
Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, SCHEDULE 16. (See end of Document for details)

SCHEDULES

SCHEDULE 16

Section 137.

SCHEMES IMPOSING SPECIAL DRAINAGE CHARGES

Submission of scheme

- 1 (1) Before submitting a special charges scheme to either of the Ministers, the [^{F1}appropriate agency] shall consult organisations appearing to it to represent the interests of persons engaged in agriculture in the area designated in the scheme.
- (2) As soon as any special charges scheme has been submitted to either of the Ministers, the [^{F1}appropriate agency] shall—
- (a) send copies of the scheme to—
- (i) the council of any county, [^{F2}county borough]district or London borough wholly or partly within the relevant area;
 - (ii) the drainage board for any internal drainage district within the relevant area; and
 - (iii) every organisation appearing to the [^{F1}appropriate agency] to represent the interests of persons engaged in agriculture in the relevant area;
- and
- (b) publish, in one or more newspapers circulating in the area affected by the scheme, a notice stating—
- (i) that the scheme has been submitted to that Minister;
 - (ii) that a copy of it is open to inspection at a specified place; and
 - (iii) that representations with respect to the scheme may be made to that Minister at any time within one month after the publication of the notice.
- (3) Where the [^{F1}appropriate agency] submit a special charges scheme which designates any watercourse wholly or partly within an internal drainage district, then (unless the [^{F1}appropriate agency] is the drainage board for that district) the scheme must be accompanied either—
- (a) by a statement of the drainage board for that district that they have consented to the designation; or
 - (b) by a statement that they have not consented thereto and a further statement setting out the reasons why the watercourse should nevertheless be designated for the purposes of section 137 of this Act.
- (4) For the purposes of sub-paragraph (2) above “the relevant area” is the area designated in the scheme.

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Textual Amendments

- F1** Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(d)** (with Sch. 7)
- F2** Words in Sch. 16 para. 1(2)(a)(i) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(10)(a)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Confirmation of scheme

- 2 (1) Subject to the following provisions of this Schedule the Minister to whom a special charges scheme has been submitted may by order made by statutory instrument confirm the scheme either with or without modifications.
- (2) Neither of the Ministers shall confirm a special charges scheme unless he is satisfied that the scheme is reasonable and financially sound, having regard to all the circumstances, and in particular to any contributions from local authorities and internal drainage boards which, if the scheme is confirmed, are likely to be available to the ^{F1}[appropriate agency] in addition to the special drainage charge authorised by the scheme.
- (3) An order confirming a special charges scheme may contain provisions with respect to the persons by whom all or any of the expenses incurred by either of the Ministers or by other persons in connection with the making or confirmation of the order, or the making of the scheme, are to be borne.

Textual Amendments

- F1** Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(d)** (with Sch. 7)

Notice of proposed order

- 3 (1) Before either of the Ministers makes an order confirming a special charges scheme he shall cause notice of—
- (a) the intention to make it;
 - (b) the place where copies of the draft order may be inspected and obtained; and
 - (c) the period within which, and the manner in which, objections to the draft order may be made,
- to be published in the London Gazette and in such other manner as he thinks best adapted for informing persons affected and to be sent to the persons specified in sub-paragraph (2) below.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) every county council ^{F3}[^{F3}, county borough council] or London borough council in whose area any part of the area proposed to be affected by the order is situated and, if any part of that area is situated in the City of London, the Common Council of the City of London; and
 - (b) the ^{F1}[appropriate agency] and every drainage body, navigation authority, harbour authority or conservancy authority that is known to the Minister in

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question to be exercising jurisdiction within the area proposed to be affected by the order.

- (3) In sub-paragraph (2) above “drainage body” has the same meaning as in section 108 of this Act.

Textual Amendments

- F1** Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 311(d) (with Sch. 7)
- F3** Words in Sch. 16 para. 3(2)(a) inserted (1.4.1996) by 1994 c. 19, s. 22(5), Sch. 11 Pt. I para. 3(10)(b) (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, Sch. 1

Determination of whether to make order

- 4 (1) Before either of the Ministers makes an order confirming a special charges scheme, he—
- (a) shall consider any objections duly made to the draft order; and
 - (b) may, in any case, cause a public local inquiry to be held with respect to any objections to the draft order.
- (2) Each of the Ministers shall have power, in making an order confirming a special charges scheme, to make such modifications in the terms of the draft as appear to him to be desirable.

Procedure and other matters after the making of an order

- 5 (1) After either of the Ministers has made an order confirming a special charges scheme, the order (together with a notice under sub-paragraph (2) below) shall be published in such manner as he thinks best adapted for informing the persons affected.
- (2) A notice under this sub-paragraph is a notice—
- (a) that the Minister in question has made the order; and
 - (b) that the order will become final and have effect unless, within such period of not less than thirty days as may be specified in the notice, a memorial praying that the order shall be subject to special parliamentary procedure is presented to that Minister, by a person who is affected by the order and has such interest as may be prescribed by regulations made by one of the Ministers as being sufficient for the purpose.

Orders subject to special parliamentary procedure

- 6 (1) If—
- (a) no such memorial as is mentioned in paragraph 5(2) above has been presented within the period so mentioned in respect of any order confirming a special charges scheme; or
 - (b) every such memorial has been withdrawn,
- the Minister who made the order shall confirm the order and it shall thereupon have effect.
- (2) If such a memorial has been presented in respect of such an order and has not been withdrawn, the order shall be subject to special parliamentary procedure.

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- (3) An order confirming a special charges scheme shall in any event be subject to special parliamentary procedure if the Minister who makes the order so directs.
- (4) The Minister who makes an order confirming a special charges scheme may, at any time before it has been laid before Parliament, revoke, either wholly or partially, any order that is subject to special parliamentary procedure.

Notice of unconfirmed orders

- 7 As soon as may be after an unconfirmed order has effect, the Minister who made the order shall publish in the London Gazette, and in such other manner as he thinks best adapted for informing persons affected, a notice—
- (a) stating that the order has come into force; and
 - (b) naming a place where a copy of it may be seen at all reasonable hours.

Challenge to unconfirmed orders

- 8 (1) If any person aggrieved by an unconfirmed order desires to question its validity on the ground—
- (a) that it is not within the powers of this Act; or
 - (b) that any requirement of this Act has not been complied with,
- he may, within six weeks of the relevant date, make an application for the purpose to the High Court.
- (2) Where an application is duly made to the High Court under this paragraph, the High Court, if satisfied—
- (a) that the order is not within the powers of this Act; or
 - (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Act not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) Except by leave of the Court of Appeal, no appeal shall lie to the [^{F4}Supreme Court] from a decision of the Court of Appeal in proceedings under this paragraph.
- (4) Subject to the preceding provisions of this paragraph an unconfirmed order shall not at any time be questioned in any legal proceedings whatsoever.
- (5) In this paragraph “the relevant date”, in relation to an order, means—
- (a) where the order is subject to special parliamentary procedure, the date on which the order becomes operative under the ^{M1}Statutory Orders (Special Procedure) Act 1945;
 - (b) where the order is not subject to special parliamentary procedure, the date of the publication of the notice mentioned in paragraph 7 above.

Textual Amendments

F4 Words in Sch. 16 para. 8(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 55](#); [S.I. 2009/1604, art. 2\(d\)](#)

Marginal Citations

M1 [1945 c. 18 \(9 & 10 Geo 6\)](#).

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Power to make regulations for purposes of Schedule

- 9 The Ministers may make regulations in relation to—
- (a) the publication of notices under this Schedule;
 - (b) the holding of public local inquiries under this Schedule and procedure at those inquiries; and
 - (c) any other matters of procedure respecting the making of orders confirming a special charges scheme.

Interpretation

- 10 (1) In this Schedule—
- “special charges scheme” means a scheme under section 137 of this Act;
 - and
 - “unconfirmed order” means an order confirming a special charges scheme, other than one which is itself confirmed under section 6 of the Statutory Orders (Special Procedure) Act 1945.
- (2) Section 113 of this Act shall apply for the interpretation of this Schedule as it applies for the interpretation of Part IV of this Act.

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