

SCHEDULES

SCHEDULE 6

Section 33.

ORDERS PROVIDING FOR EXEMPTION FROM RESTRICTION ON ABSTRACTION

Notice of draft order

- 1 (1) An application to the Secretary of State for an order under section 33 of this Act (“an exemption order”) shall be accompanied by a draft of the proposed order.
- (2) Before submitting a draft exemption order to the Secretary of State, the applicant authority shall publish a notice—
- (a) stating the general effect of the draft order;
 - (b) specifying the place where a copy of the draft order, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of first publication of the notice; and
 - (c) stating that any person may within that period, by notice to the Secretary of State, object to the making of the order.
- (3) A notice under this paragraph shall be published either—
- (a) at least once in each of two successive weeks, in one or more newspapers circulating in the locality in which the sources of supply to which the draft order relates are situated; or
 - (b) in any other manner which, in any particular case, may be certified by the Secretary of State to be expedient in that case.
- (4) Not later than the date on which the notice is first published in pursuance of subparagraph (2) above, the applicant authority shall serve a copy of the notice on—
- (a) the [^{F1}Agency], if it is not the applicant;
 - (b) every local authority or joint planning board whose area comprises any source of supply to which the draft order relates;
 - (c) any water undertaker having the right to abstract water from any such source of supply;
 - (d) any other water undertaker having the right to abstract water from any related underground strata;
 - (e) the drainage board for any internal drainage district which comprises any such source of supply or from which water is discharged into any such source of supply;
 - (f) any navigation authority, harbour authority or conservancy authority having functions in relation to any such source of supply or any related inland waters;
 - (g) if any such source of supply or any related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, [^{F2}the Secretary of State for Transport]; and

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- (h) any person authorised by a licence under Part I of the ^{M1}Electricity Act 1989 to generate electricity [^{F3}who has a right to abstract water from any such source of supply or related inland waters].
- (5) Where an application for an exemption order is made, the applicant authority shall also publish a notice in the London Gazette—
- (a) stating that the draft exemption order has been submitted to the Secretary of State;
 - (b) naming the areas in respect of which a copy of a notice is required to be served under sub-paragraph (4)(b) above;
 - (c) specifying a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (d) where the notice required by sub-paragraph (1) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.
- (6) For the purposes of this paragraph—
- (a) underground strata are related underground strata in relation to any source of supply if—
 - (i) a water undertaker has a right to abstract water from the strata; and
 - (ii) it appears to the applicant authority, having regard to the extent to which the level of water in those strata depends on the flow of the waters in that source of supply, that the exercise of that right may be substantially affected by so much of the draft order in question as relates to that source of supply;
 - (b) inland waters are related inland waters in relation to any source of supply, where it appears to the applicant authority that changes in the flow of the waters of the source of supply may affect the flow of the waters in the inland waters in question.

Textual Amendments

F1 Word in [Sch. 6 para. 1](#) substituted (subject to the other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); S.I. 1996/186, [art. 3](#)

F2 Words in [Sch. 6 para. 1\(4\)\(g\)](#) substituted (25.11.2002) by S.I. 2002/2626, [art. 20, Sch. 2 para. 18\(4\)](#)

F3 Words in [Sch. 6 para. 1\(4\)\(h\)](#) added (1.4.1996) by [1995 c. 25, s. 120\(1\), Sch. 22 para. 181](#) (with [ss. 7\(6\), 115, 117](#)); S.I. 1996/186, [art. 3](#)

Marginal Citations

M1 [1989 c. 29](#).

Duty to provide copy of draft order

- 2 Where an application for an exemption order is made, the applicant authority shall, at the request of any person, furnish him with a copy of the draft exemption order on payment of such charge as the authority thinks reasonable.

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Making of order

- 3 (1) Where an application for an exemption order is made, the Secretary of State may make the exemption order either in the form of the draft or in that form as altered in such manner as he thinks fit.
- (2) Where the Secretary of State—
- (a) proposes to make any alteration of an exemption order before making it; and
 - (b) considers that any persons are likely to be adversely affected by it,
- the applicant authority shall give and publish such additional notices, in such manner, as the Secretary of State may require.
- (3) Sub-paragraph (4) below shall apply if before the end of—
- (a) the period of twenty-eight days referred to in sub-paragraph (2) of paragraph 1 above;
 - (b) the period of twenty-five days from the publication in the London Gazette of the notice under sub-paragraph (5) of that paragraph; or
 - (c) any period specified in notices under sub-paragraph (2) above,
- notice of an objection is received by the Secretary of State from any person on whom a notice is required by this Schedule to be served, from any other person appearing to the Secretary of State to be affected by the exemption order (either as prepared in draft or as proposed to be altered) or, in the case of a draft order submitted under section 33(4) of this Act, from the [^{F4}Agency].
- (4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before making the order, shall either—
- (a) cause a local inquiry to be held; or
 - (b) afford to the objector and to the applicant authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Where the exemption order (whether as prepared in draft or as proposed to be altered) relates to any tidal water [^{F5}situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales)] in respect of which there is no relevant authority for the purposes of section 33 of this Act except the [^{F4}Agency], sub-paragraphs (1) to (4) above and paragraph 4 below shall have effect as if references to the Secretary of State (except the first reference in sub-paragraph (3) above) were references to the Secretary of State and [^{F6}the Secretary of State for Transport].

Textual Amendments

- F4** Word in *Sch. 6 para. 3* substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, *Sch. 22 para. 128* (with ss. 7(6), 115, 117); S.I. 1996/186, *art. 3*
- F5** Words in *Sch. 6 para. 3(5)* inserted (26.1.1998) by S.I. 1997/2971, *art. 6(1)*, *Sch. paras. 18, 21(b)(i)*
- F6** Words in *Sch. 6 para. 3(5)* substituted (25.11.2002) by S.I. 2002/2626, *art. 20, Sch. 2 para. 18(4)*

Notice and inspection of final order

- 4 (1) Where an exemption order is made under section 33 of this Act, whether in the form of the draft proposed by the applicant authority or with alterations, the Secretary

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of State shall give notice to the applicant authority and (if it is not the applicant authority) to the [^{F7}Agency]—

- (a) stating that the exemption order has been made, either without alteration or with alterations specified in the notice; and
- (b) specifying the date (not being earlier than twenty-eight days after the date of the notice under this paragraph) on which the order shall have effect;

and the [^{F7}Agency] shall forthwith publish the notice.

- (2) The [Agency] shall keep a copy of every order made under section 33 of this Act available at its offices for inspection by the public, free of charge, at all reasonable times.

Textual Amendments

- F7** Words in [Sch. 6 para. 4](#) substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

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