 1994

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Whereas the Secretary of State for the Environment as respects England, having consulted the Minister of Agriculture, Fisheries and Food, and the Secretary of State for Wales as respects Wales, are satisfied that in relation to the area referred to in article 3 of the following Order it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which they consider are likely to result in the pollution of any such waters;

And whereas the Secretary of State for the Environment and the Secretary of State for Wales therefore consider it appropriate to designate the said area as a water protection zone pursuant to the provisions of section 93 of the Water Resources Act 1991(a);

And whereas an application for the following Order has been made by the National Rivers Authority in accordance with Schedule 11 to the said Act;

Now, therefore, the Secretary of State for the Environment as respects England and the Secretary of State for Wales as respects Wales, acting jointly in exercise of the powers conferred on them by section 93 of the said Act, and of all other powers enabling them in that behalf, hereby make the following Order:

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Water Protection Zone (River Dee Catchment) Designation Order 1994 and shall come into force on [].

Interpretation

2.- (1) In this Order, unless the context otherwise requires -

“the Act” means the Water Resources Act 1991;

“agricultural unit” has the same meaning as in the Agriculture Act 1947(b);

“catchment control site” means a site, used for or in connection with -

- (a) an industrial process;
- (b) the research and development of products or processes;
- (c) storage or as a distribution centre; or
- (d) the storage or treatment of water, surface water, trade effluent or domestic sewage;

within which there is kept or used, or proposed to be kept or used, a controlled substance but excluding a construction site, a vehicle filling station, a site within an agricultural unit and a site used for carrying on a prescribed process within the meaning of Part I of the Environmental Protection Act 1990(c) being a process designated for central control under that Part;

“construction site” means a site on, over or under which a building is in the course of being constructed but does not include any other land in the vicinity thereof except that which is being used to facilitate the construction works;

“contravention of protection zone control” has the meaning given in article 16(2);

“controlled substance” means any substance which is -

- (a) a dangerous substance;
- (b) a fuel, lubricant or industrial spirit or solvent, which is a liquid in normal conditions or which is kept as a liquid within a site;
- (c) a medicinal product within the meaning of the Medicines Act 1968(d);

(a) 1991 c.57; and *see*, for the purposes of section 93(1), the definition of “the Minister” in section 221(1).

(b) 1947 c. 48.

(c) 1990 c.43.

(d) 1968 c. 67.

- (d) food which is a liquid in normal conditions;
- (e) feeding stuff which is liquid in normal conditions;
- (f) an inorganic fertiliser;
- (g) a cosmetic product within the meaning of the Cosmetic Products (Safety) Regulations 1989(a); or
- (h) a substance identified by its manufacturer as being toxic, harmful, corrosive or irritant: of which there is kept or used, or proposed to be, the relevant quantity: but does not include -
 - (i) controlled waste within the meaning of the Environmental Protection Act 1990(b) insofar as such waste is being treated, kept or disposed of in accordance with a waste management licence in force under the provisions of Part II of that Act;
 - (ii) radioactive waste, as defined in section 2 of the Radioactive Substances Act 1993(c);
 - (iii) any fuel, whether in the form of a liquid, gas or vapour, kept within a site and used exclusively for the production of heat or power;
 - (iv) any substance contained in an exempt pipe-line or a service pipe;
 - (v) any substance present at a site for a period of 24 hours or less whilst it is being transported from one place to another; or
 - (vi) any substance which is a gas or vapour under normal conditions;

“dangerous substance” means a substance dangerous for carriage or for supply within the meaning of the 1993 Regulations and to which those regulations apply, other than any such substance which is, in accordance with those regulations, classified only as being a substance which is explosive, flammable, highly flammable, extremely flammable or spontaneously combustible;

“exempt pipe-line” means a pipe-line used to convey a substance to or from a site, but does not include -

- (a) that part of the pipe-line on, over or under a site to which it has an outlet or inlet; or
- (b) a service pipe;

“feeding stuff” means feeding stuff within the meaning of the Agriculture Act 1970(d) and any substance used as an ingredient in its manufacture;

“food” means food within the meaning of the Food Safety Act 1990(e);

“hazardous substance” means a substance consent for the presence of which is required under the Planning (Hazardous Substances) Act 1990(f);

“industrial process” means a process for or incidental to any of the following purposes -

- (a) the making of any article or substance or part of any article or substance (including food or drink);
- (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article or substance; or
- (c) the getting, dressing or treatment of minerals;

“inorganic fertiliser” means a fertiliser used for the cultivation of crops or plants of any description, including trees, which is in the form of inorganic salts obtained by extraction, physical industrial processes, chemical industrial processes, or a combination of any or all of these, and includes calcium cyanamide, and urea and its condensation products;

“land” means any corporeal hereditament, including a building;

“minerals” has the same meaning as in the Planning Act;

(a) S.I. 1989/2233, amended by S.I.1990/1812, 1991/447 and 1992/1525

(b) 1990 c. 43.

(c) 1993 c.12.

(d) 1970 c. 40.

(e) 1990 c. 16.

(f) 1990 c. 10.

“the Planning Act” means the Town and Country Planning Act 1990(a);

“prescribed activity” means the keeping or use of a controlled substance within a catchment control site;

“the protection zone” means the water protection zone designated by article 3;

“protection zone consent” means the consent for the carrying on of a prescribed activity required by article 4;

“the 1993 Regulations” means the Chemicals (Hazard Information and Packaging) Regulations 1993(b);

“the relevant quantity” means -

- (a) in relation to food or feeding stuff which is not a dangerous substance, an amount equal to or in excess of 500 litres; and
- (b) in every other case, an amount equal to or in excess of -
 - (i) 50 litres when present in a single vessel; but otherwise
 - (ii) 200 litres;

“service pipe” means a pipe-line used by a public gas supplier (within the meaning of section 7(1) of the Gas Act 1986(c)) to supply gas to an individual consumer from a main of that supplier;

“site” means -

- (a) the whole of an area of land under the control of a person and includes a pier, jetty or similar structure whether floating or not; and
- (b) a structure, whether floating or not, which is within inland waters and which is under the control of a person;

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour and includes any such substance which is a mixture of two or more substances;

“vehicle filling station” means any premises or place used or intended to be used by way of trade or for purposes of gain for fuelling motor vehicles, and includes any building, advertisement, pump or other apparatus in, or used in connection with, any such premises;

“vessel” means any container designed or adapted to contain a controlled substance whether or not affixed to the land, and includes a container which forms part of plant or machinery but does not include a pipe-line.

(2) In this Order -

- (a) any reference to a section or a Schedule is a reference to that section or Schedule of the Act, unless there is a contrary intention;
- (b) any reference to a numbered article shall be construed as a reference to the article so numbered in this Order;
- (c) any reference in an article to a numbered paragraph shall be construed as a reference to the paragraph so numbered in that article; and
- (d) any reference in a paragraph to a numbered or lettered sub-paragraph shall be construed as a reference to the sub-paragraph so numbered or lettered in that paragraph.

(3) For the purposes of this Order, in determining whether the relevant quantity of a controlled substance is kept or used within a site, account shall be taken of any quantity of such a substance which is in any vehicle, vessel, aircraft or hovercraft under the control of the person in control of the site which is used for storage purposes at the site.

(a) 1990 c. 8.

(b) S.I. 1993/1746.

(c) 1986 c. 44.

(4) Any reference in this Order to the person in control of a site or land is a reference to the person having such control in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

(5) In this Order, any reference to a controlled substance to which a protection zone consent relates shall mean any such substance the keeping or use of which within a catchment control site is the subject of a protection zone consent granted or deemed to have been granted under this Order and any reference in that context to more than one controlled substance shall be construed accordingly.

(6) References in this Order to the area of a district council lying downstream of a catchment control site, or to a downstream source of supply, shall be construed as meaning such an area or source of supply which is wholly or partly within the protection zone and which lies downstream of any inland waters in the vicinity of the catchment control site.

(7) References in this Order to the best available techniques not entailing excessive cost, in relation to a prescribed activity, include (in addition to references to any technical means and technology) references to the number, qualifications, training and supervision of persons employed in the activity and the design, construction, lay-out and maintenance of the site within which it is carried on.

(8) Any reference in this Order to the Secretary of State shall mean -

- (a) the Secretary of State for the Environment, where a protection zone consent or an application for such a consent relates to a catchment control site which is wholly in England, or the Secretary of State for Wales, where such a consent or an application therefor relates to a catchment control site which is wholly in Wales; and
- (b) the Secretary of State for the Environment and the Secretary of State for Wales, acting jointly, where a protection zone consent or an application for such a consent relates to a catchment control site which is partly in England and partly in Wales.

(9) Unless the context otherwise requires, where in this Order reference is made to a quantity of a substance expressed in litres, that reference shall mean -

- (a) in the case of a liquid, the volume in litres of that liquid; and
- (b) in the case of a solid, the same number of kilograms of that solid;

and for the purposes of aggregation, one litre of a liquid shall be deemed to be equivalent to one kilogram of a solid.

PART II

ESTABLISHMENT OF WATER PROTECTION ZONE

Designation of water protection zone

3. There is hereby designated as a water protection zone the area edged in red on the map prepared in triplicate, each such map being dated [] signed and sealed by the Secretary of State for the Environment and the Secretary of State for Wales, of which one copy is deposited and available for inspection at the office of the Authority at Shire Hall, Mold, Clwyd CH7 6FA and one copy each at the offices of the Department of the Environment, Romney House, 43, Marsham Street, London, SW1P 3PY and the Welsh Office, Cathays Park, Cardiff, CF1 3NQ respectively.

Requirement of consent for the carrying on of a prescribed activity

4. Subject to the provisions of this Order, no person shall carry on a prescribed activity within the protection zone without the prior consent of the Authority granted or deemed to have been granted under this Order.

Deemed protection zone consent

5.- (1) Where a prescribed activity within the protection zone has been carried on at any time within the establishment period, deemed protection zone consent may be claimed in respect of that activity.

(2) A claim for deemed protection zone consent shall be made in writing to the Authority before the end of the transitional period by the person in control of the land to which it relates, and such a claim shall be accompanied by the following information and documents -

- (a) a site map and a vessel location plan for each controlled substance kept or used within the site;
- (b) a general description of the activities carried on at the site during the establishment period and a date when those activities were begun together with documentary evidence thereof;
- (c) details of each controlled substance kept or used during the establishment period and the quantity kept or used;
- (d) details of the manner of keeping and use of each such controlled substance during the establishment period;
- (e) where a controlled substance kept or used during the establishment period is a substance notification in respect of which was required by the Notification Regulations, details of all such notifications that were made to the Health and Safety Executive during the establishment period;
- (f) details of the capacity of any vessel in which a controlled substance has been contained;
- (g) details of all emergency procedures and protective arrangements to prevent, control, minimize or deal with an accident at the site which might result in one or more controlled substances entering, leaching or being discharged into the land within the site, any neighbouring land or any inland waters in the vicinity thereof;
- (h) a certificate signed by or on behalf of the claimant certifying that he is in control of the land to which the claim relates.

(3) The site map required by sub-paragraph (2)(a) shall meet the requirements of article 8(2).

(4) The vessel location plan required by sub-paragraph (2)(a) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 2,500, which identifies any area of the site where a controlled substance has been kept or used in a vessel at any time during the establishment period.

(5) Subject to paragraphs (6) and (7), the Authority shall be deemed to have granted any protection zone consent which is claimed in accordance with paragraph (1) on the date on which this Order comes into force.

(6) If, on the relevant date, notification in respect of a controlled substance kept or used was required by the Notification Regulations, protection zone consent is only to be deemed to be granted under this article if notification in respect of the substance was given before that date in accordance with those regulations.

(7) If it appears to the Authority that a claim for protection zone consent does not comply with paragraph (2), it shall be its duty, before the end of the period of four weeks from its receipt of the claim -

- (a) to notify the claimant that in its opinion the claim is invalid; and
- (b) to give its reasons for that opinion.

(8) Protection zone consent which is deemed to be granted under this article is subject -

- (a) to the condition that the maximum aggregate quantity of the controlled substances that may be kept or used within the catchment control site to which the claim for the consent relates at any one time shall not exceed the established quantity;
 - (b) to the condition that each controlled substance will be kept and used in the place and manner in which information supplied in pursuance of paragraph (2) shows that it was kept and used immediately before the relevant date; and
 - (c) to the condition that none of the controlled substances shall be kept or used in a vessel greater in capacity than the vessel or the largest of the vessels, in which the substance was kept or used immediately before that date.
- (9) In this article -
- (a) "establishment period" means the period of 12 months immediately preceding the relevant date;
 - (b) "established quantity" means -
 - (i) in respect of a controlled substance notification of which was given before the relevant date in accordance with the Notification Regulations, the quantity notified or last notified before that date;
 - (ii) in respect of a controlled substance notification of which was not required before that date by any of those regulations, the maximum quantity which was kept or used at any one time within the establishment period;
 - (c) "the Notification Regulations" means the Notification of Installations Handling Hazardous Substances Regulations 1982(a);
 - (d) "the relevant date" means the date on which notice of the application for this Order was first published in accordance with Schedule 11;
 - (e) "the transitional period" means the period of 6 months beginning with the date on which this Order comes into force.

PART III

PROCEDURAL AND ADMINISTRATIVE PROVISIONS

Application of this Part

6. The provisions of this Part shall have effect subject to any regulations in force under section 96.

Obtaining protection zone consent

- 7.-(1) Protection zone consent -

- (a) may be granted on an application made under this Part of this Order; or
- (b) may be deemed to have been granted by virtue of article 5.

(2) Without prejudice to the provisions of this Order, any protection zone consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being interested in the land.

(3) A protection zone consent is revoked if there is a change in the person in control of the whole or any part of the land to which it relates, unless an application for the continuation of the consent has previously been made to the Authority under article 13.

Applications for protection zone consent

- 8.- (1) An application for protection zone consent other than for deemed consent under article 5

(a) S.I. 1982/1357.

shall be made to the Authority and, subject to paragraph (5), shall be accompanied, or supplemented at a later date, by all such information, papers, assessments, studies or other material as the Authority may reasonably require; including without prejudice to the generality of the foregoing, in relation to each controlled substance proposed to be kept or used -

- (a) a site map and a substance location plan;
- (b) details of the substance, its density and solubility in water, the maximum quantity (by volume or weight as appropriate) of it proposed to be kept or used, the manner in which it is to be kept or used and details (including its cubic capacity) of any vessel to be used for its storage;
- (c) where the substance is to be used in a manufacturing, treatment or other industrial process, a general description of the process, a description of the major items of plant which will contain the substance and a statement of the maximum quantity (by volume or weight as appropriate) which is liable to be kept or used in the major items of the plant;
- (d) a safety and emergency statement containing the following information -
 - (i) a description of the potential sources of an accident which might result in some or all of the substance entering, leaching or being discharged into the land to which the application relates, any neighbouring land or any inland waters in the vicinity thereof;
 - (ii) a description of the conditions or events which could be significant in bringing such an accident about;
 - (iii) a description of the measures taken or proposed to be taken to prevent, control or minimise the consequences of any such accident to the inland waters in the vicinity; and
 - (iv) the emergency procedures laid down for dealing with such an accident at the site.

(2) The site map required by sub-paragraph (1)(a) shall be a map reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers.

(3) The substance location plan required by sub-paragraph (1)(a) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies -

- (a) any area of the site intended to be used for the storage of the substance;
- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be kept or used;
- (c) access points to and from the land.

(4) An application for protection zone consent shall only be made by the person in control of the land to which it relates and any such application shall include a certificate signed by or on behalf of the applicant that he is such a person.

(5) The provisions of this Order relating to applications for protection zone consent shall apply equally to any application under article 12 or 13 except that -

- (a) sub-paragraphs (1)(a) to (c) shall not apply to applications under article 12 which shall, without prejudice to the generality of paragraph (1), be accompanied or supplemented by
 - (i) particulars of the relevant consent and, if required by paragraph (6), a change of location plan;

- (ii) details of the controlled substances to which the relevant consent relates, the maximum quantity (by volume or weight as appropriate) of each of them kept or used or proposed to be and their density and solubility in water;
 - (iii) details of any conditions previously imposed which it is intended should not be imposed on the consent, or should only be imposed in a modified form (in the latter case indicating the proposed modification) and reasons why such a condition or conditions should not be imposed or should only be imposed in a modified form;
 - (iv) a description of any relevant changes in circumstances since the previous consent was granted;
- (b) sub-paragraphs (1)(a) to (c) shall not apply to applications under article 13 which shall, without prejudice to the generality of paragraph (1), be accompanied or supplemented by
- (i) particulars of the relevant consent and a change of control plan;
 - (ii) details of the controlled substances kept or used, or proposed to be, within that part of the site to be subject to the proposed change of control, the maximum quantity (by volume or weight as appropriate) of each of them kept or used or proposed to be and their density and solubility in water;
 - (iii) a description of the use of each area of the site identified in the change of control plan and a description of any relevant changes in circumstances since the existing consent was granted.

(6) A change of location plan shall be required in the case of an application to which article 12 applies which relates to a condition restricting the location of a controlled substance, and shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500 which identifies the location of the controlled substance at the date of the application and the proposed location requiring the application.

(7) The change of control plan required by sub-paragraph (5)(b)(i) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site under separate control after the proposed change of control.

(8) The relevant consent referred to in sub-paragraph (5)(a)(i) is the existing protection zone consent which applies to the catchment control site to which the application relates and the relevant consent referred to in sub-paragraph (5)(b)(i) is the existing protection zone consent which applies to the site to be subject to the proposed change of control; and the particulars of the relevant consent to be supplied shall be a copy of the consent, in the case of a consent granted on an application under this Order or a copy of the relevant claim, in the case of a consent deemed to be granted under article 5.

Procedure upon receipt of applications for protection zone consent

- 9.- (1) Where an application for protection zone consent is made in accordance with the provisions of this Order and received by the Authority the Authority shall -
- (a) after the expiration of 7 days following receipt of the application send a copy of it to every district council whose area includes the catchment control site or lies downstream of it and to every water undertaker who abstracts water from a downstream source of supply;
 - (b) as soon as practicable, acknowledge receipt of the application in writing;
 - (c) notify the applicant as soon as practicable if in the opinion of the Authority the application is invalid, giving its reasons.

(2) The Authority shall be entitled, upon an application for protection zone consent, to disregard the provisions of sub-paragraph (1)(a) if it proposes to grant the consent applied for and considers that the carrying on of the prescribed activity in question represents no appreciable threat to any inland waters in the vicinity of the catchment control site.

- (3) If a person who proposes to make or has made an application for protection zone consent -
- (a) applies to the Secretary of State at any time before such application is submitted or not later than 7 days after it is submitted for a certificate providing that the provisions of sub-paragraph (1)(a) and article 19 shall not apply to -
 - (i) that application;
 - (ii) any protection zone consent given or conditions imposed on the application;
 - (iii) any sample taken of any controlled substance related to the application; or
 - (iv) information produced by analysis of such a sample; and
 - (b) satisfies the Secretary of State that it would be contrary to the public interest or would prejudice, to an unreasonable degree, some private interest, by disclosing information about a trade secret, if a certificate were not issued under this paragraph,

the Secretary of State may issue a certificate to that person providing that those provisions shall not apply to such of the matters mentioned in sub-paragraph (a) as are specified in the certificate.

- (4) For the purposes of this Order an application for protection zone consent shall be taken to have been received when each of the following events has occurred -
- (a) the application has been served on the Authority together with all relevant information, papers or other material that are specified in article 8; and
 - (b) any fee required to be paid in respect of the application pursuant to article 21 has been paid to the Authority and, for this purpose, lodging a cheque for the amount of a fee is to be taken as payment.

Consideration and determination of applications

10.-(1) Upon an application for protection zone consent in accordance with the provisions of this Order the Authority may, subject to the provisions of this article and article 11 -

- (a) grant protection zone consent, either unconditionally or subject to such conditions as it thinks fit; or
- (b) refuse protection zone consent.

(2) Except where the body or person concerned has notified the Authority that they do not wish to be consulted, the Authority shall before determining an application for protection zone consent, consult -

- (a) the Health and Safety Executive;
- (b) every district council whose area includes the catchment control site or lies downstream of it and every water undertaker who abstracts water from a downstream source of supply;
- (c) where the application relates to land in an area to which section 28(1) of the Wildlife and Countryside Act 1981(a) applies (sites of special scientific interest), in England, the Nature Conservancy Council for England or, in Wales, the Countryside Council for Wales.

(3) Where, under paragraph (2) the Authority is required to consult in respect of an application, it shall, unless a copy of the application has been served on the consultee by the applicant or (in the case of sub-paragraph (2)(b)) sent to the consultee by the Authority in accordance with article 9(1)(a),

(a) 1981 c. 69. See the amendments to this Act made by Part VII of the Environmental Protection Act 1990 (1990 c.43).

serve the consultee with a copy of the application after the expiration of 7 days following its receipt by the Authority, and then within the following 14 days.

(4) Where the Authority is required to consult under paragraph (2), the Authority shall not determine an application for protection zone consent before the end of a period of 42 days beginning with the date on which the consultee is served with a copy of the application, or, where the Authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served.

(5) Subject to paragraph (4), the Authority shall, within the period specified in paragraph (6), give the applicant written notice of the Authority's decision or notice that the application has been referred to the Secretary of State under article 11 for determination by him.

(6) The period specified for the purposes of paragraph (5) is -

- (a) a period of four months from the date when the application is received by the Authority;
- (b) except where the applicant has already given notice of appeal to the Secretary of State in accordance with article 15, such extended period as may be agreed in writing by the applicant and the Authority;
- (c) where a fee due in respect of the application has been paid by a cheque which is subsequently dishonoured, the appropriate period specified in sub-paragraphs (a) or (b) above calculated without regard to any time between the date when the Authority sent the applicant written notice of the dishonouring of the cheque and the date when the Authority is satisfied that it has received the full amount of the fee;
- (d) where paragraph (7) applies, the appropriate period specified in sub-paragraphs (a) or (b) above calculated without regard to the period during which the Authority has delayed its determination of the application in accordance with that paragraph; or
- (e) where paragraph (8) applies, the appropriate period specified in sub-paragraphs (a) or (b) above calculated without regard to the period during which the Authority is prohibited by virtue of sub-paragraph (8)(c) from giving its consent to the application.

(7) Where -

- (a) any person, having made an application to the Authority for protection zone consent, has failed to comply with his obligation under article 8(1) to supplement that application with information, papers or other material reasonably required by the Authority; and
- (b) that requirement was made by the Authority at such a time before the end of the period specified in sub-paragraphs (6)(a) or (b) within which the Authority is required to determine that application as gave that person a reasonable opportunity to provide the required information, papers or other material within that period,

the Authority may delay its determination of the application until a reasonable time after the required information, papers or other material are provided.

(8) (a) This paragraph applies where the Authority proposes to give its consent to an application for protection zone consent in respect of which representations or objections have been made by a body or person consulted under paragraph (2) and which have not subsequently been withdrawn;

- (b) It shall be the duty of the Authority to serve notice of the proposal to give consent to the application on every body or person who made any such representations or objection; and any such notice shall include a statement of the effect of sub-paragraph (c);
- (c) It shall be the duty of the Authority not to give its consent to the application for protection

zone consent before the end of a period of twenty-one days beginning with the latest day on which the notice of the proposal is served on every body or person concerned.

(9) In considering an application for protection zone consent the Authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing

- (a) the nature, quantity and location of any controlled substance proposed to be kept or used and the manner of its intended use, keeping and storage;
- (b) the likelihood of that substance accidentally entering, leaching or being discharged into the land to which the application relates, any neighbouring land or any inland waters in the vicinity thereof and the resulting concentration of that substance therein;
- (c) the likely consequences of such an accident on the quality of those inland waters and, in particular, the anticipated impact upon water supplies for human consumption;
- (d) the predicted frequency of those consequences;
- (e) the presence or proposed presence of any hazardous substance in, on, over or under the land to which the application relates or the presence or proposed presence of any hazardous substance on, over or under land in the vicinity thereof including its nature, quantity and location and the manner of its use and storage; and
- (f) any advice or comments which the Authority may have received following consultations in pursuance of paragraph (2).

(10) The Authority shall, when granting protection zone consent, include in that consent -

- (a) a description of the catchment control site to which the consent relates;
- (b) a description of the controlled substance or substances to which it relates; and
- (c) in respect of each controlled substance to which it relates, a statement of the maximum quantity allowed by the consent to be kept or used at any one time and the manner in which it is to be used, conveyed, kept and stored.

(11) When the Authority gives notice of a decision on an application for protection zone consent the notice shall, where protection zone consent is refused or is granted subject to conditions -

- (a) state, clearly and precisely, its full reasons for the refusal or for any condition imposed;
- (b) include a statement to the effect that if the applicant is aggrieved by the decision he may appeal to the Secretary of State under article 15 within 3 months of the date of the notice of the decision, or such longer period as the Secretary of State may at any time allow.

(12) Subject to paragraphs (13) and (14) the Authority may grant protection zone consent subject to such conditions with respect to any of the following matters as the Authority considers appropriate

- (a) the controlled substances which are permitted to be kept or used within the catchment control site;
- (b) how and where any controlled substance to which the consent relates is to be kept, used or transported;
- (c) the times between which any such substance may be kept or used;
- (d) the permanent removal of any such substance -
 - (i) on or before a date specified in the consent; or
 - (ii) before the end of a period specified in it and commencing on the date on which it is granted;

- (e) the taking by the applicant of precautionary measures or procedures with regard to the land to which the application relates, in relation to any relevant plant, machinery or structure or in relation to the applicant's methods of operation or management;
- (f) the period of time for which the consent is to last;

and where protection zone consent is granted subject to one or more conditions a statement of all such conditions imposed shall be included in that consent.

(13) No condition imposed by the Authority pursuant to paragraph (12) shall prejudice, conflict with or interfere with the exercise of any statutory power, authority or jurisdiction vested in or exercisable by any persons for securing the health of persons at work (within the meaning of Part I of the Health and Safety at Work etc. Act 1974)(a).

(14) (a) No condition shall be imposed by the Authority pursuant to paragraph (12) unless the Authority considers the condition appropriate for ensuring that, in carrying on a prescribed activity, the best available techniques not entailing excessive cost will be used for preventing the direct or indirect release of a controlled substance into any inland waters in the vicinity of the catchment control site or, where that is not practicable by such means, for reducing the release of such substance to a minimum and for rendering harmless any such substance which is so released;

(b) In sub-paragraph (a) "harmless" has the same meaning as in Part I of the Environmental Protection Act 1990(b).

(15) The Authority shall, as soon as practicable, inform the following bodies or persons of the terms of its decision -

- (a) the Health and Safety Executive;
- (b) every district council whose area includes the catchment control site or lies downstream of it and every water undertaker who abstracts water from a downstream source of supply; and
- (c) any other consultees who have made representations to the Authority on the application pursuant to paragraph (2).

Reference of applications to the Secretary of State

11.-(1) The Secretary of State may, either in consequence of representations made to him or otherwise, give directions requiring applications for protection zone consent to be referred to him instead of being dealt with by the Authority.

(2) A direction under this article may relate either to a particular application or to applications of a class specified in the direction.

(3) Any application in respect of which a direction under this article has effect shall be referred by the Authority to the Secretary of State accordingly and upon doing so the Authority shall serve on every applicant to whose application the direction relates a notice -

- (a) informing the applicant that the application has been referred to the Secretary of State;
- (b) setting out the reasons (if any) given by the Secretary of State for issuing the direction; and
- (c) setting out the provisions of this article regarding the determination by the Secretary of State of the application referred to him.

(4) Sub-paragraph (1)(a) of article 9 shall have effect in relation to an application referred to the Secretary of State under this article.

(5) Before determining an application referred to him under this article, the Secretary of State

(a) 1974 c.37.

(b) 1990 c. 43.

may cause a local inquiry to be held with respect to the application or afford the applicant and the Authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(6) The Secretary of State shall exercise his power under paragraph (5) in any case where a request to be heard with respect to the application is made to him by the applicant or by the Authority in writing and sent to the Secretary of State before the expiry of a period of 28 days beginning with the day on which the Authority, in accordance with paragraph (3), has informed the applicant that the application has been referred to the Secretary of State for determination.

(7) Where under this article the Secretary of State affords to an applicant and the Authority an opportunity of appearing before, and being heard by, a person appointed for the purpose, it shall be the duty of the Secretary of State to afford an opportunity of appearing before, and being heard by, that person to every person who has made any representations or objection to the Secretary of State with respect to the application in question.

(8) It shall be the duty of the Secretary of State, if the requirements of this article are complied with, to determine an application for consent referred to him by the Authority under this article by directing the Authority to refuse its consent or to give its consent under article 10 (either unconditionally or subject to such conditions as are specified in the direction).

(9) In complying with a direction under paragraph (8) to give a consent the Authority shall not be required to comply with any requirement imposed by article 10(8).

(10) The decision of the Secretary of State on any application referred to him under this article shall be final.

Applications for removal of protection zone consent conditions

12.-(1) This article shall apply to an application for protection zone consent in relation to a catchment control site without a condition subject to which a protection zone consent was granted, then in force for the site (including a deemed consent under article 5).

(2) On such an application the Authority shall consider only the question of the conditions subject to which protection zone consent should be granted.

(3) If on such an application the Authority determine -

- (a) that protection zone consent should be granted subject to conditions differing from those subject to which the previous consent was granted; or
- (b) that it should be granted unconditionally,

it shall grant protection zone consent accordingly.

(4) If on such an application the Authority determine that protection zone consent should be granted subject to the same conditions as those subject to which the previous consent was granted, it shall refuse the application.

(5) Where -

- (a) protection zone consent has been granted or is deemed to have been granted for the carrying on of a prescribed activity; and
- (b) an application under this article does not relate to all of the controlled substances kept or used,

the Authority shall only have regard to any condition relating to a controlled substance to which the application does not relate to the extent that it has implications for a controlled substance to which the application does relate.

(6) References in this Order to applications for protection zone consent include references to

applications under this article and, subject to the provisions of this article and article 8(5)(a), the provisions of this Order shall apply to such applications accordingly.

Applications for the continuation of protection zone consent

13.-(1) This article shall apply to an application for the continuation of protection zone consent pursuant to the provisions of article 7(3).

(2) When such an application is made the Authority may modify the consent in any way it considers appropriate or it may revoke it.

(3) If a protection zone consent relates to more than one controlled substance, the Authority may make different determinations in relation to each such substance.

(4) It shall be the duty of the Authority, when continuing protection zone consent, to attach to the consent either -

- (a) a statement that it is unchanged in relation to the matters included in it by virtue of paragraphs (10) and (12) of article 10; or
- (b) a statement of any change in respect of those matters.

(5) The modifications which the Authority may make by virtue of paragraph (2) include, without prejudice to the generality of that paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in article 10(12).

(6) Where any application is made to the Authority for the continuation of protection zone consent then, unless within the period specified in article 10(6) the Authority either -

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to him that the application has been referred to the Secretary of State in accordance with directions given under article 11,

the application shall be deemed to have been granted.

(7) References in this Order to applications for protection zone consent include references to applications for the continuation of protection zone consent and, subject to the provisions of this article and article 8(5)(b), the provisions of this Order shall apply to such applications accordingly.

Revocation of consents and alteration and imposition of conditions

14.-(1) Subject to the following provisions of this article, the Authority may by a notice served on the person in control of the catchment control site to which the protection zone consent relates -

- (a) revoke a protection zone consent;
- (b) make modifications to the conditions of the consent; or
- (c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the order,

if it appears to the Authority, having regard to any material consideration, expedient to do so and then only to such extent as it considers expedient.

(2) The Authority may also by such a notice revoke a protection zone consent if it appears to it -

- (a) that there has been a material change of use of the catchment control site to which a protection zone consent relates; or
- (b) that planning permission has been granted for development the carrying out of which would involve a material change of use of that site and the development to which the permission relates has been commenced; or
- (c) in the case of a protection zone consent which relates only to one controlled substance, that that substance has not for at least five years been kept or used within the catchment

control site to which the consent relates; or

- (d) in the case of a protection zone consent which relates to a number of controlled substances, that none of those substances has for at least five years been so kept or used.

(3) The Authority may not, without the consent of the person in control of the catchment control site to which the protection zone consent relates, serve a notice under paragraph (1) before the expiration of the period specified in paragraph (4) ("the guaranteed period").

(4) The guaranteed period is -

- (a) in relation to a protection zone consent regarding which no notice under sub-paragraphs (1)(b) or (c) has been made, 2 years from the date when that consent was granted or deemed to have been granted;
- (b) in relation to a protection zone consent regarding which a notice or notices under sub-paragraphs (1)(b) or (c) have been made, 2 years from the date when the most recent order was made.

Appeals

15.-(1) Where the Authority, otherwise than in pursuance of a direction of the Secretary of State, has -

- (a) refused an application for protection zone consent;
- (b) granted such consent subject to one or more conditions;
- (c) refused an application for any consent, agreement or approval of the Authority required by a condition imposed on the grant of a protection zone consent, or granted it subject to conditions; or
- (d) served a notice revoking or in any way modifying a protection zone consent under article 14,

the applicant or the person in control of the catchment control site to which the notice served relates may, if he is aggrieved by the Authority's decision, appeal against it to the Secretary of State.

(2) A person who has made an application for protection zone consent may also appeal to the Secretary of State if the Authority has neither -

- (a) given notice to the applicant of its decision on the application; nor
- (b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under article 11,

within the period specified in article 10(6); and for the purposes of this article in such a case the Authority shall be deemed to have refused the application.

(3) An appeal under this article must be made by giving to the Secretary of State in writing notice of appeal with a statement of the grounds of appeal, to be submitted before the expiry of the period of three months beginning with the day on which -

- (a) the Authority notified the appellant of the decision or served on the appellant the notice giving rise to the appeal; or
 - (b) the Authority was deemed under paragraph (2) to have refused consent; or
- before the expiry of such longer period as may be agreed between the Authority and the appellant or as the Secretary of State may at any time allow (as the case may be).

(4) The Secretary of State may require the appellant to send him within 28 days of giving notice of appeal (or such longer period as the Secretary of State may allow) a copy of any or all of the following documents -

- (a) the application to the Authority or the notice served by the Authority which has occasioned the appeal;
- (b) any relevant maps, plans or other documents submitted in support of the application;
- (c) any relevant record, consent, determination, notice or other notification given, made, issued or served by the Authority; and
- (d) any other relevant correspondence between the appellant and the Authority.

(5) The Secretary of State shall -

- (a) send the Authority a copy of the notice of appeal and of the statement of the grounds of appeal given to him under paragraph (3); and
- (b) in the case of an appeal under sub-paragraphs (1)(a) to (c), require the Authority to serve notice in writing, within 14 days of the receipt by it of the copy of the notice of appeal mentioned in the preceding sub-paragraph, on any person whose advice or comments with respect to the application fell to be considered by it in accordance with article 10(9)(f).

(6) A notice required to be served under sub-paragraph (5)(b) shall state that an appeal has been lodged, and that further representations may be made to the Secretary of State in respect of the application within a period of 21 days from the date of service of the notice.

(7) The Secretary of State shall send to the appellant and the Authority a copy of any representations received by him in pursuance of paragraph (6).

(8) The Secretary of State may, if he thinks fit, require the appellant or the Authority to submit to him within a specified period a further statement in writing in respect of any of the matters to which the appeal relates, and where he exercises this power he shall send to the appellant or, as the case may be, the Authority a copy of any statement made by the other.

(9) (a) If, after considering the grounds of the appeal and the documents before him, the Secretary of State is satisfied that he is sufficiently informed to determine the appeal he may, not earlier than 14 days after giving notice of his intention to the appellant and the Authority, determine the appeal without further investigation unless such investigation is required by the appellant or the Authority pursuant to paragraph (10).

(b) Where any requirement by the Secretary of State under paragraph (4) or (8) has not been complied with by the expiry of the relevant period the Secretary of State may, after allowing a further specified period which appears to him reasonable, determine the appeal without further investigation.

(10) If either the appellant or the Authority within a period of fourteen days after service of notice under sub-paragraph (9)(a) request the Secretary of State not to determine the appeal without further investigations or the Secretary of State otherwise considers it expedient so to do, the Secretary of State shall either -

- (a) cause a local inquiry to be held with respect to the appeal; or
- (b) afford the appellant and the Authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(11) The Secretary of State may allow or dismiss the appeal under this article or may reverse or vary any part of the decision of the Authority (whether or not the appeal relates to that part of it) and, in the case of an appeal under sub-paragraphs (1)(a) to (c), may deal with the application as if it had been made to him in the first instance.

(12) Where an appeal is brought against a notice served by the Authority under article 14, the notice shall not take effect pending the determination or the withdrawal of the appeal.

(13) The decision of the Secretary of State on any appeal under this article shall be final.

Contravention of protection zone control

16.-(1) Subject to the following provisions of this article if there is a contravention of protection zone control, any person causing or knowingly permitting it shall be guilty of an offence.

(2) There is a contravention of protection zone control -

(a) if a prescribed activity has been carried on within the protection zone and either -

(i) there is no protection zone consent for the carrying on of that activity; or

(ii) there is protection zone consent for the carrying on of that activity but the quantity of controlled substances kept or used exceeds the maximum quantity permitted by the consent;

(b) if there is or has been a failure to comply with a condition subject to which a protection zone consent was granted.

(3) A person guilty of an offence under this article shall be liable to a penalty or penalties not exceeding the penalties specified in section 85(6).

(4) The provisions of section 217 (criminal liabilities of directors and other third parties) shall apply where there is a contravention of protection zone control as if such a contravention were an offence under the Act.

(5) In any proceedings for an offence under this article it shall be a defence for the accused to prove -

(a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or

(b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.

(6) In any proceedings for an offence consisting of a contravention falling within sub-paragraph (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe -

(a) if the case falls within sub-paragraph (2)(a)(i), that the prescribed activity was being carried on;

(b) if the case falls within sub-paragraph (2)(a)(ii), that the controlled substance was kept or used in a quantity exceeding the maximum quantity permitted by the consent.

(7) In any proceedings for an offence consisting of a contravention falling within sub-paragraph (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which protection zone consent had been granted.

Transitional exemptions: deemed consent

17.-(1) No offence is committed under article 16 in relation to the carrying on of a prescribed activity, if -

(a) the activity was being carried on at any time within the establishment period; and

(b) in a case in which at the relevant date notification in respect of a controlled substance kept or used within the site was required by any of the Notification Regulations, both the conditions specified in paragraph (2) were satisfied; or

(c) in a case in which at that date such notification was not so required, any controlled substances kept or used during the transitional period have not been kept or used in a

quantity greater in aggregate than the established quantity.

- (2) The conditions mentioned in paragraph (1) are -
 - (a) that notification required by the Notification Regulations was given before the relevant date; and
 - (b) that the controlled substance has not been kept or used during the transitional period in a quantity greater in aggregate than the established quantity.
- (3) This article shall have effect until the end of the transitional period.
- (4) Expressions used in this article have the same meanings as they do in article 5.

Transitional exemptions: applications for consent

18.-(1) No offence is committed under article 16 in respect of the carrying on of a prescribed activity without protection zone consent during the period of 28 days beginning with the date on which this Order comes into force.

(2) Where an application for protection zone consent under this Order is received by the Authority within the 28 day period mentioned in paragraph (1), no offence is committed under article 16 in respect of the carrying on of the activity the subject of the application during the period beginning with the date on which the application is so received and ending on the determination of the application.

Consents register

19.-(1) The Authority shall keep a register which shall contain -

- (a) a copy of every application for protection zone consent made to the Authority and not finally determined;
 - (b) in respect of every application for protection zone consent made to the Authority -
 - (i) a copy of the application;
 - (ii) particulars of any direction given under article 11;
 - (iii) the decision (if any) of the Authority, including details of any conditions subject to which consent was granted and the date of the decision;
 - (iv) the reference number, date and effect of any decision of the Secretary of State, whether on a reference under article 11 or on an appeal under article 15;
 - (c) a copy of every notice revoking or modifying protection zone consent made by the Authority;
 - (d) in respect of every protection zone consent deemed to be granted under article 5, a copy of the relevant claim form;
 - (e) a copy of every certificate issued under article 9(3) by the Secretary of State;
 - (f) a copy of any direction under article 20 sent to the Authority by the Secretary of State.
- (2) The register shall include an index to enable any person to trace an entry in the register.
 - (3) Every entry in the register shall be made within 28 days of the relevant information being available to the Authority.
 - (4) The register shall be kept at an office of the Authority within the protection zone.
 - (5) It shall be the duty of the Authority -
 - (a) to secure that the contents of the register are available, at all reasonable times, for inspection by the public free of charge; and
 - (b) to afford members of the public reasonable facilities for obtaining from the Authority on

payment of reasonable charges, copies of entries in the register.

(6) For the purpose of sub-paragraph (1)(a), an application shall not be treated as finally determined unless -

- (a) it has been decided by the Authority (or the period specified in article 10(6) has expired without it giving a decision) and the period specified in article 15(3) has expired without any appeal having been made to the Secretary of State;
- (b) it has been referred to the Secretary of State under article 11 or an appeal has been made to the Secretary of State under article 15 and the Secretary of State has issued his decision; or
- (c) it has been withdrawn by the applicant before being determined or an appeal has been withdrawn by the applicant before the Secretary of State has issued his decision.

(7) The register to be kept pursuant to this article may be kept in any form.

Temporary exemption directions

20.-(1) If it appears to the Secretary of State -

- (a) either -
 - (i) that the community or part of it is being or is likely to be deprived of an essential service or commodity; or
 - (ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it; and
- (b) that the carrying on of a prescribed activity specified in the direction requiring protection zone consent, is necessary for the effective provision of that service or commodity,

he may direct that, subject to such conditions or exceptions as he thinks fit, the carrying on of the activity is not to constitute a contravention of protection zone control so long as the direction remains in force.

(2) A direction under this article -

- (a) may be withdrawn at any time;
- (b) shall in any case cease to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Secretary of State's power to give a further direction.

(3) The Secretary of State shall send a copy of any such direction to the Authority.

Fees in connection with protection zone consent

21.-(1) Where an application is made to the Authority for protection zone consent, a fee of £250 shall be payable to the Authority unless the application relates to 10 or fewer controlled substances, when a fee of £50 shall be payable.

(2) Any fee due in respect of an application shall be paid by the applicant and shall accompany the application when it is made to the Authority.

(3) Any fee paid pursuant to this article shall be refunded if the application is rejected as invalidly made.

Exemption certificates

22.-(1) Subject to paragraph (2), the Authority may, by certificate in writing, exempt any person or class of persons, activity or class of activities to which this Order applies from any requirement or prohibition imposed by this Order and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Authority shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to -

(a) the conditions, if any, which it proposes to attach to the exemption; and

(b) any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the exemption would not increase the risk of controlled substances entering, leaching or being discharged into land within the protection zone or any inland waters in the vicinity thereof.

Local inquiries

23. Section 215 shall apply to local inquiries held under any provisions of this Order in the same way as it applies to local inquiries held under any provision of the Act.

IN WITNESS whereof the official seal of the Secretary of State for the Environment is hereunto affixed on [1994].

[]

Secretary of State for the Environment

[]

[1994]

Secretary of State for Wales

EXPLANATORY NOTE

(This note is not part of the Order)

Section 93 of the Water Resources Act 1991 ("the 1991 Act") gives the Secretary of State power to designate any area as a water protection zone if, in relation to that area, it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which the Secretary of State considers are likely to result in the pollution of any such waters.

This Order designates as a water protection zone an area forming part of the freshwater river Dee catchment. The area is defined by a reference map which is available for inspection during normal office hours at the offices of the Department of the Environment, Romney House, 43, Marsham Street, London SW1P 3PY and at the offices of the Welsh Office, Cathays Park, Cardiff, CF1 3NQ and at the offices of the National Rivers Authority ("the Authority") at Shire Hall, Mold, Clwyd CH7 6FA.

Section 93 of the 1991 Act contains various provisions relating to the contents of an Order under that section.

The Order requires that the consent of the Authority ("protection zone consent") must be obtained for the carrying on of a prescribed activity within the water protection zone (article 4). A prescribed activity is the keeping or use of a controlled substance within a catchment control site.

The Order also contains provisions in relation to:

- (a) deemed protection zone consent (article 5);
- (b) applications to the Authority for protection zone consent (articles 7, 8, 9, 12 and 13);
- (c) the Authority's consideration and determination of such applications (article 10);
- (d) the reference of applications to and the making of appeals to the Secretary of State (articles 11 and 15);
- (e) the revocation of protection zone consents and the alteration and imposition of conditions (article 14);
- (f) contravention of the requirement to obtain protection zone consent (article 16);
- (g) transitional exemptions (articles 17 and 18);
- (h) a consents register (article 19);
- (i) temporary exemption directions (article 20), fees in connection with applications for protection zone consent (article 21), exemption certificates (article 22) and local inquiries (article 23).

The maximum penalties for offences under the Order (article 16) are, based upon the current maximum penalties under the main water pollution provisions of the Water Resources Act 1991, on summary conviction, imprisonment for a term not exceeding three months or a fine not exceeding £20,000 or both; and on conviction on indictment imprisonment for a term not exceeding two years or a fine or both.

DRAFT

STATUTORY INSTRUMENTS

1994 No.

WATER, ENGLAND AND WALES

The Water Protection Zone (River Dee Catchment) Designation Order

A. J. WEARE

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21.02.94