



Water Act 1989

1989 CHAPTER 15

PART II

WATER SUPPLY AND SEWERAGE SERVICES

CHAPTER I

APPOINTMENT AND REGULATION OF WATER AND SEWERAGE UNDERTAKERS

Making and conditions of appointments

11 Appointment of undertakers

- (1) Subject to the following provisions of this Chapter, a company may be appointed—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director,
- to be the water undertaker or sewerage undertaker for any area of England and Wales.
- (2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect while the appointment remains in force—
- (a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
 - (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;
 - (c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to

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- be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.
- (3) The appointment of a company to be a water undertaker or sewerage undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made; and a single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.
- (4) It shall be the duty of the Secretary of State to make such appointments under this Chapter as will secure—
- (a) that on the transfer date a statutory water company becomes the water undertaker for the area appointment for which will, in the opinion of the Secretary of State, ensure that the company continues to supply water for the same area on and after that date as immediately before; and
- (b) that on the transfer date the successor companies become water undertakers for areas comprising so much of England and Wales as is not the subject of appointments by virtue of paragraph (a) above and sewerage undertakers for the areas which immediately before that date are the water authorities' areas for the purposes of section 14 of the 1973 Act (sewerage and sewage disposal);
- and to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times on and after the transfer date both a company holding an appointment under this Chapter as water undertaker and (whether or not the same company in relation to the whole or any part of that area) a company holding an appointment as sewerage undertaker.
- (5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company and shall not be appointed to be a sewerage undertaker unless it is a limited company.
- (6) Subject to subsection (7) and section 12 below—
- (a) the Secretary of State; and
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,
- shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.
- (7) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations to which section 12 below applies as secure either—
- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
- (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

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- (8) As soon as practicable after making an appointment under this Chapter or exercising any power to vary the area to which such an appointment relates, the Secretary of State shall send a copy of the appointment or variation to the Director.
- (9) In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—
- “Director of a company for the time being holding an appointment under Chapter I of Part II of the Water Act 1989 or of such a company’s holding company, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown.”;

and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

12 Restrictions on making replacement appointments

- (1) This section applies—
- (a) to any appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any one or more existing areas; and
 - (b) to any variation by virtue of which the area for which a company holds an appointment under this Chapter is modified so as to include the whole or any part of one or more existing areas.
- (2) An appointment or variation to which this section applies shall not be made in relation to the whole or any part of an existing area except where—
- (a) the existing appointee consents to the appointment or variation;
 - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by the existing appointee; or
 - (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of appointment of the existing appointee.
- (3) In determining whether to make an appointment or variation by virtue of subsection (2) (b) above in relation to any part of an existing area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by the existing appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director, in making an appointment or variation to which this section applies and, where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of—
- (a) charges in respect of services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; and
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay,
- to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

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- (5) For the purposes of this section premises in a part of an existing area are served by the existing appointee—
- (a) in relation to an appointment or variation by virtue of which that appointee would be replaced as the water undertaker for that part of that area, if those premises—
 - (i) are supplied with water by means of a connection with a distribution main of the existing appointee; or
 - (ii) consist in a building or part of a building which is situated within thirty metres of such a main;
 - and
 - (b) in relation to an appointment or variation by virtue of which that appointee would be replaced as the sewerage undertaker for that part of that area, if those premises—
 - (i) are drained by means of a relevant sewer; or
 - (ii) consist in a building or part of a building which is situated within thirty metres of such a sewer, not being a storm-water overflow sewer.
- (6) In this section—
- “distribution main” means a water main that is not a trunk main;
 - “existing area”, in relation to the appointment of any company to be the water undertaker or sewerage undertaker for any area or the variation of any company’s appointment as a water undertaker or sewerage undertaker, means an area for which, until the appointment or variation comes into force, another company (“the existing appointee”) holds the appointment as water undertaker or, as the case may be, sewerage undertaker;
 - “new appointee”, in relation to an appointment or variation to which this section applies, means the company which by virtue of the appointment or variation becomes the water undertaker or sewerage undertaker for the whole or any part of an existing area;
 - “relevant sewer”, in relation to an appointment or variation to which this section applies, means any of the following, that is to say—
 - (a) a public sewer vested in the existing appointee;
 - (b) a sewer in relation to which the existing appointee has made, or is treated as having made, a declaration of vesting under section 17 of the Public Health Act 1936 (vesting declarations) which has not yet taken effect;
 - (c) a drain or sewer in relation to which the existing appointee has, or is treated as having, entered into an agreement under section 18 of that Act.

13 Procedure for replacement appointments

- (1) An application for an appointment or variation to which section 12 above applies shall be made in such manner as may be prescribed; and, within fourteen days after making any such application, the applicant shall—
- (a) serve notice of the application on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the application relates; and
 - (b) publish a copy of the notice in such manner as may be prescribed.
- (2) Before making an appointment or variation to which section 12 above applies, the Secretary of State or the Director shall give notice—

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- (a) stating that he proposes to make the appointment or variation;
 - (b) stating the reasons why he proposes to make the appointment or variation; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
 - (b) by serving a copy of the notice on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.
 - (4) Before making an appointment or variation to which section 12 above applies, the Secretary of State shall consult the Director.
 - (5) As soon as practicable after making an appointment or variation to which section 12 above applies, the Secretary of State or the Director shall—
 - (a) serve a copy of the appointment or variation on the existing appointee; and
 - (b) serve notice of the making of the appointment or variation on every local authority whose area includes the whole or any part of the area to which the appointment or variation relates.
 - (6) Schedule 5 to this Act shall have effect with respect to the making of transitional provision for the purposes of, or in connection with, the making of an appointment or variation to which section 12 above applies.
 - (7) In this section “the existing appointee”, in relation to an appointment or variation to which section 12 above applies, means the company which is the existing appointee for the purposes of that section in relation to any area to the whole or any part of which the appointment or variation relates or, where there is more than one such company, each of them.

14 Conditions of appointment

- (1) An appointment under this Chapter may include—
 - (a) such conditions (whether or not connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers) as appear to the Secretary of State or, as the case may be, the Director to be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
 - (b) conditions for the purposes of section 12(2)(c) above; and
 - (c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

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- (2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in an appointment by virtue of that paragraph may—
- (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified;
 - (b) require the appointed company, except in so far as the Director consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment, or are of a description so specified; and
 - (c) provide for the reference to and determination by—
 - (i) the Secretary of State or the Director; or
 - (ii) on a reference by the Director, the Monopolies and Mergers Commission (in this Act referred to as “the Monopolies Commission”),
 of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.
- (3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions; and any provision included by virtue of this subsection in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.
- (4) Subsection (5) below applies in relation to the appointment of any company under this Chapter in pursuance of section 11(4)(a) above where provision is contained in that appointment by virtue of subsection (2) or (3) above for postponing the determination of, or of any of the terms of, the conditions of the appointment with respect to the fixing by the company of—
- (a) charges in respect of any services provided by that company in the course of the carrying out of the functions of a water undertaker; or
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay,
- until a time after the transfer date and before the end of the financial year current on that date.
- (5) Where this subsection applies in relation to a company's appointment, the conditions or terms mentioned in subsection (4) above shall not be determined in accordance with the provision so mentioned unless—
- (a) notice of the proposed determination has been served on the company;
 - (b) the company has been allowed a period of at least twenty-eight days from the date of service of the notice for making representations or objections with respect to the proposed determination; and
 - (c) the Secretary of State has considered any such representations or objections which have been duly made and are not withdrawn.
- (6) Where any question or other matter falls to be determined by the Monopolies Commission in pursuance of a provision contained in an appointment under this Chapter—

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- (a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
 - (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of paragraph (a) above in accordance with any regulations under subsection (7) below and with the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.
- (7) The Secretary of State may by regulations make such provision as he considers appropriate for regulating the procedure to be followed with respect to the reference of any question or other matter to the Monopolies Commission in pursuance of provision contained in an appointment under this Chapter; and, without prejudice to the generality of that power, any such regulations may, in relation to any such reference, apply (with or without modifications) the provisions of any enactment relating to references to that Commission under the following provisions of this Act, the Fair Trading Act 1973 or the Competition Act 1980.
- (8) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.
- (9) Where an instrument of appointment has been served under subsection (3) of section 11 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument; and if the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.
- (10) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

Modification of appointment conditions

15 Modification by agreement

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.
- (2) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and

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- (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company and on the Secretary of State.
- (4) The Director shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed the Director not to make.
- (5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—
 - (a) the modification is a modification of provision contained in the appointment for the purposes of section 12(2)(c) above;
 - (b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
 - (c) it appears to the Secretary of State that the modification should be made, if at all, under section 18 below.

16 Modification references to Monopolies Commission

- (1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
 - (a) whether any matters which—
 - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.
- (2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—
 - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and

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- (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director shall—
- (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
 - (b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information in his possession which relates to matters falling within the scope of the investigation, and which is either—
 - (i) requested by the Commission for that purpose; or
 - (ii) information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request;
 - and
 - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;
- and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by Part I of this Act.
- (7) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the Competition Act 1980 (modifications of provisions about performance of such functions) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the said Act of 1973;
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
 - (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the said Act of 1973 were a reference to subsection (2) above; and
 - (e) paragraph 16(2) of that Schedule were omitted.
- (8) For the purposes of references under this section the Secretary of State shall appoint not less than eight additional members of the Monopolies Commission; and, if any functions of that Commission in relation to any such reference are performed through a group—
- (a) the chairman of that Commission shall select one or more of those additional members to be members of the group; and

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- (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the Fair Trading Act 1973 shall be reduced by the number of additional members selected.

17 Reports on modification references

- (1) In making a report on a reference under section 16 above, the Monopolies Commission—
 - (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions and of their conclusions;
 - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under section 16 above, the Monopolies Commission conclude that a company holding an appointment under this Chapter is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (3) Section 82 of the Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 16 above as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under section 16 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
 - (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Secretary of State; and
 - (b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph; and the Director shall comply with any such direction.

18 Modification following report

- (1) Where a report of the Monopolies Commission on a reference under section 16 above—
 - (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
 - (d) specifies modifications by which those effects could be remedied or prevented,the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.
- (5) The Director shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—
 - (a) are contained in that appointment for the purposes of section 12(2)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

19 Modification by order under other enactments

- (1) Subject to subsection (3) below, where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the Fair Trading Act 1973 or section 10(2) (a) of the Competition Act 1980, the order may also provide for the modification of the conditions of a company's appointment under this Chapter to such extent as may

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appear to him to be requisite or expedient for the purpose of giving effect to or taking account of any provision made by the order.

- (2) Subsection (1) above shall have effect where—
- (a) the circumstances are as mentioned in section 56(1) of the said Act of 1973 (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying out of any of the functions of a water undertaker or sewerage undertaker;
 - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in carrying out functions of a water undertaker or sewerage undertaker; or
 - (c) the circumstances are as mentioned in section 10(1) of the said Act of 1980 (order on report on competition reference) and the anti-competitive practice relates to the carrying out of any of the functions of a water undertaker or sewerage undertaker.
- (3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 12(2)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.
- (4) In this section expressions which are also used in the said Act of 1973 or the said Act of 1980 have the same meanings as in that Act.

Enforcement orders

20 Orders for securing compliance with certain provisions

- (1) Subject to subsections (2) and (5) and section 21 below, where in the case of any company holding an appointment under this Chapter the Secretary of State or the Director is satisfied—
- (a) that that company is contravening—
 - (i) any condition of the company's appointment in relation to which he is the enforcement authority; or
 - (ii) any statutory requirement which is enforceable under this section and in relation to which he is the enforcement authority;
 - or
 - (b) that that company has contravened any such condition or requirement and is likely to do so again,
- he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to subsection (5) below, where in the case of any company holding an appointment under this Chapter—
- (a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) above; and
 - (b) it appears to him that it is requisite that a provisional order be made,

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he may (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.

- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory requirement enforceable under this section, is likely to be done, or omitted to be done, before a final order may be made.
- (4) Subject to subsection (5) and section 21 below, where the Secretary of State or the Director has made a provisional order, he shall confirm it, with or without modifications, if—
- (a) he is satisfied that the company to which the order relates—
 - (i) is contravening any condition or statutory requirement in relation to which he is the enforcement authority; or
 - (ii) has contravened any such condition or requirement and is likely to do so again;
 - and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) Neither the Secretary of State nor the Director shall be required to make a final order or provisional order in relation to any company or to confirm a provisional order so made if he is satisfied—
- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
 - (b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.
- (6) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of a final order or provisional order or the confirmation of a provisional order so made, is satisfied as mentioned in paragraph (a), (b) or (c) of subsection (5) above, he shall—
- (a) serve notice that he is so satisfied on the company;
 - (b) publish a copy of the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director;

but the requirements of the preceding provisions of this subsection shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 170 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

- (7) A final or provisional order—

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- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the enforcement authority who made it.
- (8) For the purposes of this section and the following provisions of this Act—
- (a) the statutory requirements which shall be enforceable under this section in relation to a company holding an appointment under this Chapter shall be—
 - (i) such of the requirements of section 8 or 9 above as are imposed on that company in consequence of that appointment; and
 - (ii) such of the requirements of any other enactment or of any subordinate legislation as are so imposed and are made so enforceable by that enactment or subordinate legislation;
 - (b) the Director shall be the enforcement authority in relation to the conditions of an appointment under this Chapter;
 - (c) the Secretary of State shall be the enforcement authority in relation to the requirements imposed by sections 8 and 9 above; and
 - (d) the enforcement authority in relation to each of the other statutory requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable;

and the requirement to comply with an undertaking given for the purposes of subsection (5)(b) above shall be treated as a statutory requirement enforceable under this section by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

- (9) In this section and sections 21 and 22 below—
- “final order” means an order under this section other than a provisional order;
 - “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

- (10) Where any act or omission constitutes a contravention of a condition of an appointment under this Chapter or of a statutory requirement enforceable under this section, the only remedies for that contravention, apart from those available by virtue of this section, shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

21 Procedural requirements

- (1) Before making a final order or confirming a provisional order, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out the effect of the order;
 - (b) setting out—

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- (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order;
 - and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (3) Neither the Secretary of State nor the Director shall make a final order with modifications, or confirm a provisional order with modifications, except—
- (a) with the consent to the modifications of the company to which the order relates; or
 - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—
- (a) serve on the company to which the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than twenty-eight days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Secretary of State or, as the case may be, the Director shall—
- (a) serve a copy of the order on the company to which the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and
 - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and

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- (b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.
- (8) A notice under subsection (6) or (7) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 170 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

22 Validity and effect of orders

- (1) If the company to which a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
 - (a) that its making or confirmation was not within the powers of section 20 above; or
 - (b) that any of the requirements of section 21 above have not been complied with in relation to it,
 the company may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned in any legal proceedings whatsoever.
- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
- (6) In any proceedings brought against any company in pursuance of subsection (5) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 52(1)(a) below, it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.
- (8) In subsection (7) above “the relevant enforcement authority”, in relation to any final or provisional order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

Special administration orders

23 Special administration orders in relation to water or sewerage undertakers

- (1) If, on an application made to the High Court by petition presented—
- (a) by the Secretary of State; or
 - (b) with the consent of the Secretary of State, by the Director,
- that Court is satisfied in relation to any company which holds an appointment under this Chapter that any one or more of the grounds specified in subsection (4) below is satisfied in relation to that company, that Court may make an order under this section.
- (2) An order under this section is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court, for the achievement of the purposes of the order and in a manner which protects the respective interests of the members and creditors of the company.
- (3) The purposes of an order made under this section in relation to a company holding an appointment under this Chapter shall be—
- (a) the transfer to another company, or (as respects different parts of the company’s area or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
 - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation to which section 12 above applies).
- (4) The grounds mentioned in subsection (1) above are, in relation to any company—
- (a) that there has been, is or is likely to be such a contravention by the company of a requirement imposed on the company by section 37 or 67 below, not being a contravention in respect of which a notice has been served under subsection (6) of section 20 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
 - (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any final order or provisional order under section 20 above, being an order which—

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- (i) is not for the time being the subject-matter of proceedings brought by virtue of section 22(1) above; and
 - (ii) if it is a provisional order, has been confirmed,
- as is serious enough to make it inappropriate for the company to continue to hold its appointment;
- (c) that the company is or is likely to be unable to pay its debts;
 - (d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 24 below, for him to petition for the winding up of the company under section 440 of the Companies Act 1985 (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under this Chapter; or
 - (e) that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of subsection (2)(c) of section 12 above of any appointment or variation to which that section applies.
- (5) Notice of the petition for an order under this section shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the Insolvency Act 1986; and no such petition shall be withdrawn except with the leave of the High Court.
- (6) Subsections (4) and (5) of section 9 of the said Act of 1986 (powers on application for administration order) shall apply on the hearing of the petition for an order under this section in relation to any company as they apply on the hearing of a petition for an administration order.
- (7) Subsections (1), (2) and (4) of section 10 of the said Act of 1986 (effect of petition) shall apply in the case of a petition for an order under this section in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to an order under this section;
 - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
 - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 20 above.
- (8) Schedule 6 to this Act shall have effect with respect to orders under this section and Schedule 5 to this Act shall have effect with respect to the making of transitional provision for the purposes of an order under this section.
- (9) In this section and section 24 below—
- “business” and “property” have the same meanings as in the Insolvency Act 1986;
 - “security” has the same meaning as in Parts I to VII of that Act;
- and for the purposes of this section a company is unable to pay its debts if it is a limited company which is deemed to be so unable under section 123 of the Insolvency Act 1986 (definition of inability to pay debts) or if it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).

24 Restriction on winding-up etc. of water or sewerage undertaker

- (1) Where a company holds an appointment under this Chapter—
 - (a) the company shall not be wound up voluntarily;
 - (b) no administration order shall be made in relation to the company under Part II of the Insolvency Act 1986; and
 - (c) no step shall be taken by any person to enforce any security over the company's property except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on the Director.
- (2) On an application made to any court for the winding up of a company which holds an appointment under this Chapter—
 - (a) the court shall not make a winding-up order in relation to the company; but
 - (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment, it shall, instead, make an order under section 23 above in relation to the company.

25 Government financial assistance where special administration orders made

- (1) Where a special administration order is for the time being in force in relation to a company, the Secretary of State, may, with the consent of the Treasury—
 - (a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;
 - (b) agree to indemnify the person appointed to achieve the purposes of the order in respect of liabilities incurred and loss or damage sustained by that person in connection with the carrying out of his functions under the order.
- (2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company in relation to which a special administration order is in force at the time when the guarantee is given.
- (3) Without prejudice to any provision applied in relation to the company by Schedule 6 to this Act—
 - (a) the terms and conditions on which a grant is made to any company under this section may require the whole or part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and
 - (b) any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.
- (4) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.
- (5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

- (6) In this section “special administration order” means an order under section 23 above (whether made by virtue of that section or section 24 above).

Review of certain matters and investigation of complaints

26 Director’s duty to keep matters under review and to consider certain matters

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which water undertakers or sewerage undertakers carry out functions.
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time to do so, to collect information with respect to—
- (a) the carrying out by companies appointed under this Chapter of the functions of water undertakers or sewerage undertakers; or
 - (b) any such company,
- with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on him by or under any enactment.
- (3) The Secretary of State may give general directions indicating—
- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1) or (2) above; and
 - (b) considerations to which, in cases where it appears to the Director that any of his powers under this Part are exercisable, he should have particular regard in determining whether to exercise those powers;
- and it shall be the duty of the Director to comply with any such directions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to the functions of water undertakers or sewerage undertakers or the carrying out of any such functions by a company holding an appointment under this Chapter.

27 Protection of customer interests

- (1) It shall be the duty of a customer service committee—
- (a) to keep under review all matters appearing to the committee to affect the interests of the persons who are customers or potential customers of the companies allocated to the committee, to consult each company so allocated about such of those matters as appear to affect the interests of the customers or potential customers of that company and to make to a company so allocated all such representations about any such matter as the committee considers appropriate;
 - (b) subject to paragraph (c) below, to investigate any complaint which—
 - (i) is made to the committee by any person who is a customer or potential customer of a company so allocated or is referred to the committee by the Director under subsection (2) below;

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- (ii) does not appear to the committee to be vexatious or frivolous; and
 - (iii) relates to the carrying out by that company of any of the functions of a water undertaker or sewerage undertaker;
 - (c) to refer to the Director every complaint which is made to the committee by any person in relation to a company allocated to the committee and consists in or amounts to a complaint which the Director would be required to investigate under section 162 below or an assertion that the company is contravening or has contravened—
 - (i) any condition of the company’s appointment under this Chapter; or
 - (ii) any statutory or other requirement enforceable under section 20 above;
 - (d) where the committee considers it appropriate to do so in connection with any such complaint as is mentioned in paragraph (b) above, to make representations on behalf of the complainant to the company in question about any matter to which the complaint relates or which appears to the committee to be relevant to the subject-matter of the complaint; and
 - (e) to refer to the Director or, as the case may be, back to the Director any such complaint as is so mentioned which the committee is unable to resolve.
- (2) It shall be the duty of the Director—
 - (a) to consider whether any complaint which—
 - (i) is made to him by a customer or potential customer of a company allocated to a customer service committee; and
 - (ii) does not consist in or amount to a complaint which he is required to investigate under section 162 below or such an assertion as is mentioned in subsection (1)(c) above,
should be referred to that committee instead of being dealt with by him;
 - (b) to consider whether any complaint which does consist in or amount to such an assertion and is either made to him by such a customer or potential customer or is referred to him by such a committee should be referred by him to the Secretary of State;
 - (c) to consider any such complaint as is mentioned in paragraph (b) above which is not referred by him to the Secretary of State;
 - (d) to consider any complaint referred to him by virtue of subsection (1)(e) above;
 - (e) to consider any complaint made to him by a customer or potential customer of a company allocated to a customer service committee that the committee has failed to perform any duty imposed on it by subsection (1) above; and
 - (f) to take such steps in consequence of his consideration of any matter falling within any of paragraphs (a) to (e) above (including in a case falling within paragraph (d) or (e) above any step which could have been taken by the committee) as he considers appropriate.
- (3) The only remedy for a breach by a customer service committee of a duty imposed on it by subsection (1) above shall be the making of such a complaint to the Director as is mentioned in subsection (2)(e) above.
- (4) It shall be the duty of the Director to make such arrangements as he considers appropriate for facilitating the provision by one customer service committee to another of any such information as that other committee may require for any purpose relating to the carrying out of its functions.

Provisions with respect to competition

28 Functions of Director with respect to competition

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the Fair Trading Act 1973 so far as relating to courses of conduct which are or may be detrimental to the interests of persons who are consumers in relation to the supply of water by water undertakers or the provision of sewerage services by sewerage undertakers, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
 - (a) the functions of that Director under sections 44 and 45 of the Fair Trading Act 1973; and
 - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the supply of water or the provision of sewerage services; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.
- (3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 and 16 of the Competition Act 1980 so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the supply of water or securing a supply of water or with the provision or securing of sewerage services; and references in those sections and in section 19 of that Act to that Director shall be construed accordingly.
- (4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—
 - (a) paragraph (a) of subsection (2) above;
 - (b) paragraph (b) of that subsection; and
 - (c) subsection (3) above,
 he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—
 - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
 - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;
 and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

- (6) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) Part IV or section 86 or 88 of the Fair Trading Act 1973; or
 - (b) sections 2 to 10 of the Competition Act 1980,
- by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.
- (7) Expressions used in this section which are also used in the Fair Trading Act 1973 or the Competition Act 1980 have the same meaning as in that Act.

29 Mergers of water or sewerage undertakings

- (1) Subject to the following provisions of this section, it shall be the duty of the Secretary of State to make a merger reference to the Monopolies Commission if it appears to him that it is or may be the fact—
- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
 - (b) that such a merger has taken place at any time on or after 11th January 1989 otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.
- (2) For the purposes of this section an enterprise shall be regarded as a water enterprise—
- (a) in relation to a merger on or after the transfer date, if it is carried on by a water undertaker or sewerage undertaker; and
 - (b) in relation to a merger on or after 11th January 1989 and before the transfer date, if it is or was carried on by a statutory water company within the meaning of the 1973 Act or by a water authority.
- (3) The Secretary of State shall not make a merger reference under this section in respect of any actual or prospective merger of two or more water enterprises if it appears to him—
- (a) that the take over from which the merger has resulted or, as the case may be, would result was initiated before 9 a.m. on 11th January 1989;
 - (b) that the value of the assets taken over does not exceed or, as the case may be, would not exceed the amount for the time being specified in section 64(1)(b) of the Fair Trading Act 1973 (condition of merger reference relating to amount of assets taken over); or
 - (c) that the only water enterprises already belonging to the person making the take over are enterprises each of which has assets the value of which does not exceed or, as the case may be, would not exceed that amount.
- (4) For the purposes of subsection (3) above a merger of two or more enterprises results from a take over initiated before 9 a.m. on 11th January 1989 if—
- (a) the Secretary of State or the Director General of Fair Trading was given notice before that time on that date of the material facts about the proposed arrangements or transactions resulting in the merger; or
 - (b) the merger results exclusively from the acceptance of offers to acquire shares in a body corporate and those offers—
 - (i) were all made before that time on that date; or

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- (ii) in so far as they were not so made, consist in offers made, by the same person and in respect of the same shares, in substitution for offers made before that time on that date.
- (5) In relation to a merger of two or more water enterprises—
- (a) the value of the assets taken over shall, for the purposes of subsection (3) above, be determined in accordance with section 67 of the Fair Trading Act 1973 by reference only to assets employed in or appropriated to a water enterprise; and
 - (b) the value of the assets of a water enterprise belonging to the person making the take over shall be taken for those purposes to be the value of such assets employed in or appropriated to that enterprise as by virtue of the exceptions in paragraph (a) of subsection (2) of that section are disregarded in determining the value of the assets taken over;
- and paragraph (b) of that subsection shall apply for determining the value of the assets referred to in paragraph (b) above as it applies in relation to the assets taken over.
- (6) For the purposes of subsections (3) and (5) above and of any determination in accordance with those subsections—
- (a) the assets treated as employed in or appropriated to a water enterprise carried on by a company holding an appointment under this Chapter, a statutory water company within the meaning of the 1973 Act or a water authority shall include all the assets for the time being of that company or authority;
 - (b) every water enterprise any of whose assets fall to be disregarded as mentioned in subsection (5)(b) above shall be treated as belonging to the person making the take over;
 - (c) the enterprises mentioned in paragraph (b) above shall be treated as separate enterprises in so far as they are carried on by different companies holding appointments under this Chapter or, in relation to any time before the transfer date, by different statutory water companies; and
 - (d) subsections (3) and (4) of section 67 of the Fair Trading Act 1973 (assets treated as appropriated to an enterprise and mergers over a period) shall apply as they apply for the purposes of, and of any determination in accordance with, subsection (2) of that section.
- (7) The Secretary of State shall not make a reference under this section in relation to the merger of any two or more enterprises, or in relation to any arrangements which will or may result in such a merger, if—
- (a) the merger of those enterprises has been; or
 - (b) arrangements that might result in the merger of those enterprises have been, the subject of a merger reference made before the passing of this Act under Part V of the Fair Trading Act 1973.
- (8) Nothing in this section shall prejudice any power of the Secretary of State, in a case in which he is not required to make a reference under this section, to make a merger reference under Part V of the Fair Trading Act 1973 in respect of any actual or prospective merger of two or more water enterprises.
- (9) In this section and section 30 below—
- (a) “enterprise” has the meaning given for the purposes of sections 64 to 77 of the Fair Trading Act 1973 by section 63(2) of that Act; and

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- (b) references, in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part V of that Act, to be distinct enterprises;
and sections 66 and 66A of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this section and section 30 below as they have effect for the purposes of that Part.
- (10) If the Secretary of State considers that it is appropriate for subsection (3) above to have effect with a reference in paragraph (b) to a different amount, or for the condition set out in that paragraph to be modified in any other respect, he may, in relation to mergers after the coming into force of the regulations, by regulations make such modifications of that paragraph and, for that purpose, of the other provisions of this section as may be prescribed.

30 References under section 29

- (1) Subject to subsections (2) to (5) below, the Fair Trading Act 1973 shall have the effect in relation to any reference under section 29 above as if—
- (a) any such merger of two or more water enterprises as is required to be the subject of such a reference were a merger situation qualifying for investigation; and
 - (b) a reference under that section were made under section 64 of that Act or, as the case may be, under section 75 of that Act (references in anticipation of a merger).
- (2) Nothing in subsection (1) above shall have the effect in relation to any reference under section 29 above of applying—
- (a) so much of Part V of the Fair Trading Act 1973 as requires the Monopolies Commission to consider any of the matters set out in subsection (1) of section 64 of that Act; or
 - (b) the provisions of sections 69(2) to (4) and 75(3) of that Act (power to restrict matters referred).
- (3) In determining on a reference under section 29 above whether any matter operates, or may be expected to operate, against the public interest the Monopolies Commission—
- (a) shall have regard to the desirability of giving effect to the principle that the number of water enterprises which are under independent control should not be reduced so as to prejudice the Director's ability, in carrying out his functions by virtue of this Act, to make comparisons between different such water enterprises; and
 - (b) shall have regard to the desirability of achieving any other purpose so far only as they are satisfied—
 - (i) that that other purpose can be achieved in a manner that does not conflict with that principle; or
 - (ii) that the achievement of that other purpose is of substantially greater significance in relation to the public interest than that principle and cannot be brought about except in a manner that conflicts with that principle.
- (4) No order shall be made under Part V of the Fair Trading Act 1973 in consequence of any merger reference made under section 29 above in respect of an actual merger unless the reference was made within the appropriate time limit; and if on such a

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reference the Monopolies Commission are satisfied that the reference was not made within that time limit their report on the reference shall state that fact and nothing else.

- (5) For the purposes of subsection (4) above the appropriate time limit is—
- (a) in the case of a reference in respect of a merger which took place before the passing of this Act, the period of six months beginning with the day on which this Act is passed; and
 - (b) in any other case of a merger which has taken place before the reference, the period of six months beginning with whichever is the later of—
 - (i) the day on which the merger took place; and
 - (ii) the day on which the material facts about the transactions which resulted in the merger first came to the notice of the Secretary of State or the Director General of Fair Trading or were made public within the meaning of section 64 of the Fair Trading Act 1973.
- (6) In this section “water enterprise” has the same meaning as in section 29 above; and the reference to the number of water enterprises under independent control is a reference to the number of water enterprises there would be if two or more water enterprises counted as one enterprise wherever they would be treated for the purposes of Part V of the Fair Trading Act 1973 as having ceased to be distinct enterprises.

The Director’s register

31 The Director’s register

- (1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Chapter.
- (2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of—
 - (a) every appointment under this Chapter, every termination or transfer of any such appointment, every variation of the area for which any company holds any such appointment and every modification of the conditions of any such appointment;
 - (b) every direction, consent or determination given or made under any such appointment by the Secretary of State, the Monopolies Commission or the Director himself;
 - (c) every final order made under section 20 above, every provisional order made or confirmed under that section, every revocation of such a final or provisional order and every notice under subsection (6) of that section;
 - (d) every undertaking given to and accepted by the Secretary of State or the Director for the purposes of subsection (5)(b) of that section; and
 - (e) every special administration order and every discharge of such an order.
- (3) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest, he may direct the Director not to enter that provision in the register; and the Director shall comply with any such direction.
- (4) The contents of the register shall be available for inspection by the public at such times and subject to the payment of such charges as may be specified in an order made by the Secretary of State.

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- (5) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, the contents of any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.
- (6) The power to make an order under subsection (4) or (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.
- (8) In this section “special administration order” means an order under section 23 above (whether made by virtue of that section or section 24 above).

Information and reports

32 Duty of undertakers to furnish information to the Secretary of State

- (1) It shall be the duty of a company holding an appointment under this Chapter and, in relation to any time before the transfer date, of any statutory water company within the meaning of the 1973 Act to furnish the Secretary of State with all such information relating to any matter which—
 - (a) is connected with, or with any proposals relating to, the carrying out by that company of the functions of a water undertaker or sewerage undertaker; or
 - (b) is material to the carrying out by the Secretary of State of any of his functions under this Act,as the Secretary of State may reasonably require.
- (2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State may reasonably require.
- (3) The information which a company may be required to furnish to the Secretary of State under this section shall include information which, although it is not in the possession of that company or would not otherwise come into the possession of that company, is information which it is reasonable to require that company to obtain.
- (4) A requirement for the purposes of this section shall be contained in a direction which—
 - (a) may describe the information to be furnished in such manner as the Secretary of State considers appropriate;
 - (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time; and
 - (c) may be given to a particular company, to companies of a particular description or to all the companies holding appointments under this Chapter.
- (5) The obligations of a water undertaker or sewerage undertaker under this section shall be enforceable under section 20 above by the Secretary of State.

33 Power to require information etc. for enforcement purposes

- (1) Where it appears to the Secretary of State or the Director that a company which holds an appointment under this Chapter may be contravening, or may have contravened—

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- (a) any condition of its appointment; or
 - (b) any statutory or other requirement enforceable under section 20 above,he may, for any purpose connected with such of his powers under sections 20 to 23 above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice signed by the Secretary of State or the Director and—
 - (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Secretary of State or the Director or to any person appointed by the Secretary of State or the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
 - (b) requiring that person, if he is carrying on a business, to furnish, at the time and place and in the form and manner specified in the notice, the Secretary of State or the Director with such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who, without reasonable excuse, fails to do anything required of him by a notice under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce shall be guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) above, the High Court may, on the application of the Secretary of State or the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) Nothing in this section shall be construed as restricting any power of the Secretary of State or the Director under section 32 above or the conditions of an appointment under this Chapter to require a company holding such an appointment to produce any document to him or to furnish him with any information.

34 Publication of information and advice

- (1) The Secretary of State may arrange for the publication, in such form and in such manner as he considers appropriate, of such information relating to any matter which is connected with the carrying out by a company holding an appointment under this Chapter of the functions of a water undertaker or sewerage undertaker as it may appear to him to be in the public interest to publish.

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- (2) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him to be expedient to give to any customer or potential customer of a company holding an appointment under this Chapter.
- (3) In arranging for the publication of any such information or advice the Secretary of State or the Director shall have regard to the need for excluding, so far as that is practicable—
 - (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) of the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) of the Director, seriously and prejudicially affect the interests of that body.

35 Reports by Director

- (1) The Director shall, as soon as practicable after the end of the year 1989 and of each subsequent calendar year make to the Secretary of State a report on—
 - (a) his activities during that year; and
 - (b) the Monopolies Commission's activities during that year so far as relating to references made by him.
- (2) Every such report shall—
 - (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions; and
 - (b) set out any general directions given to the Director during that year under section 26(3) above.
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to any matters falling within the scope of his functions.
- (5) The Director may arrange for copies of any report prepared under subsection (4) above to be published in such manner as he considers appropriate.
- (6) In making or preparing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 34(3)(a) and (b) above.

36 Reports by customer service committees

- (1) A customer service committee—
 - (a) shall prepare a report on any such matter as the Director may require; and
 - (b) may prepare a report concerning any matter which appears to the customer service committee to affect the interests of the customers or potential customers of a company allocated to the committee,

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and, as soon as reasonably practicable after preparing a report under this subsection, a customer service committee shall send a copy of the report to the Director.

- (2) As soon as reasonably practicable after the end of each financial year, a customer service committee shall prepare a report on its activities during that year and shall send a copy of that report to the Director.
- (3) The Director may arrange for any report which has been sent to him by virtue of this section to be published in such manner as he considers appropriate.
- (4) In publishing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 34(3)(a) and (b) above.

CHAPTER II

WATER SUPPLY

General duties of water undertakers

37 General duty with respect to water supply

- (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—
 - (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
 - (b) for maintaining, improving and extending the water undertaker's water mains and other pipes,
 as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Chapter.
- (2) The duty of water undertaker under this section shall be enforceable under section 20 above by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

38 Standards of performance in connection with water supply

- (1) For the purpose—
 - (a) of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Chapter are to amount to breaches of the duty imposed by section 37 above; or
 - (b) of supplementing that duty by establishing overall standards of performance in relation to that duty,
 the Secretary of State may by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in his opinion, ought to be achieved in individual cases; and such regulations may provide that if a water

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- undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (3) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
- (a) include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
 - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Director’s determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.
- (4) Subject to subsection (5) below, the Secretary of State shall not make any regulations under subsection (1) or (2) above unless—
- (a) the Director has made a written application to the Secretary of State which—
 - (i) sets out draft provisions proposed by the Director for inclusion in such regulations;
 - (ii) specifies the water undertaker or undertakers in relation to which it is proposed those provisions should apply; and
 - (iii) summaries the Director’s reasons for his proposals;
 - (b) the Secretary of State is satisfied that a copy of the application has been served by the Director on every water undertaker specified in the application;
 - (c) the regulations contain only the provisions proposed by the Director or those provisions with such modifications as the Secretary of State considers appropriate;
 - (d) the only modifications of the Director’s proposals to which effect is given by the regulations are modifications the proposal to make which has been notified to the Director and to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications;
 - (e) such period as the Secretary of State considers appropriate has been allocated for the making by the Director and by any affected water undertaker of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
 - (f) the Secretary of State has considered both the Director’s reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- (5) Subsection (4) above shall not apply in relation to any regulations made under subsection (2) above before the transfer date.
- (6) The obligations imposed on a water undertaker by the following provisions of this Chapter and the remedies available in respect of contraventions of those obligations shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 37 above and shall not be in any way qualified by any such provision.

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Bulk supplies of water

39 Bulk supply between water undertakers

- (1) Where, on the application of a water undertaker—
 - (a) it appears to the Director that it is necessary or expedient for the purposes of this Chapter that another water undertaker should give a supply of water in bulk to the applicant; and
 - (b) he is satisfied that the giving and taking of such a supply cannot be secured by agreement,
 the Director may by order require the undertakers to give and to take such a supply for such period and on such terms and conditions as may be provided in the order.
- (2) An order under this section shall have effect as an agreement between the water undertakers in question but may be varied or revoked by a subsequent order made by the Director on the application of either of those undertakers, as well as by agreement between the undertakers.
- (3) The Director shall not make an order under this section which he considers affects the carrying out by the Authority of any of its functions unless he has first consulted the Authority.
- (4) In determining what provision to make by an order under this section in respect of the giving of any supply by a water undertaker the Director shall have regard to the desirability of the undertaker's recovering the expenses of complying with its obligations under this section and of securing a reasonable return on its capital.

Duties to provide supplies etc.

40 Requisitioning of water mains

- (1) It shall be the duty of a water undertaker to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if—
 - (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under subsection (2) below are entitled to require the provision of the main for that locality;
 - (b) the premises in that locality to which those supplies would be provided by means of that main are—
 - (i) premises consisting in buildings or parts of buildings; or
 - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out;
 and
 - (c) the conditions specified in section 41 below are satisfied in relation to that requirement.
- (2) Each of the following persons shall be entitled to require the provision of a water main for any locality, that is to say—
 - (a) the owner of any premises in that locality;
 - (b) the occupier of any premises in that locality;

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- (c) any local authority within whose area the whole or any part of that locality is situated;
 - (d) where the whole or any part of that locality is situated in a new town, within the meaning of the New Towns Act 1981—
 - (i) the Commission for the New Towns; and
 - (ii) the Development Board for Rural Wales or the development corporation for the new town, according to whether or not the new town is situated within the area for which that Board is for the time being responsible;
- and
- (e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the Local Government, Planning and Land Act 1980, the urban development corporation.
- (3) A water undertaker shall not be in breach of a duty imposed by this section in relation to any locality unless—
- (a) the period of three months beginning with the relevant day has expired; and
 - (b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable service pipes to premises in that locality to connect with the main at the places determined under subsection (4) below;
- and for the purposes of this subsection the period mentioned in paragraph (a) above may be extended by agreement between the undertaker and the person or persons who required the provision of the water main or, where there is a dispute as to whether the period should be extended, by an arbitrator on a reference under subsection (5) below.
- (4) The places mentioned in subsection (3)(b) above shall be determined by agreement between the water undertaker and the person or persons who required the provision of the water main or, in default of agreement, shall be such places as are determined by an arbitrator, on a reference under subsection (5) below, to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question to connect with the water main.
- (5) A reference for the purposes of subsection (3) or (4) above shall be to a single arbitrator appointed by agreement between the undertaker and the person or persons who required the provision of the water main or, in default of agreement, by the President of the Institution of Civil Engineers.
- (6) The duty of a water undertaker under this section to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of the persons who joins in doing so; and any breach by a water undertaker of any such duty which causes any person to whom the duty is owed to sustain loss or damage shall be actionable at the suit of that person.
- (7) In any proceedings brought against a water undertaker in pursuance of subsection (6) above in respect of a breach of duty which has caused any person to sustain loss or damage it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (8) In this section—
- “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple;

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“relevant day”, in relation to a requirement to provide a water main for any locality, means the day after whichever is the later of the following, that is to say—

- (a) the day on which the conditions specified in section 41 below are satisfied in relation to the requirement; and
- (b) the day on which the places where service pipes to premises in that locality will connect with the main are determined under subsection (4) above.

41 Financial conditions for water main requisition

- (1) The conditions mentioned in section 40(1)(c) above are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—
 - (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) below have been given by the person or persons who have required the provision of the main; and
 - (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who—
 - (i) by virtue of section 40(2)(a) or (b) above required, or joined in requiring, the provision of the main; and
 - (ii) is not a public authority.
- (2) The undertakings which a water undertaker may require for the purposes of subsection (1) above in respect of any water main are undertakings which bind the person or persons mentioned in that subsection (in the case of two or more persons, either jointly and severally or with liability to pay apportioned in such manner as those persons may agree) to pay to the undertaker, in respect of each of the twelve years following the provision of the main, an amount not exceeding the relevant deficit (if any) for that year on that main.
- (3) For the purposes of this section the relevant deficit for any year on a water main is the amount (if any) by which the water charges payable for the use during that year of that main are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.
- (4) The annual borrowing costs of a loan of the amount required for the provision of a water main is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that main as were not incurred in the provision of additional capacity had been borrowed, by the water undertaker providing the main, on terms—
 - (a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
 - (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined either by the undertaker with the approval of the Director or, in default of such a determination, by the Director.
- (5) The costs reasonably incurred in providing a water main (“the new main”) shall include—

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- (a) the costs reasonably incurred in providing such other water mains and such tanks, service reservoirs and pumping stations as it is necessary to provide in consequence of the provision of the new main; and
- (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier water main as falls to be used in consequence of the provision of the new main;

and in this subsection “earlier water main”, in relation to the new main, means any water main which has been provided in the period of twelve years immediately before the provision of the new main and was so provided in pursuance of a requirement under section 40 above, under the provisions of section 36 or 37 of the 1945 Act or of section 29 of Schedule 3 to that Act (water main requisitions) or under any local statutory provision corresponding to section 40 above or to any of those provisions of the 1945 Act.

- (6) Any reference in this section to the provision of additional capacity in a water main provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that main as are carried out or done for the purpose of enabling that main to be used for purposes in addition to those for which it is necessary to provide the main in order to comply with the requirement.
- (7) For the purposes of this section references to the water charges payable for the use during any year of any main provided by a water undertaker are references to so much of the aggregate of any charges payable to the water undertaker in respect of services provided in the course of that year as represents charges which—
 - (a) have been imposed by the undertaker in relation to premises which are connected with that main; and
 - (b) are reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main.
- (8) Where for the purposes of subsection (1)(b) above any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
 - (a) by the undertaker with the approval of the Director; or
 - (b) in default of a determination under paragraph (a) above, by the Director,on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (9) An approval or determination given or made by the Director for the purposes of subsection (4) or (8) above—
 - (a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and
 - (b) may be revoked at any time except, in the case of an approval or determination for the purposes of subsection (4) above, in relation to a water main that has already been provided.
- (10) Any dispute between a water undertaker and any other person as to—
 - (a) the undertakings or security required by the undertaker for the purposes of this section; or
 - (b) the amount required to be paid in pursuance of any such undertaking,

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shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the President of the Institution of Civil Engineers.

42 Duty to make connections to water mains

(1) This section applies where the owner or occupier of any premises which are situated in the area of a water undertaker and are premises which consist in the whole or any part of a building or premises on which any person is proposing to erect any building or part of a building serves a notice on the undertaker which—

- (a) requires the undertaker, for the purpose of providing a supply of water for domestic purposes to that building or part, to connect a service pipe to those premises with one of the undertaker's water mains; and
- (b) is accompanied or supplemented by all such information as the undertaker may reasonably require and, if it has effect so that a requirement is imposed on the undertaker by virtue of subsection (3)(c) below, sets out the matters that have given rise to the imposition of that requirement;

and this section applies where a notice has been served for the purposes of this section whether or not the service pipe to which the notice relates has been laid when the notice is served.

(2) Subject to the following provisions of this section and to section 44 below, it shall be the duty of a water undertaker on whom a notice is served for the purposes of this section, at the expense of the person serving the notice, to make the required connection if—

- (a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and
- (b) such conditions as the undertaker may have imposed under section 43 below have been satisfied.

(3) Where a water undertaker is required to make a connection under subsection (2) above, it shall be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the following works as need to be carried out before the connection in question can be made, that is to say—

- (a) to lay so much of the service pipe as it is necessary, for the purpose of making a connection with the main, to lay in a street;
- (b) in a case where—
 - (i) the water main in question is situated in a street;
 - (ii) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and
 - (iii) the service pipe to those premises will enter the premises otherwise than through an outer wall of a building abutting on the street and will have a stopcock fitted by the undertaker in the premises,

to lay so much of the service pipe as it is necessary for that purpose to lay in land between the boundary of the street and that stopcock;

- (c) in a case where the notice for the purposes of this section is served in compliance with a requirement imposed by a notice served by a local authority under section 57 below, to lay so much of the service pipe as it is necessary

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for that purpose to lay in land owned or occupied by a person who is certified by that authority—

- (i) to have unreasonably refused his consent to the laying of the service pipe; or
- (ii) to have sought to make the giving of his consent subject to unreasonable conditions;

and it shall be the duty of any water undertaker making a connection under this section to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.

- (4) Where a water main is alongside a street and within eighteen metres of the middle of that street, subsection (3) above shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.
- (5) Subject to section 44(6) below, a water undertaker may comply with any duty under this section to lay a service pipe by laying a water main instead; but nothing in this section shall impose any duty on a water undertaker—
 - (a) to lay a water main where it has no power to lay a service pipe; or
 - (b) to connect a service pipe to any premises with a service pipe to other premises.
- (6) Where a notice under this section is served in respect of any premises before the laying of so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker under subsection (3) above, the duties of the undertaker under this section shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in subsection (3)(b) or (c) or (4) above.

43 Conditions of connection to water main

- (1) Subject to the following provisions of this section and without prejudice to the provisions of sections 233 and 372 of the Insolvency Act 1986 (conditions of supply after insolvency), where the owner or occupier of any premises serves a notice on a water undertaker under section 42 above, the undertaker may make any one or more of the following a condition of complying with the duties to which it is subject by virtue of that notice, that is to say—
 - (a) that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of section 44(5) below on the person serving the notice;
 - (b) in a case where the connection required by the notice is necessary as a consequence of a disconnection made by reason of any person's failure to pay any charges, that the person serving the notice has paid any amount owed by him to the undertaker in respect of a supply of water to those premises or in respect of expenses incurred in the making of the disconnection;
 - (c) that a meter for use in determining the amount of any charges which have been or may be fixed in relation to those premises by reference to volume has been installed and connected either by the undertaker or in accordance with specifications approved by the undertaker;

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- (d) that so much of the service pipe to the premises as does not belong to, or fall to be laid by, the undertaker and the plumbing of the premises comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter to be so installed and connected;
 - (e) that a separate service pipe has been provided to each house or building on the premises or, where different parts of a building on the premises are separately occupied, to each of those parts or to any of them;
 - (f) that such a requirement as may be imposed under subsection (5) of section 51 below has been complied with or, in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that subsection, that the cistern and its float-operated valve are in good repair;
 - (g) that there is no contravention in relation to the water fittings used or to be used in connection with the supply of water to those premises, or with the use of water in those premises, of such of the requirements of regulations under section 62 below as are prescribed for the purposes of this paragraph; and
 - (h) that every such step has been taken as has been specified in any notice served under section 63 below in relation to those premises on any person.
- (2) A condition shall not be imposed by an undertaker under this section on a person who has served a notice under section 42 above except by a counter-notice served on that person before the end of the period of fourteen days beginning with the day after the service of the notice under that section.
- (3) Where for the purposes of subsection (1)(a) above any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
- (a) by the undertaker with the approval of the Director; or
 - (b) in default of a determination under paragraph (a) above, by the Director,
- on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker; and an approval or determination by the Director for the purposes of this subsection may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.
- (4) The power conferred on a water undertaker by virtue of paragraphs (c) and (d) of subsection (1) above shall be exercisable in relation to any premises even if the undertaker has no immediate intention, when the power is exercised, of fixing charges in relation to those premises by reference to volume, but shall not be exercisable so as to require the alteration or removal of any pipe laid or plumbing installed before 1st April 1989.
- (5) Specifications approved by any water undertaker for the purposes of either of the said paragraphs (c) and (d) may be approved in relation to particular premises or, by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.
- (6) Any dispute between a water undertaker and any other person as to the terms of any condition imposed by virtue of either of the said paragraphs (c) and (d) shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Secretary of State.
- (7) Where the effect of a notice served on a water undertaker under section 42 above in respect of any house is to require a service pipe to that house to be connected with

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a water main with which it has previously been connected, the undertaker shall not be entitled to make the reconnection subject to any such condition as is mentioned in paragraph (e) of subsection (1) above unless the undertaker would have been entitled under section 50 below to require the provision of a separate service pipe if the reconnection had already been made.

- (8) In this section “meter” means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises; and any reference in this section to the fixing of charges in relation to any premises by reference to volume is a reference to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors or to one or both of those factors taken together with other factors.

44 Enforcement of obligations under section 42

- (1) Any duty imposed on a water undertaker by virtue of a notice under section 42 above shall be owed to the person who served the notice; and any breach by a water undertaker of any such duty which causes the person to whom the duty is owed to sustain loss or damage shall be actionable at the suit of that person.
- (2) A water undertaker shall not be in breach of a duty imposed by virtue of a notice under section 42 above unless—
- (a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;
 - (b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of fourteen days beginning with the relevant day.
- (3) In any case in which a water undertaker is subject to any such duty as is mentioned in subsection (2)(a) above, it shall be presumed, unless the contrary is shown in relation to that case, that the period of twenty-one days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—
- (a) to lay so much of any service pipe; and
 - (b) to fit such stopcock,
- as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.
- (4) In any proceedings brought against a water undertaker in pursuance of subsection (1) above in respect of a breach of duty which has caused any person to sustain loss or damage it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (5) Where a water undertaker carries out any works which it is its duty to carry out under section 42 above at the expense of a person who has served a notice on the undertaker, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.
- (6) Where a water undertaker exercises its power under section 42(5) above to lay a water main instead of a service pipe—

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- (a) paragraph (a) of subsection (2) above shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that paragraph for the laying of the service pipe; but
 - (b) the expenses recoverable by virtue of subsection (5) above shall not exceed such amount as it would have been reasonable for the undertaker to have incurred in laying a service pipe instead of the main.
- (7) In this section “the relevant day”, in relation to a duty imposed on a water undertaker by virtue of a notice under section 42 above, means the day after whichever is the latest of the following days, that is to say—
- (a) the day on which the notice was served on the undertaker;
 - (b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;
 - (c) the day on which all such conditions are satisfied as the undertaker has, under section 43 above, made conditions of its compliance with that duty.

45 Duty to supply water for domestic purposes

- (1) This section applies to any premises which consist in the whole or any part of a building and which are connected by means of a service pipe to a water main if—
- (a) that pipe was first connected with that main in pursuance of a notice served under section 42 above in respect of those premises;
 - (b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately before the transfer date;
 - (c) the condition specified in paragraph (b) above would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before the transfer date; or
 - (d) the condition specified in any of the preceding paragraphs—
 - (i) has been satisfied in relation to those premises at any time on or after the transfer date; and
 - (ii) would continue to be satisfied in relation to those premises had not the whole or any part of a service pipe to those premises, or the main with which such a pipe had been connected, been renewed (on one or more previous occasions).
- (2) Subject to the following provisions of this section, a water undertaker shall owe a domestic supply duty in relation to any premises to which this section applies and which are situated in the area of the undertaker if—
- (a) a demand for a supply of water for domestic purposes has been made to the undertaker in respect of those premises—
 - (i) by the person who was the occupier of the premises at the time when the demand was made; or
 - (ii) by any person who was the owner of the premises at that time and agreed with the undertaker to pay all the undertaker’s charges in respect of the supply demanded;

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- (b) those premises are premises to which this section applies by reason of a supply of water provided before the transfer date,
and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the beginning of the transfer date.
- (3) Where a water undertaker owes a domestic supply duty in relation to any premises, it shall be the duty of that undertaker, until there is an interruption of that duty—
- (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (b) to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to those premises.
- (4) For the purposes of this section—
- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of any power conferred on the undertaker by section 49 or 63 below, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and
- (b) a domestic supply duty owed in relation to any premises shall not be treated for the purposes of this section as interrupted by reason only of a change of the occupier or owner of the premises.
- (5) Nothing in this section shall impose any duty on a water undertaker—
- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced, or for the pipe to be disconnected, for the purposes of the carrying out of any necessary works.
- (6) Without prejudice to the provisions of sections 233 and 372 of the Insolvency Act 1986 (conditions of supply after insolvency), where a demand for the purposes of subsection (2) above has been made to a water undertaker in respect of any premises, the undertaker may make any one or more of the following a condition of providing his first supply of water in compliance with that demand, that is to say—
- (a) in a case where the demand is made as a consequence of a supply having been cut off by reason of any person's failure to pay any charges, that the person serving the notice has paid any amount owed by him to the undertaker in respect of a supply of water to those premises or in respect of expenses incurred in cutting off any such supply;
- (b) that such a requirement as may be imposed under subsection (5) of section 51 below has been complied with or, in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that subsection, that the cistern and its float-operated valve are in good repair;
- (c) that there is no contravention in relation to the water fittings used or to be used in connection with the supply of water to those premises, or with the use of water in those premises, of such of the requirements of regulations under section 62 below as are prescribed for the purposes of this paragraph; and

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- (d) that every such step has been taken as has been specified in any notice served under section 63 below in relation to those premises on any person.
- (7) Any duty imposed on a water undertaker under this section to provide a supply of water to any premises, or to maintain a connection between a water main and a service pipe by which such a supply is provided, shall be owed to the consumer; and any breach by a water undertaker of any duty imposed by this section which causes any person to whom the duty is owed to sustain loss or damage shall be actionable at the suit of that person.
- (8) In any proceedings brought against a water undertaker in pursuance of subsection (7) above in respect of a breach of duty which has caused any person to sustain loss or damage it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

46 Supply of water for non-domestic purposes

- (1) This section applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—
 - (a) the premises are premises which do not consist in the whole or any part of a building; or
 - (b) the requested supply is for purposes other than domestic purposes.
- (2) Subject to the following provisions of this section and to sections 49 and 63 below, where this section applies, it shall be the duty of the undertaker, in accordance with such terms and conditions as may be determined under this section—
 - (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and
 - (b) having taken any such steps, to provide that supply.
- (3) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if—
 - (a) the provision of that supply or the taking of those steps would—
 - (i) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
 - (ii) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in sub-paragraph (i) above;
 - or
 - (b) there is a contravention in relation to the water fittings used or to be used in connection with the supply of water to those premises, or with the use of water in those premises, of such of the requirements of regulations under section 62 below as are prescribed for the purposes of this paragraph.
- (4) Subject to subsection (5) below and without prejudice to the provisions of sections 233 and 372 of the Insolvency Act 1986 (conditions of supply after insolvency), any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker under subsection (2) above shall be determined by agreement between that person and the water undertaker or, in default

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of agreement, shall be determined by the Director according to what appears to him to be reasonable; and the Director shall also determine any dispute arising between such a person and a water undertaker by virtue of subsection (3) above.

- (5) The Director may, instead of himself making a determination under subsection (4) above, refer any matter submitted to him for determination under that subsection to the arbitration of such person as he may appoint.
- (6) For the purposes of any determination under this section by the Director or any person appointed by him—
- (a) it shall be for a water undertaker to show that it should not be required to comply with a request for the purposes of subsection (2) above;
 - (b) the charges in respect of a supply provided in compliance with such a request shall not be determined by the Director or such a person except in so far as at the time of the request no provision is in force by virtue of a scheme under section 76 below in respect of supplies of the applicable description; and
 - (c) in so far as charges in respect of such a supply do fall to be determined they shall be determined having regard to the desirability of the undertaker's recovering the expenses of complying with its obligations under this section and of securing a reasonable return on its capital;

and, to the extent that paragraph (b) above excludes any charges from a determination under this section, those charges shall be fixed from time to time by a scheme under the said section 76 but not otherwise.

- (7) Where—
- (a) a request has been made by any person to a water undertaker for the purposes of subsection (2) above; and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for or agreement to any exercise by the undertaker of any of its powers or to the carrying out by the undertaker of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.

- (8) Nothing in this section shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.
- (9) The duty of a water undertaker to supply water under this section at the request of any person and any terms and conditions determined under this section in default of agreement between the undertaker and that person shall have effect as if contained in such an agreement.

47 Duty to provide a supply of water etc. for fire-fighting

- (1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.

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- (2) Every water undertaker shall, at the request of the fire authority concerned, fix fire-hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.
- (3) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.
- (4) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.
- (5) It shall be the duty of a water undertaker to ensure that a fire authority has been supplied by the undertaker with all such keys as the authority may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.
- (6) The expenses incurred by a water undertaker in complying with its obligations under subsections (2) to (5) above shall be borne—
 - (a) in the case of a hydrant fixed in pursuance of a request made (whether before or after the transfer date) by the owner or occupier of a factory or place of business, by the owner or occupier for the time being of that factory or place, according to whether the person who made the original request did so in his capacity as owner or occupier; and
 - (b) in any other case, by the fire authority concerned.
- (7) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.
- (8) The obligations of a water undertaker under this section shall be enforceable under section 20 above by the Secretary of State; and, in addition, where a water undertaker is in breach of a duty under this section the undertaker shall be guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (9) In any proceedings against any water undertaker for an offence under subsection (8) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (10) For the purposes of subsection (3) above a water main or other pipe is suitable, in relation to a factory or place of business, if—
 - (a) it is situated in a street which is in or near to that factory or place of business; and
 - (b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.
- (11) In this section—
 - “factory” has the same meaning as in the Factories Act 1961; and
 - “fire authority” has the same meaning as in the Fire Services Act 1947.

48 Duty to supply water for other public purposes

- (1) A water undertaker shall, at the request of a sewerage undertaker, highway authority or local authority, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains, for cleansing and watering highways or, as the case may be, for supplying any public pumps, baths or wash-houses.
- (2) A supply of water provided by a water undertaker under this section shall be provided upon such terms and conditions as may be reasonable.
- (3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this section if and only if it has a fire-hydrant fixed on it.
- (4) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.
- (5) The obligations of a water undertaker under this section shall be enforceable under section 20 above by the Director.

49 Powers to disconnect service pipes and cut off supplies

- (1) Subject to the following provisions of this section and, in the case of a supply provided under section 46 above, to any terms or conditions determined under that section, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if—
 - (a) it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works;
 - (b) the occupier of the premises—
 - (i) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
 - (ii) has failed to do so before the end of the period of seven days beginning with the day after he is served with notice requiring him to do so;

or

 - (c) notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.
- (2) The power of a water undertaker by virtue of paragraph (a) of subsection (1) above to cut off a supply of water shall include power to reduce a supply of water; and, except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker by virtue of that paragraph to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.
- (3) Where a water undertaker exercises its power by virtue of the said paragraph (a) to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—
 - (a) that those works are carried out with reasonable dispatch; and
 - (b) that any supply of water to those premises for domestic purposes is interrupted for more than twenty-four hours for the purposes of the carrying out of those

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works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of those premises;

and any breach by a water undertaker of that duty which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

- (4) Where a water undertaker has served a notice for the purposes of paragraph (b) of subsection (1) above on a person who, within the period of seven days mentioned in that paragraph, serves a notice on the undertaker stating that he disputes his liability to pay the charges in question, the undertaker shall not exercise his power by virtue of that paragraph in relation to any premises except at a time when that person is the occupier of the premises and—
- (a) the undertaker is able to enforce a judgment against that person for the payment of the charges in question; or
 - (b) that person is in breach of an agreement entered into, since the service of his notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of those charges.
- (5) A water undertaker which exercises its power by virtue of the said paragraph (b) to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply.
- (6) Where—
- (a) a water undertaker has power by virtue of the said paragraph (b) to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and
 - (b) a supply of water is provided to those premises and to other premises wholly or partly by the same service pipe,
- the undertaker may exercise that power so as to cut off the supply to those other premises if and only if the same person is the occupier of the premises in relation to which the charges are due and of the other premises.
- (7) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by virtue of paragraph (c) of subsection (1) above.
- (8) Where a water undertaker disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house, without restoring that supply before the end of the period of twenty-four hours beginning with the time when it is cut off, the undertaker shall, no later than forty-eight hours after that time, serve notice that it has cut off that supply on the local authority in whose area the house is situated.
- (9) A water undertaker which —
- (a) disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under this section, section 63 below or any other enactment;
 - (b) in disconnecting any such pipe or cutting off any such supply fails, without reasonable excuse, to comply with any requirement of this section, that section or, as the case may be, the other enactment in pursuance of which it disconnects the pipe or cuts off the supply; or
 - (c) fails, without reasonable excuse, to serve a notice on a local authority as required by subsection (8) above,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

50 Power to require separate service pipes

- (1) Subject to the following provisions of this section, a water undertaker may require the provision of a separate service pipe to any premises within its area which—
 - (a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and
 - (b) are already supplied with water by the undertaker but do not have a separate service pipe.
- (2) Where the supply of water to two or more houses was provided to those houses before 15th April 1981 wholly or partly by the same service pipe and continues to be so provided, the water undertaker shall not require the provision of separate service pipes to those houses until—
 - (a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;
 - (b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;
 - (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;
 - (d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or
 - (e) the undertaker has reasonable grounds for believing that such interference as is mentioned in paragraph (d) above is likely to take place.
- (3) If, in the case of any such premises as are described in subsection (1) above, the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under subsection (4) below—
 - (a) that consumer shall, within three months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of paragraph (b) below;
 - (b) sections 42 to 44 above shall apply as if that consumer had, by a notice under the said section 42, required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;
 - (c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—
 - (i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of section 45 above that such a supply is provided by means of the separate service pipe; and
 - (ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice;

and

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- (d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.
- (4) If a person upon whom a notice has been served for the purposes of subsection (3) above fails to comply with the notice, the water undertaker may itself carry out the works which that person was required to carry out and may recover the expenses reasonably incurred by the undertaker in doing so from that person.
- (5) Without prejudice to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 43 above or to the power conferred by virtue of paragraph (d) of that subsection, any works carried out by a water undertaker by virtue of the provisions of the said paragraph (b) or of subsection (4) above shall be necessary works for the purposes of sections 45 to 49 above and section 51 below.

Constancy and pressure of water supplies

51 Duty as respects constant supply and pressure

- (1) Subject to the following provisions of this section, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—
 - (a) are used for providing supplies of water for domestic purposes; or
 - (b) have fire-hydrants fixed on them,
 to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.
- (2) Nothing in subsection (1) above shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken; and for the purposes of this section a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.
- (3) Nothing in subsection (1) above shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.
- (4) The Secretary of State may by order modify the application of the preceding provisions of this section in relation to any water undertaker; but the Secretary of State shall not make such an order except—
 - (a) in accordance with Schedule 7 to this Act; and
 - (b) on an application made in accordance with that Schedule by the Director or by the water undertaker in relation to which the order is made.
- (5) A water undertaker may—
 - (a) require that any premises consisting in—
 - (i) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Act, be constantly laid on under pressure; or
 - (ii) any relevant house to which water is required to be delivered at a height greater than 10.5 metres below the draw-off level of the service

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- reservoir or tank from which a supply of water is being provided by the undertaker to those premises,
shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises; and
- (b) in the case of such a house as is mentioned in paragraph (a)(ii) above, require that the cistern shall be capable of holding sufficient water to provide an adequate supply to the house for a period of twenty-four hours.
- (6) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice, being a period of not less than twenty-eight days beginning with the day after the service of the notice—
- (a) to provide a cistern in accordance with a requirement under subsection (5) above; or
- (b) to put any such cistern and its float-operated valve into good repair,
- the water undertaker may itself provide a cistern, or execute any repairs necessary to prevent waste of water, and may recover the expenses reasonably incurred by it in doing so from the owner of the premises.
- (7) The power of the Secretary of State to make an order under subsection (4) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and such an order may—
- (a) require the payment of compensation by a water undertaker to persons affected by the order;
- (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (8) The obligations of a water undertaker under this section shall be enforceable under section 20 above by the Secretary of State; and, in addition, where a water undertaker is in breach of a duty under this section the undertaker shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.
- (9) In any proceedings against any water undertaker for an offence under subsection (8) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (10) In this section “relevant house” means—
- (a) a house the erection of which is commenced on or after the transfer date; or
- (b) a house in relation to which any such requirement as is mentioned in subsection (5) above could have been imposed under any enactment having effect immediately before the transfer date in relation to the person who was supplying water to that house immediately before that date.

Quality and sufficiency of water supplies

52 Duties of water undertakers with respect to water quality

- (1) It shall be the duty of a water undertaker—

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- (a) when supplying water to any premises for domestic purposes to supply only water which is wholesome at the time of supply; and
 - (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which that undertaker supplies water to premises for domestic purposes, that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources.
- (2) For the purposes of this section and section 53 below and subject to subsection (3) below, water supplied by a water undertaker to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the undertaker's pipes.
- (3) For the purposes of this section where water supplied by a water undertaker to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
- (a) it has ceased to be wholesome after leaving the undertaker's pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
 - (b) it has so ceased in consequence of the failure of the undertaker, before supplying the water, to take such steps as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the undertaker's pipes.
- (4) The provisions of this section shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Act.
- (5) The duties of a water undertaker under this section shall be enforceable under section 20 above by the Secretary of State.

53 Regulations for preserving water quality

- (1) The Secretary of State may by regulations require a water undertaker to take all such steps as may be prescribed for the purpose of securing compliance with section 52 above; and, without prejudice to the generality of that power, regulations under this subsection may impose an obligation on a water undertaker—
- (a) to take all such steps as may be prescribed for monitoring and recording whether the water which that undertaker supplies to premises for domestic purposes is wholesome at the time of supply;
 - (b) to take all such steps as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which that undertaker uses or is proposing to use for supplying water to any premises for domestic purposes;
 - (c) to ensure that a source which that undertaker is using or proposing to use for supplying water for domestic purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
 - (d) to keep records of the localities within which all the premises supplied with water for domestic purposes by that undertaker are normally supplied from the same source or combination of sources;

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- (e) to comply with prescribed requirements with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.
- (2) Without prejudice to subsection (1) above, the Secretary of State may by regulations make provision with respect to the use by water undertakers, for the purposes of or in connection with the carrying out of their functions, of such processes and substances, and of products that contain or are made with such substances or materials, as he considers might affect the quality of any water; and, without prejudice to the generality of that power, regulations under this subsection may—
- (a) forbid the use by water undertakers of processes, substances and products which have not been approved under the regulations or which contravene the regulations;
 - (b) for the purposes of provision made by virtue of paragraph (a) above, require processes, substances and products used by water undertakers to conform to such standards as may be prescribed by or approved under the regulations;
 - (c) impose such other requirements as may be prescribed with respect to the use by water undertakers of prescribed processes, substances and products;
 - (d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition;
 - (e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;
 - (f) provide for a contravention of the regulations to constitute—
 - (i) a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed; or
 - (ii) an offence triable either way and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine;
- and
- (g) require prescribed charges to be paid to persons carrying out functions under the regulations.
- (3) The Secretary of State may by regulations require a water undertaker—
- (a) to publish information about the quality of water supplied for domestic purposes to any premises by that undertaker; and
 - (b) to provide information to prescribed persons about the quality of water so supplied.
- (4) Regulations under subsection (3) above—
- (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
 - (b) may require the provision of information by a water undertaker to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker of a prescribed charge; and
 - (c) may impose such other conditions on the provision of information by a water undertaker to any person as may be prescribed.

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54 Offence of supplying water unfit for human consumption

- (1) Subject to subsection (3) below, where a water undertaker supplies water by means of pipes to any premises and that water is unfit for human consumption, the undertaker shall be guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) For the purposes of section 177 below and any other enactment under which an individual is guilty of an offence by virtue of subsection (1) above the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (3) In any proceedings against any water undertaker for an offence under this section it shall be a defence for that undertaker to show that it—
 - (a) had no reasonable grounds for suspecting that the water would be used for human consumption; or
 - (b) took all reasonable steps and exercised all due diligence for securing that the water was fit for human consumption on leaving its pipes or was not used for human consumption.
- (4) Proceedings for an offence under this section shall not be instituted except by the Secretary of State or the Director of Public Prosecutions.

55 Provision of water where piped supplies insufficient or unwholesome

- (1) Where—
 - (a) it is not practicable at reasonable cost for a water undertaker, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its area as (so far as those premises are concerned) is sufficient for domestic purposes;
 - (b) it is practicable at reasonable cost for the undertaker to provide such a supply to those premises otherwise than in pipes;
 - (c) the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and
 - (d) the local authority in whose area those premises are situated notify the undertaker of that danger and require the undertaker to provide a supply otherwise than in pipes,it shall be the duty of the undertaker, for such period as may be required by that local authority, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by that authority.
- (2) Where under subsection (1) above a local authority require the provision by a water undertaker of a supply of water to any premises, that authority—
 - (a) shall be liable to the undertaker for any charges payable by virtue of Chapter IV of this Part in respect of the provision of that supply; but
 - (b) shall have power to recover the whole or any part of any charges paid by virtue of this subsection from the owner or occupier of the premises to which the supply is provided.
- (3) In this section references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at

reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.

- (4) The duty of a water undertaker under subsection (1) above shall be enforceable under section 20 above by the Secretary of State.

56 General functions of local authorities in relation to water quality

- (1) It shall be the duty of every local authority to take all such steps as they consider appropriate for keeping themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises.

- (2) It shall be the duty of a local authority to notify any water undertaker of anything appearing to the authority to suggest—

- (a) that any supply by that undertaker of water for domestic purposes to any premises in the area of that authority is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for those purposes;
- (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health; or
- (c) that the duty imposed on that undertaker by virtue of section 52(1)(b) above is being, has been or is likely to be so contravened as to affect any supply of water to premises in that area;

and it shall be the duty of a local authority to require the provision of a supply in pursuance of section 55 above whenever, in a case falling within paragraph (a) of subsection (1) of that section, they are satisfied, in relation to any premises in their area, as to the matters specified in paragraphs (b) and (c) of that subsection.

- (3) Where a local authority have notified a water undertaker of any such matter as is mentioned in subsection (2) above, it shall be the duty of that authority, if they are not satisfied that all such remedial action as is appropriate will be taken by the undertaker, to inform the Secretary of State about the contents of the notification.

- (4) It shall be the duty of a local authority to comply with any direction given by the Secretary of State to that authority, to authorities of a description applicable to that authority or to local authorities generally as to—

- (a) the cases and circumstances in which they are or are not to exercise any of the powers conferred on them by this Chapter in relation to private supplies; and
- (b) the manner in which those powers are to be exercised.

- (5) The Secretary of State may by regulations make such provision, supplementing the provisions of this section, as he considers appropriate for—

- (a) imposing duties and conferring powers on local authorities with respect to the acquisition of information about the quality and sufficiency of water supplies provided to premises in their areas; and
- (b) regulating the performance of any duty imposed by or under this section.

- (6) Without prejudice to the generality of subsection (5) above, regulations under that subsection may—

- (a) prescribe the matters to be taken into account by a local authority in determining, for the purposes of subsection (1) above, what is appropriate;

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- (b) provide, for the purposes of the exercise or performance of any power or duty conferred or imposed on a local authority by or under this section, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;
- (c) authorise local authorities to exercise or perform any such power or duty through prescribed persons;
- (d) provide for the recovery by a local authority from prescribed persons of such amounts as may be prescribed in respect of expenses reasonably incurred by the authority in the exercise of any such power or the performance of any such duty.

57 Remedial powers of local authorities in relation to private supplies

- (1) Subject to the following provisions of this section, where a local authority are satisfied in relation to any premises in their area which are supplied with water for domestic purposes by means of a private supply—
- (a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or
 - (b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,
- the authority may serve a notice in relation to that private supply on one or more of the relevant persons.
- (2) A notice under this section in relation to a private supply of water to any premises shall—
- (a) give particulars of the matters mentioned in subsection (1) above in respect of which the notice is served;
 - (b) specify the steps which, in the opinion of the authority serving the notice, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
 - (c) specify a period, ending not less than twenty-eight days after the day on which the notice is served, within which any representations or objections with respect to the notice must be received by that authority; and
 - (d) state the effect in relation to that notice of section 58(2) and (3) below.
- (3) Subject to section 58 below, where a local authority serve a notice under this section on any relevant person they may do one or more of the following, that is to say—
- (a) by that notice designate as steps to be taken by the authority themselves such of the steps specified in the notice as they consider it appropriate to so designate;
 - (b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;
 - (c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to that authority such payments as may be so determined in respect of expenses reasonably incurred by that other person or that authority in taking any step specified in the notice;

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- (d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.
- (4) The power of a local authority to serve a notice under this section specifying the steps which are required to be taken in relation to any source from which a private supply is provided both to premises in the area of that authority and to premises in the area of another local authority shall be exercisable only where—
 - (a) the other authority consent to the service of the notice; or
 - (b) the authorities act jointly in exercising their respective powers under this section in relation to that source.
- (5) The powers conferred by this section and section 58 below shall be so exercised in relation to a private supply of water to any premises where there is no house as to secure that no local authority are required to bear any of the expenses incurred (whether by the authority or by any other person) in taking any steps for ensuring that the supply is wholesome which are specified in any notice under this section.
- (6) The steps that a relevant person may be required by a notice under this section to take in relation to any premises shall include—
 - (a) requiring a supply of water to be provided to those premises by a water undertaker or by any other person; and
 - (b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.
- (7) For the purposes of this section and section 58 below the relevant persons, in relation to a private supply of water to any premises in the area of a local authority, are the owners and occupiers of those premises and (whether or not the source of the private supply is in that authority's area) the owners and occupiers of the premises where that source is situated and any other person who exercises powers of management or control in relation to that source.

58 Effect, confirmation and variation of notice under section 57

- (1) Subject to subsection (2) below, a notice served by a local authority under section 57 above shall not take effect until the end of the period specified in the notice as the period within which representations or objections with respect to the notice must be received by that authority.
- (2) Where any written representation or objection with respect to a notice by a local authority under section 57 above is received by the authority, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—
 - (a) the notice is submitted by the authority to the Secretary of State and is confirmed by him either with or without modifications; or
 - (b) the representation or objection is withdrawn.
- (3) If a local authority submit a notice under section 57 above to the Secretary of State for confirmation, the Secretary of State—
 - (a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;

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- (b) may, with respect to the matters specified in the notice or any proposed modification of it, direct the local authority to serve a notice under section 57 above, in such terms as may be specified in the direction, on any relevant person who has not previously been so served;
 - (c) may, for the purposes of paragraph (a) or (b) above—
 - (i) cause a local inquiry to be held; or
 - (ii) afford to the local authority, and to every person who has made representations or objections with respect to the notice or a proposed direction under paragraph (b) above, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose;
- and
- (d) if he is satisfied that the person on whom any notice to be served in pursuance of a direction under paragraph (b) above has had a proper opportunity of having his representations or objections with respect to the proposal for the direction considered, may dispense in relation to the notice so served with the provisions of subsections (1) and (2) above and of section 57(2)(c) and (d) above.
- (4) Where the Secretary of State confirms a notice under section 57 above (whether with or without modifications)—
- (a) he, or if he so directs, the local authority concerned shall serve notice of that confirmation on every person originally served with the notice under that section; and
 - (b) that notice shall take effect, with any modifications made by the Secretary of State, at such time as may be specified in the notice served under this subsection.
- (5) Where any relevant person who is required by virtue of a notice under section 57 above to take any step in relation to any premises fails to take that step within the period specified in the notice, the authority which served the notice may, in accordance with any applicable provision having effect by virtue of section 59 below, take that step themselves.
- (6) Where any step is taken by a local authority in relation to any premises by virtue of subsection (5) above—
- (a) the authority may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by the authority in taking that step; and
 - (b) for the purposes of any requirement under which payments are required to be made to that person by any person other than the authority, sums paid by virtue of paragraph (a) above in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.
- (7) Nothing in this Act shall confer any right of action on any person in respect of any loss or damage sustained by that person in consequence of the failure by any other person to take any step specified in a notice under section 57 above; but any sum required to be paid to any person by virtue of any requirement or undertaking contained in such a notice shall be recoverable by that person from the person who is required to pay it.
- (8) Any requirement which is imposed by virtue of a notice under section 57 above on the owner or occupier of any premises and is expressed to bind those premises in relation

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to the owners or occupiers from time to time shall bind successive owners or, as the case may be, occupiers of those premises and shall be a local land charge.

- (9) Subject to subsection (10) below, a local authority may by notice served on any person modify or revoke the effect in relation to that person of any notice under section 57 above or this subsection (including a notice which has been confirmed, with or without modifications, by the Secretary of State).
- (10) Section 57(2)(c) and (d) and subsections (1) to (4) above shall apply, as they apply in relation to a notice under section 57 above, in relation to any notice served by a local authority on any person under subsection (9) above except where the notice—
- (a) extends the period within which any step is required to be taken by that person; or
 - (b) discharges, postpones or abates any obligation of that person to make a payment to the local authority.

59 Incidental powers of local authorities

- (1) Subject to subsection (4) below, a local authority may serve on any person a notice requiring him to furnish that authority, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by that authority for the purpose of exercising or performing any power or duty conferred or imposed on that authority by or under any of sections 56 to 58 above.
- (2) Any person designated in writing for the purpose by any local authority may—
- (a) enter any premises for the purpose, in relation to any private supply, of—
 - (i) determining whether, and if so in what manner, any power or duty conferred or imposed on that authority by or under any of sections 56 to 58 above should be exercised or performed; or
 - (ii) exercising any such power or performing any such duty;
 - (b) enter any premises to which a supply of water is provided by a water undertaker for the purpose, in relation to a supply so provided, of determining whether, and if so in what manner, such a power should be exercised or such a duty performed or of exercising such a power or performing such a duty; or
 - (c) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as the local authority—
 - (i) consider appropriate for the purposes of any such power or duty; and
 - (ii) have authorised that person to carry out or take away.
- (3) Without prejudice to any power exercisable by virtue of a warrant under section 178 below, no person shall make an entry into any premises by virtue of this section except—
- (a) in an emergency; or
 - (b) at a reasonable time and after twenty-four hours' notice of the intended entry has been given to the occupier of the premises.
- (4) The Secretary of State may by regulations make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.

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- (5) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

60 Assessors for the enforcement of water quality

- (1) The Secretary of State may for the purposes of this section appoint persons to act on his behalf as technical assessors in relation to some or all of—
- (a) the powers and duties conferred or imposed on him by or under sections 52 to 58 above and section 65 below; and
 - (b) such other powers and duties in relation to the quality and sufficiency of water supplied by a water undertaker as are conferred or imposed on him by or under other enactments.
- (2) A person appointed under this section shall—
- (a) carry out such investigations as the Secretary of State may require him to carry out for the purpose of—
 - (i) ascertaining whether any duty or other requirement imposed on that undertaker by or under any of sections 52 to 55 above is being, has been or is likely to be contravened; or
 - (ii) advising the Secretary of State as to whether, and if so in what manner, any of the powers of the Secretary of State in relation to such a contravention, or any of the powers (including the powers to make regulations) which are conferred on him by or under sections 52 to 58 above or section 65 below, should be exercised;
 - and
 - (b) make such reports to the Secretary of State with respect to any such investigation as the Secretary of State may require.
- (3) Without prejudice to the powers conferred by subsection (4) below, it shall be the duty of a water undertaker to give a person appointed under this section all such assistance, and to provide a person so appointed with all such information, as that person may reasonably require for the purpose of carrying out any such investigation as is mentioned in subsection (2) above.
- (4) Any person appointed under this section who is designated in writing for the purpose by the Secretary of State may—
- (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in subsection (2) above;
 - (b) carry out such inspections, measurements and tests on premises entered by that person or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that person considers appropriate for the purpose of enabling him to carry out any such investigation; or
 - (c) at any reasonable time require any water undertaker to supply him with copies of, or of extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker by or under any of sections 52 to 55 above.
- (5) Without prejudice to any power exercisable by virtue of a warrant under section 178 below, no person shall make an entry into any premises by virtue of this section except—

- (a) in an emergency; or
 - (b) at a reasonable time and after twenty-four hours' notice of the intended entry has been given to the occupier of the premises.
- (6) Any water undertaker which fails to comply with the duty imposed on it by virtue of subsection (3) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Contamination, waste and misuse of water

61 Offences of contaminating, wasting and misusing water etc

- (1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or adapted, or to be so used—
- (a) that water in a water main or other pipe of a water undertaker or in a pipe connected with such a water main or pipe is or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
 - (b) that water that has been supplied by the undertaker to those premises is or is likely to be contaminated before it is used; or
 - (c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,
- that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) Any person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (3) Where a person has committed an offence under subsection (2) above the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.
- (4) For the purposes of this section the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.

62 Regulations for preventing contamination, waste etc. and with respect to water fittings

- (1) The Secretary of State may by regulations make such provision as he considers appropriate for any of the following purposes, that is to say—
- (a) for securing that water in a water main or other pipe of a water undertaker is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, by the return of any substance from any premises to that main or pipe;
 - (b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker

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- is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;
- (c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker to any premises; and
 - (d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for any of the purposes specified in that subsection, make provision in relation to such water fittings as may be prescribed—
- (a) for forbidding the installation, connection or use of the fittings if they have not been approved under the regulations or if they contravene the regulations;
 - (b) for requiring the fittings, for the purposes of provision made by virtue of paragraph (a) above, to be of such a size, nature, strength or workmanship, to be made of such materials or in such a manner or to conform to such standards as may be prescribed by or approved under the regulations;
 - (c) for imposing such other requirements as may be prescribed with respect to the installation, arrangement, connection, testing, disconnection, alteration and repair of the fittings and with respect to the materials used in their manufacture;
 - (d) for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations; and
 - (e) for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.
- (3) Without prejudice as aforesaid, regulations under this section may—
- (a) impose separate or concurrent duties with respect to the enforcement of the regulations on water undertakers, local authorities and such other persons as may be prescribed;
 - (b) confer powers on a water undertaker or local authority to carry out works and take other steps, in prescribed circumstances, for remedying any contravention of the regulations;
 - (c) provide for the recovery by a water undertaker or local authority of expenses reasonably incurred by the undertaker or authority in the exercise of any power conferred by virtue of paragraph (b) above;
 - (d) repeal or modify the provisions of section 61 above or section 63 below;
 - (e) provide for a contravention of the regulations to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed;
 - (f) require prescribed charges to be paid to persons carrying out functions under the regulations;
 - (g) enable the Secretary of State to authorise such relaxations of and departures from such of the requirements of the regulations as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition;
 - (h) enable the Secretary of State to authorise a water undertaker or local authority (either instead of the Secretary of State or concurrently with him) to exercise

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- any power conferred on the Secretary of State by regulations made by virtue of paragraph (g) above; and
- (i) require disputes arising under the regulations to be referred to arbitration and for determinations under the regulations to be subject to such rights of appeal as may be prescribed.
- (4) Any person designated in writing for the purpose by any water undertaker or local authority or designated in writing for the purposes of this subsection in such other manner as may be prescribed may—
- (a) enter any premises for the purpose of—
 - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being or has been contravened;
 - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under this section should be exercised or performed; or
 - (iii) exercising any such power or performing any such duty;
 - or
 - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under this section.
- (5) Without prejudice to any power exercisable by virtue of a warrant under section 178 below, no person shall make an entry into any premises by virtue of this section except—
- (a) in an emergency; or
 - (b) at a reasonable time and after twenty-four hours' notice of the intended entry has been given to the occupier of the premises.
- (6) Any sums received by the Secretary of State in consequence of the provisions of any regulations under this section shall be paid into the Consolidated Fund.
- (7) In this section “safe” has the same meaning as in Part II of the Consumer Protection Act 1987.

63 Power to prevent damage and to take steps to prevent contamination, waste etc

- (1) Without prejudice to any power conferred on water undertakers by regulations under section 62 above, where a water undertaker which provides a supply of water to any premises has reason for believing—
- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;
 - (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
 - (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or

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- (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.

- (2) The power conferred by this subsection in relation to any premises is —
- (a) where the case constitutes an emergency, power to disconnect the service pipe or otherwise to cut off the supply of water to those premises; and
 - (b) in any other case, power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.

- (3) Where a water undertaker, in exercise of the power conferred by virtue of subsection (2)(a) above, disconnects a service pipe to any premises or otherwise cuts off any supply of water to any premises, the undertaker shall, as soon as reasonably practicable after the supply is disconnected or cut off, serve a notice on the consumer specifying the steps which that person is required to take before the undertaker will restore the supply.

- (4) The steps specified in a notice under subsection (3) above shall be the steps necessary to secure that, as the case may be—
- (a) the damage, contamination, waste, misuse or undue consumption; or
 - (b) the likelihood of damage, contamination, waste, misuse or undue consumption,

would not recur if the supply were restored; and a water undertaker which fails, without reasonable excuse, to serve a notice in accordance with that subsection shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (5) A notice served for the purposes of subsection (2)(b) above shall—
- (a) specify the period, not being less than the period of seven days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and
 - (b) set out the powers of the undertaker under subsections (6) and (7) below.

- (6) Where a water undertaker has served a notice for the purposes of subsection (2)(b) above in relation to any premises and—
- (a) the case becomes an emergency; or
 - (b) the premises appear to be unoccupied and the steps specified in the notice are not taken before the end of the period so specified,

the undertaker may disconnect the service pipe to those premises or otherwise cut off the supply of water to those premises; and subsections (3) and (4) above shall apply where a water undertaker exercises its power under this subsection as they apply where such an undertaker exercises its power by virtue of subsection (2)(a) above.

- (7) Where, in a case not falling within subsection (6)(a) or (b) above, any steps specified in a notice served by a water undertaker for the purposes of subsection (2)(b) above have not been taken by the end of the period so specified, the water undertaker shall have power—
- (a) to take those steps itself; and

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- (b) subject to subsection (8) below, to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served;
- and any steps taken by a water undertaker by virtue of paragraph (a) above shall be necessary works for the purposes of sections 45 to 51 above.
- (8) Where any steps are taken by virtue of this section and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in subsection (2) or, as the case may be, (4) above, the water undertaker in question—
 - (a) shall not be entitled to recover any expenses incurred by it in taking those steps; and
 - (b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps.

Supplemental provisions of Chapter II

64 Additional powers of entry for the purposes of Chapter II

- (1) Without prejudice to the powers conferred by Part IV of this Act, any person designated in writing for the purpose by a water undertaker may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
 - (a) the carrying out of any survey or tests for the purpose of determining—
 - (i) whether it is appropriate and practicable for the undertaker to exercise any power under any provision of this Chapter to disconnect any pipe or cut off any supply of water to any premises or to carry out any works which it is authorised to carry out under section 50(4), 51(6) or 63 above; or
 - (ii) how any such power should be exercised;
 - (b) the exercise of any such power;
 - (c) the monitoring and recording of—
 - (i) whether water supplied to any premises for domestic purposes is wholesome at the time of supply; or
 - (ii) the quality of the water from any source, or combination of sources, which is or is to be used for supplying water to any premises for those purposes,and the carrying out of any tests for that purpose.
- (3) The power by virtue of subsection (1) above of a person designated by a water undertaker to enter any premises for the purpose of carrying out any survey or tests shall include power to take away such samples of water or effluent or of any land or articles as the undertaker—
 - (a) considers necessary for the purpose of determining any of the matters mentioned in subsection (2)(a) or (c) above; and
 - (b) has authorised that person to carry out or take away.
- (4) Without prejudice to any power exercisable by virtue of a warrant under section 178 below, no person shall make an entry into any premises by virtue of this section except—

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- (a) in an emergency; or
- (b) at a reasonable time and after the appropriate notice of the intended entry has been given to the occupier of the premises.

(5) In subsection (4) above “the appropriate notice”—

- (a) in relation to an entry for a purpose mentioned in subsection (2)(c) above, means twenty-four hours' notice; and
- (b) in any other case, means seven days' notice;

and subsections (2) and (3) of section 52 above shall apply for the purposes of any power conferred by virtue of subsection (2)(c)(i) above as they apply for the purposes of that section.

65 Standards of wholesomeness

- (1) The Secretary of State may by regulations make provision that water that is supplied to any premises is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for the purpose of determining the wholesomeness of any water—
 - (a) prescribe general requirements as to the purposes for which the water is to be suitable;
 - (b) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
 - (c) prescribe specific requirements as to other characteristics of the water;
 - (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;
 - (e) enable the Secretary of State to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition; and
 - (f) enable the Secretary of State to authorise a local authority (either instead of the Secretary of State or concurrently with him) to exercise in relation to a private supply any power conferred on the Secretary of State by regulations made by virtue of paragraph (e) above.

66 Interpretation etc. of Chapter II

(1) In this Chapter—

“consumer”, in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

“necessary works” includes works carried out, in exercise of any power conferred by or under any enactment, by a person other than a water undertaker;

“private supply” means, subject to subsection (2) below, a supply of water provided otherwise than by a water undertaker (including a supply provided

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for the purposes of the bottling of water), and cognate expressions shall be construed accordingly;

“water fittings” includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water;

“wholesome” and cognate expressions shall be construed subject to the provisions of any regulations made under section 65 above.

- (2) For the purposes of any reference in this Chapter to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this subsection water shall be treated as used on any premises where it is bottled on those premises for use or consumption elsewhere.
- (3) For the purposes of this Chapter a service pipe shall be treated as connected with a water main other than a trunk main even if the connection is an indirect connection made by virtue of a connection with another service pipe.
- (4) The rights conferred by virtue of this Chapter as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises in question.

CHAPTER III

PROVISION OF SEWERAGE SERVICES

67 General sewerage functions

- (1) It shall be the duty of every sewerage undertaker—
 - (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers as to ensure that that area is and continues to be effectually drained; and
 - (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.
- (2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—
 - (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
 - (b) to the need to provide for the disposal of trade effluent which is so discharged.
- (3) In subsection (2) above “trade effluent” has the same meaning as in the Public Health (Drainage of Trade Premises) Act 1937.
- (4) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 20 above by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

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68 Standards of performance in connection with provision of sewerage services

- (1) For the purpose—
 - (a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Chapter are to amount to breaches of the duty imposed by section 67 above; or
 - (b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker, the Secretary of State may by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in his opinion, ought to be achieved in individual cases; and such regulations may provide that if a sewerage undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (3) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
 - (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
 - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.
- (4) Subject to subsection (5) below, the Secretary of State shall not make any regulations under subsection (1) or (2) above unless—
 - (a) the Director has made a written application to the Secretary of State which—
 - (i) sets out draft provisions proposed by the Director for inclusion in such regulations;
 - (ii) specifies the sewerage undertaker or undertakers in relation to which it is proposed those provisions should apply; and
 - (iii) summarises the Director's reasons for his proposals;
 - (b) the Secretary of State is satisfied that a copy of the application has been served by the Director on every sewerage undertaker specified in the application;
 - (c) the regulations contain only the provisions proposed by the Director or those provisions with such modifications as the Secretary of State considers appropriate;
 - (d) the only modifications of the Director's proposals to which effect is given by the regulations are modifications the proposal to make which has been notified to the Director and to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications;
 - (e) such period as the Secretary of State considers appropriate has been allowed for the making by the Director and by any affected sewerage undertaker of

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representations or objections with respect to the Director's proposals and any modifications proposed by the Secretary of State; and

- (f) the Secretary of State has considered both the Director's reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- (5) Subsection (4) above shall not apply in relation to any regulations made under subsection (2) above before the transfer date.
- (6) The obligations imposed on a sewerage undertaker by virtue of the following provisions of this Chapter and the remedies available in respect of contraventions of those obligations shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 67 above and shall not be in any way qualified by any such provision.

69 Transfer of principal sewerage functions

Schedule 8 to this Act shall have effect for transferring to sewerage undertakers the functions of water authorities relating to the provision of sewerage services and for making amendments of the enactments relating to the transferred functions.

70 Allocation of cross boundary sewers

- (1) For the purposes of any scheme under Schedule 2 to this Act, so much of any sewer as is vested in a water authority immediately before the transfer date but is—
- (a) situated in the area of another water authority; and
 - (b) maintained for the purpose of draining premises in that area,
- shall be deemed to have vested in the other water authority before the coming into force of that scheme.
- (2) Where any part of a water authority's sewer is deemed by virtue of this section to have vested in another water authority, anything which—
- (a) has been done by or in relation to the first-mentioned authority for any purposes connected with that part of that sewer; and
 - (b) is in force or effective immediately before the transfer date,
- shall have effect for the purposes of any transitional provision contained in this Act as if it had been done by or in relation to that other authority.
- (3) Where any part of a sewer is vested in any sewerage undertaker by virtue of this section, the terms on which that part of that sewer—
- (a) communicates with such parts of that sewer or of any other sewer; or
 - (b) discharges into any such sewage disposal works,
- as immediately before the transfer date were vested in the same water authority as that part of that sewer but, by virtue of this section, are vested in another sewerage undertaker shall be determined, in default of agreement, by the Director.
- (4) A determination by the Director under this section shall have effect as an agreement between the sewerage undertakers in question but may be varied or revoked by a subsequent determination made by the Director on the application of either of those undertakers, as well as by agreement between the undertakers.

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- (5) In making a determination under this section, the Director shall have regard to the desirability of a sewerage undertaker's recovering the costs resulting from its allowing the sewers of other sewerage undertakers to communicate with its sewers or to discharge into its sewage disposal works and of securing a reasonable return on its capital.

71 Requisitioning of sewers

- (1) It shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—
- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by one or more of the persons who under subsection (3) below are entitled to require the provision of the sewer for that locality;
 - (b) the premises in that locality the drainage of which would be by means of that sewer are—
 - (i) premises on which there are buildings; or
 - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out;
 and
 - (c) the conditions specified in section 72 below are satisfied in relation to that requirement.
- (2) In subsection (1) above the reference to domestic purposes, in relation to the drainage of premises in a particular locality to which a requirement under that subsection relates, is a reference—
- (a) where there are buildings on premises in that locality, to such of the following purposes as are specified in the requirement, that is to say—
 - (i) the removal, from the buildings and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
 - (ii) the removal, from the buildings and from such land, of water which has been used for cooking or washing, not being water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises; and
 - (iii) the removal, from the buildings and such land, of surface water;
 and
 - (b) where any person is proposing to erect buildings on premises in the locality, to such of the purposes mentioned in paragraph (a) above as are specified in the requirement in relation to times after the erection of the buildings.
- (3) Each of the following persons shall be entitled to require the provision of a public sewer for any locality, that is to say—
- (a) the owner of any premises in that locality;
 - (b) the occupier of any premises in that locality;
 - (c) any local authority within whose area the whole or any part of that locality is situated;
 - (d) where the whole or any part of that locality is situated in a new town, within the meaning of the New Towns Act 1981—
 - (i) the Commission for the New Towns; and

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- (ii) the Development Board for Rural Wales or the development corporation for the new town, according to whether or not the new town is situated within the area for which that Board is for the time being responsible;
 - and
 - (e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the Local Government, Planning and Land Act 1980, the urban development corporation.
- (4) A sewerage undertaker shall not be in breach of a duty imposed by this section in relation to any locality unless—
- (a) the period of six months beginning with the relevant day has expired; and
 - (b) the sewerage undertaker has not, before the end of that period, so laid the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in that locality to communicate with the public sewer at the places determined under subsection (5) below;
- and for the purposes of this subsection the period mentioned in paragraph (a) above may be extended by agreement between the undertaker and the person or persons who required the provision of the public sewer or, where there is a dispute as to whether the period should be extended, by an arbitrator on a reference under subsection (6) below.
- (5) The places mentioned in subsection (4)(b) above shall be determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, in default of agreement, shall be such places as are determined by an arbitrator on a reference under subsection (6) below to be the places at which it is reasonable, in all the circumstances, for drains or private sewers to be used for the drainage of premises in that locality to communicate with the public sewer.
- (6) A reference for the purposes of subsection (4) or (5) above shall be to a single arbitrator appointed by agreement between the undertaker and the person or persons who required the provision of the public sewer or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) The duty of a sewerage undertaker under this section to provide a public sewer shall be owed to the person who requires the provision of the sewer or, as the case may be, to each of the persons who joins in doing so; and any breach by a sewerage undertaker of any such duty which causes any person to whom the duty is owed to sustain loss or damage shall be actionable at the suit of that person.
- (8) In any proceedings brought against a sewerage undertaker in pursuance of subsection (7) above in respect of a breach of duty which has caused any person to sustain loss or damage it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (9) In this section—
- “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple;
 - “relevant day”, in relation to a requirement to provide a public sewer for any locality, means the day after whichever is the later of the following, that is to say—

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- (a) the day on which the conditions specified in section 72 below are satisfied in relation to the requirement; and
- (b) the day on which the places where drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer are determined under subsection (5) above.

72 Financial conditions of sewer requisition

- (1) The conditions mentioned in section 71(1)(c) above are satisfied in relation to a requirement for the provision of a public sewer by a sewerage undertaker if—
 - (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) below have been given by the person or persons who have required the provision of the sewer; and
 - (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who—
 - (i) by virtue of section 71(3)(a) or (b) above required or joined in requiring the provision of the sewer; and
 - (ii) is not a public authority.
- (2) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any public sewer are undertakings which bind the person or persons mentioned in that subsection (in the case of two or more persons, either jointly and severally or with liability to pay apportioned in such manner as those persons may agree) to pay to the undertaker, in respect of each of the twelve years following the provision of the sewer, an amount not exceeding the relevant deficit (if any) for that year on that sewer.
- (3) For the purposes of this section the relevant deficit for any year on a public sewer is the amount (if any) by which the drainage charges payable for the use during that year of that sewer are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.
- (4) The annual borrowing costs of a loan of the amount required for the provision of a public sewer is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that sewer as were not incurred in the provision of additional capacity had been borrowed, by the sewerage undertaker providing the sewer, on terms—
 - (a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
 - (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined either by the undertaker with the approval of the Director or, in default of such a determination, by the Director.
- (5) The costs of providing a public sewer (“the new sewer”) shall include—
 - (a) the costs reasonably incurred in providing such other public sewers and such pumping stations as it is necessary to provide in consequence of the provision of the new sewer; and

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- (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier public sewer as falls to be used in consequence of the provision of the new sewer;
- and in this subsection “earlier public sewer”, in relation to the new sewer, means any public sewer which has been provided in the period of twelve years immediately before the provision of the new sewer and was so provided in pursuance of a requirement under section 71 above, under section 16 of the 1973 Act (requisitioning of sewers) or under any local statutory provision corresponding to the said section 71 or 16.
- (6) Any reference in this section to the provision of additional capacity in a public sewer provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that sewer as are carried out or done for the purpose of enabling that sewer to be used for purposes in addition to those for which it is necessary to provide the sewer in order to comply with the requirement.
- (7) For the purposes of this section references to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker are references to so much of the aggregate of any charges payable to the sewerage undertaker in respect of services provided in the course of that year as represents charges which—
- (a) have been imposed by the undertaker in relation to such of the premises connected with that sewer as are premises where there are buildings; and
 - (b) are reasonably attributable to the use of that sewer for the drainage for domestic purposes of those premises or to the disposal of effluent drained for domestic purposes from those premises;
- and the references in this subsection to domestic purposes shall be construed as references to any of the purposes mentioned in subsection (2)(a) of section 71 above.
- (8) Where for the purposes of subsection (1)(b) above any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
- (a) by the undertaker with the approval of the Director; or
 - (b) in default of a determination under paragraph (a) above, by the Director,
- on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (9) An approval or determination given or made by the Director for the purposes of subsection (4) or (8) above—
- (a) may be given or made in relation to the provision of a particular public sewer, in relation to the provision of sewers of a particular description or in relation to the provision of sewers generally; and
 - (b) may be revoked at any time except, in the case of an approval or determination for the purposes of subsection (4) above, in relation to a public sewer that has already been provided.
- (10) Any dispute between a sewerage undertaker and any other person as to—
- (a) the undertakings or security required by the undertaker for the purposes of this section; or
 - (b) the amount required to be paid in pursuance of any such undertaking,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the President of the Institution of Civil Engineers.

Status: This is the original version (as it was originally enacted).

73 Performance of sewerage functions by local authorities etc

- (1) A relevant authority may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker, carry out sewerage functions on that undertaker's behalf in relation to such area comprising the whole or any part of that authority's relevant area, together (where that authority are a local authority or an urban development corporation and the arrangements so provide) with parts of any adjacent relevant areas of other relevant authorities, as may be specified in the arrangements.
- (2) Arrangements entered into for the purposes of this section may contain any such provision as may be agreed between the relevant authority and the sewerage undertaker but shall not affect the availability to any person, other than the relevant authority, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out.
- (3) It is hereby declared that, if arrangements entered into for the purposes of this section so provide, a relevant authority shall be entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions.
- (4) Where arrangements entered into for the purposes of this section provide for a local authority to carry out the sewerage functions of a sewerage undertaker on the undertaker's behalf, section 101 of the Local Government Act 1972 (delegation of functions), so far as it relates to the carrying out of functions by a committee, sub-committee or officer of a local authority, shall have effect in relation to those sewerage functions only in so far as the arrangements do not otherwise provide.
- (5) In this section—
 - “new town” has the same meaning as in the New Towns Act 1981;
 - “relevant area”—
 - (a) in relation to a local authority, means the area of the authority and the whole of any new town or urban development area any part of which is situated within the area of the authority;
 - (b) in relation to the Commission for the New Towns, means any new town;
 - (c) in relation to the development corporation for any new town, means that new town;
 - (d) in relation to the Development Board for Rural Wales, means any new town situated within the area for which the Board is for the time being responsible; and
 - (e) in relation to any urban development corporation for any urban development area, means that area;
 - “relevant authority” means any of the following, that is to say—
 - (a) a local authority;
 - (b) the Commission for the New Towns, a development corporation for a new town or the Development Board for Rural Wales;
 - (c) the urban development corporation for any urban development area;
 - “sewerage functions”, in relation to a sewerage undertaker, means the functions of the undertaker by virtue of its appointment under Chapter I of this Part as a sewerage undertaker, other than—
 - (a) its functions relating to sewage disposal; and

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(b) its functions by virtue of the Public Health (Drainage of Trade Premises) Act 1937, Part V of the Public Health Act 1961 and sections 43 to 45 of the Control of Pollution Act 1974;

“urban development area” means any area so designated under Part XVI of the Local Government, Planning and Land Act 1980.

74 Control of exercise of trade effluent functions in certain cases

- (1) The provisions of the Public Health (Drainage of Trade Premises) Act 1937, Part V of the Public Health Act 1961 and sections 43 to 45 of the Control of Pollution Act 1974 shall have effect in relation to trade effluent to which this section applies subject to the provisions of Schedule 9 to this Act.
- (2) This section applies to any trade effluent if—
 - (a) prescribed substances are present in the effluent or are present in the effluent in prescribed concentrations; or
 - (b) the effluent derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

CHAPTER IV

CHARGING FOR SERVICES ETC. PROVIDED BY UNDERTAKERS

75 Powers of undertakers to charge

- (1) Subject to the following provisions of this Chapter, the powers of every water undertaker and of every sewerage undertaker shall include power—
 - (a) to fix charges for any services provided in the course of carrying out its functions and, in the case of a sewerage undertaker, charges to be paid in connection with the carrying out of its trade effluent functions; and
 - (b) to demand and recover charges fixed under this section from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions.
- (2) The powers conferred by subsection (1) above shall be exercisable—
 - (a) by or in accordance with a scheme under section 76 below; or
 - (b) by or in accordance with agreements with the persons to be charged;but paragraph (b) above shall have effect in relation to the exercise of those powers with respect to charges in connection with the carrying out of a sewerage undertaker’s trade effluent functions only in so far as provision for the fixing, demanding or recovery of such charges may be contained in an agreement entered into in accordance with section 7 of the Public Health (Drainage of Trade Premises) Act 1937.
- (3) Except in so far as this Chapter otherwise provides, a water undertaker or sewerage undertaker may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to the undertaker to be appropriate.

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- (4) The powers in relation to which this section has effect shall not be exercised so as to contravene any local statutory provision which expressly provides that no charge shall be made for a particular service.
- (5) Nothing in subsections (1) to (4) above or in any scheme under section 76 below shall affect any power of a water undertaker or sewerage undertaker to fix charges under any power conferred otherwise than by virtue of this Chapter.
- (6) References in this section to a sewerage undertaker's trade effluent functions are references to its functions under the Public Health (Drainage of Trade Premises) Act 1937, Part V of the Public Health Act 1961 and sections 43 to 45 of the Control of Pollution Act 1974.

76 Charges schemes

- (1) A water undertaker or sewerage undertaker may make a scheme (in this section referred to as a "charges scheme") which does any one or more of the following, that is to say—
 - (a) fixes the charges to be paid for any services provided by the undertaker in the course of carrying out its functions;
 - (b) in the case of a sewerage undertaker, requires such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme—
 - (i) a trade effluent notice is served on the undertaker under the Public Health (Drainage of Trade Premises) Act 1937;
 - (ii) such a consent as is necessary for the purposes of that Act is given by the undertaker; or
 - (iii) a discharge is made in pursuance of such a consent;
 and
 - (c) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.
- (2) The persons who may be required by a charges scheme to pay any charge fixed by virtue of paragraph (b) of subsection (1) above shall be the person who serves the notice, the person to whom the consent is given or, as the case may be, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates; and a charges scheme which requires the payment of charges where a discharge has been made in pursuance of such a consent as is mentioned in that paragraph may impose—
 - (a) a single charge in respect of the whole period for which the consent is in force;
 - (b) separate charges in respect of different parts of that period; or
 - (c) both such a single charge and such separate charges.
- (3) A charges scheme may—
 - (a) make different provision for different cases, including different provision in relation to different circumstances or localities; and
 - (b) contain supplemental, consequential and transitional provision for the purposes of the scheme;
 and such a scheme may revoke or amend a previous charges scheme.
- (4) Nothing in any charges scheme shall affect—

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- (a) any power of a water undertaker or sewerage undertaker to enter into such an agreement with any person in any particular case as determines the charges to be made for the services provided to that person by the undertaker; or
- (b) the power of a sewerage undertaker to enter into any agreement under section 7 of the Public Health (Drainage of Trade Premises) Act 1937 (agreement as to discharges of trade effluent) on terms that provide for the making of payments to the undertaker.

77 Liability of occupiers etc. for charges

- (1) Subject to the following provisions of this section and except in so far as provision to the contrary is made by any agreement to which the undertaker is a party—
 - (a) supplies of water provided by a water undertaker shall be treated for the purposes of this Chapter as services provided to the occupiers for the time being of any premises supplied; and
 - (b) sewerage services provided by a sewerage undertaker shall be treated for the purposes of this Chapter as provided to the occupiers for the time being of any premises which—
 - (i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water or surface water or both; or
 - (ii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.
- (2) Subject to subsection (3) below, charges which, under the preceding provisions of this Chapter, are fixed in relation to any premises by reference to volume may be imposed so that a person is made liable in relation to those premises to pay charges for services provided by a water undertaker or sewerage undertaker after that person has ceased to be the occupier of the premises.
- (3) A person shall not be made liable by virtue of subsection (2) above for any charges fixed in relation to any premises by any water undertaker or sewerage undertaker, except where—
 - (a) he fails to inform the undertaker of the ending of his occupation of the premises at least two working days before he ceases to occupy them; and
 - (b) the charges are in respect of a period ending no later than with whichever of the following first occurs after he ceases to occupy the premises, that is to say—
 - (i) where he informs the undertaker of the ending of his occupation of the premises less than two working days before, or at any time after, he ceases to occupy them, the twenty-eighth day after he so informs the undertaker;
 - (ii) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
 - (iii) any day on which any other person informs the undertaker that he has become the new occupier of the premises.
- (4) Where—
 - (a) any person who is the occupier of any premises to which a supply of water is provided by a water undertaker has served notice on the undertaker for the purposes of section 49(1)(c) above; and

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- (b) that notice is given otherwise than in connection with that person's ceasing to be the occupier of the premises in a case in which provision is made by virtue of subsection (2) above for a person who has ceased to be the occupier of the premises to be made liable for any charges,

then, notwithstanding that that person continues to be the occupier of those premises, he shall not be liable to the undertaker (otherwise than in pursuance of a demand for a supply made since the service of the notice) for any charges in respect of any supply of water to those premises after whichever is the later of the expiry of the notice and the end of the period of two working days beginning with the service of the notice.

(5) In this section—

- (a) any reference to the fixing of charges in relation to any premises by reference to volume is a reference to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors or to one or both of those factors taken together with other factors; and
- (b) any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on a Saturday or Sunday or on Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

78 Provisions relating to charging by volume

- (1) Schedule 10 to this Act shall have effect for the purpose of securing the installation of meters and of making other provision in relation to meters and the premises where they are installed.
- (2) The Secretary of State may by regulations make such provision, supplementing the provisions of this Chapter, as he considers appropriate with respect to the installation of meters, with respect to the connection, disconnection, use, maintenance, authentication and testing of meters and with respect to any related matters.
- (3) Without prejudice to the generality of subsection (2) above, regulations under that subsection may—
- (a) regulate the positioning, whether inside or outside the building or other premises in relation to which the meter is to be used, of any meter or of any pipes or apparatus appearing to any water undertaker or sewerage undertaker to be required for the purpose of facilitating the use of any meter;
- (b) make any other provision which appears to the Secretary of State to be appropriate with respect to any such pipes or apparatus;
- (c) provide for a reading from a meter to be proved in such manner as may be prescribed and for a reading from a meter to be such evidence as may be prescribed of the volume of water supplied to, or of effluent discharged from, any premises;
- (d) fix the method of determining the amount of the charges to be paid where it appears that a meter has given, or may have given, an incorrect reading;
- (e) require a person who is not a water undertaker or sewerage undertaker to pay the expenses incurred by a water undertaker or sewerage undertaker in doing anything under the regulations or to pay contributions towards those expenses;
- (f) provide for the payment of compensation in respect of anything done by a water undertaker or sewerage undertaker under the regulations;
- (g) require disputes arising under the regulations to be referred to arbitration;

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(h) repeal or amend any local statutory provision.

(4) In this section “meter” means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises.

79 Restrictions on power to make connection and certain other charges

(1) Subject to subsection (2) below, nothing in this Chapter or in any other enactment shall entitle any water undertaker or sewerage undertaker to fix, demand or recover an initial charge for its becoming, or for its taking steps for the purpose of becoming—

- (a) the person who provides a supply of water for domestic purposes to any premises; or
- (b) the person who provides sewerage services for the purposes of the drainage for domestic purposes of any premises.

(2) Subject to subsection (3) below, nothing in subsection (1) above or in any other enactment shall be construed as prohibiting the fixing, demand or recovery by a water undertaker or sewerage undertaker of—

- (a) a charge for the connection to a water supply of premises which have never at any previous time (whether before or on or after the transfer date) been connected to a supply of water provided for domestic purposes by a water undertaker or by any other authority or body which at that time provided supplies of water in the course of carrying out functions under any enactment; or
- (b) a charge for the connection to a public sewer of premises which have never at any previous time (whether before or on or after the transfer date) been connected to a sewer used for the drainage for domestic purposes of those premises by a sewerage undertaker or by any other authority or body which at that time provided sewerage services in the course of carrying out functions under any enactment.

(3) Nothing in this Chapter or in any other enactment or in the terms of any agreement under section 18 of the Public Health Act 1936 (agreements to adopt sewers and works) shall authorise a sewerage undertaker to require any payment to be made to the undertaker in respect of the making by the undertaker of any declaration of vesting under Part II of that Act or in respect of any agreement to make such a declaration.

(4) Nothing in this Chapter or in any other enactment shall authorise a sewerage undertaker to require any payment to be made to the undertaker by a highway authority in respect of the drainage of any highway or the disposal of the contents of any drain or sewer used for draining any highway.

(5) The preceding provisions of this section, so far as they restrict the making of certain charges, are without prejudice—

- (a) to enactments by virtue of which a water undertaker or sewerage undertaker may recover expenses incurred by it in carrying out works; and
- (b) to the power of any such undertaker, by virtue of section 75(3) above, to fix the amount of any of its other charges by reference to such matters as it thinks appropriate.

(6) The references in this section to domestic purposes, in relation to the drainage of any premises, shall be construed as references to any of the purposes mentioned in subsection (2)(a) of section 71 above.

Status: This is the original version (as it was originally enacted).

80 Prohibition on charging by rateable value

- (1) Charges and other amounts to which this section applies shall not, by virtue of anything contained in this Chapter, in any local statutory provision, in any scheme under section 76 above or in any agreement entered into on or after the transfer date, be recoverable by a water undertaker or sewerage undertaker from any person if they have been fixed wholly or partly by reference to a rating valuation list or are otherwise determined, whether directly or indirectly, by reference to any value or other amount specified at any time in such a list.
- (2) This section applies to—
 - (a) charges in respect of any services provided at any time after the end of 31st March 2000 by a water undertaker or sewerage undertaker in the course of carrying out its functions; and
 - (b) amounts of any other description which such an undertaker, in exercise of any power conferred by or under any enactment, requires any person to pay in respect of any period ending after that date or in respect of anything done after that date.
- (3) In this section “rating valuation list” means a list which is or has at any time been maintained for the purposes of rating under section 41 or 52 of the Local Government Finance Act 1988, section 67 of the General Rate Act 1967 or any other enactment.

81 Exemption from charges for water for fire fighting

- (1) Notwithstanding anything in section 75 above or in any scheme under section 76 above or in any agreement as to charges in respect of any supply of water, no charge may be made by any water undertaker in respect of—
 - (a) water taken for the purpose of extinguishing fires or taken by a fire authority for any other emergency purposes;
 - (b) water taken for the purpose of testing apparatus installed or equipment used for extinguishing fires or for the purpose of training persons for fire-fighting; or
 - (c) the availability of water for any purpose mentioned in paragraph (a) or (b) above.
- (2) This section shall not prevent the making of charges in respect of work carried out at the request of or for the benefit of any person receiving a supply of water for the purposes mentioned in paragraph (a) or (b) of subsection (1) above.
- (3) This section shall not have the effect, where any water is used or made available for any of the purposes mentioned in paragraph (a) or (b) of subsection (1) above, of requiring a reduction in the charges imposed in respect of the provision for other purposes of the supply from which that water is taken.
- (4) In this section “fire authority” has the same meaning as in the Fire Services Act 1947.

82 Fixing maximum charges for services provided with the help of undertakers' services

- (1) The Director may from time to time by order fix maximum charges which a person who is not a water undertaker or sewerage undertaker may recover from another such person in respect of water supplies or sewerage services provided to that other person with the help of services provided by a water undertaker or sewerage undertaker.

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- (2) For the purposes of this section water supplies or sewerage services are provided to a person with the help of services provided by a water undertaker or sewerage undertaker if—
 - (a) a facility for that person to have access to a supply of water provided by a water undertaker in pipes, or to make use of sewerage services provided by a sewerage undertaker, is made available to that person otherwise than by the undertaker;
 - (b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by a water undertaker; or
 - (c) that person is provided with sewerage services by a person who, for the purpose of providing those services, makes use of sewerage services provided, directly or indirectly, by a sewerage undertaker.
- (3) It shall be the duty of the Director to publish any order under this section in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (4) An order under this section may make different provision for different cases, including different provision in relation to different persons, circumstances or localities, and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.
- (5) Where a person pays a charge in respect of anything to which an order under this section relates and the amount paid exceeds the maximum charge fixed by the order, the amount of the excess shall be recoverable by that person from the person to whom he paid the charge.

CHAPTER V

OWNERSHIP AND FINANCES OF SUCCESSOR COMPANIES ETC.

83 Initial Government holdings

- (1) As a consequence of the vesting in accordance with any scheme under Schedule 2 to this Act of property, rights and liabilities of any water authority in that authority's successor company, that company shall issue such securities of the company as the Secretary of State may from time to time direct—
 - (a) to such limited company as may (whether before or after the transfer date) have been nominated by the Secretary of State by order made by statutory instrument as the nominated holding company of the successor company; or
 - (b) to the Secretary of State.
- (2) As a consequence of the issue by virtue of any direction under subsection (1) above of any securities of a company to that company's nominated holding company, the latter company shall issue such securities of the nominated holding company as the Secretary of State may from time to time direct—
 - (a) to the Treasury or the Secretary of State; or
 - (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State.
- (3) The Secretary of State shall not—

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- (a) make an order nominating any company as the nominated holding company of a successor company; or
 - (b) give a direction under subsection (1) or (2) above for the issue of securities, except at a time when the company nominated by the order or, as the case may be, the company which is directed to issue securities is wholly owned by the Crown.
- (4) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms as the Secretary of State may direct.
- (5) Shares in a company which are issued in pursuance of this section—
 - (a) shall be of such nominal value as the Secretary of State may direct; and
 - (b) shall be issued as fully paid and treated for the purposes of the application of the Companies Act 1985 in relation to that company as if they had been paid up by virtue of the payment to the company of their nominal value in cash.
- (6) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (7) Any dividends or other sums received by the Treasury or the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

84 Government financial assistance for companies wholly owned by the Crown

- (1) Subject to section 92(1) below, the Secretary of State may, with the consent of the Treasury, lend such sums as he thinks fit to any company which is the nominated holding company of a successor company and is for the time being wholly owned by the Crown.
- (2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by any company which—
 - (a) is a successor company or the nominated holding company of such a company; and
 - (b) is wholly owned by the Crown at the time when the guarantee is given.
- (3) Subject to section 86 below, any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.
- (4) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this section.
- (5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the National Loans Fund.
- (6) It shall be the duty of the Secretary of State as respects each financial year—
 - (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of subsection (4) above and of sums received by him under subsection (3) above and of the disposal by him of the sums so issued or received; and

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(b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;
and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

85 Transfer of successor company liabilities to holding companies

- (1) The Secretary of State may by order made by statutory instrument transfer to that company's nominated holding company the liabilities of a successor company in respect of the principal of any relevant loan.
- (2) Where the Secretary of State has made an order under subsection (1) above in respect of the liabilities of any successor company and he considers it appropriate to do so, he may give a direction under this subsection to that company and that company shall, as a consequence of the making of the order, issue such debentures of the company to its nominated holding company as may be specified or described in the direction.
- (3) The Secretary of State—
 - (a) shall not exercise his power to make an order under this section except with the consent of the Treasury; and
 - (b) shall not make such an order transferring the liability of any company or give a direction under subsection (2) above to any company, except at a time when the company is wholly owned by the Crown.
- (4) Subsection (4) of section 83 above shall apply for the purposes of this section as it applies for the purposes of that section.
- (5) In this section “relevant loan”, in relation to the successor company of a water authority, means any sum borrowed or treated as borrowed by the authority from the Secretary of State or the Public Works Loan Commissioners, being a sum the liability to repay which has vested in the authority's successor company in accordance with any scheme under Schedule 2 to this Act.

86 Conversion of certain loans

- (1) The Secretary of State may by order made by statutory instrument extinguish all or any of the liabilities of the nominated holding company of a successor company in respect of the principal of any loan of either of the following descriptions, that is to say—
 - (a) a loan made to that company under section 84 above;
 - (b) a loan the liability to repay the principal of which has been transferred to that company under section 85 above;and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.
- (2) An order made under subsection (1) above in respect of any loan the liability to repay the principal of which was transferred to the nominated holding company of a successor company under section 85 above may extinguish all or any of the liabilities of that successor company under debentures issued in respect of the transfer under subsection (2) of that section.
- (3) Where the Secretary of State has made an order under subsection (1) above and he considers it appropriate to do so, he may give a direction under this subsection to any nominated holding company whose liabilities are extinguished by the order and that

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company shall, as a consequence of the making of the order, issue such debentures of the company as may be specified or described in the direction—

- (a) to the Treasury or the Secretary of State; or
- (b) to any person entitled to require the issue of the debentures following their initial allotment to the Treasury or the Secretary of State.

(4) The Secretary of State shall not—

- (a) make an order under subsection (1) above extinguishing the liability of any company; or
- (b) give a direction under subsection (3) above for the issue of debentures,

except at a time when the company whose liability is extinguished by the order or, as the case may be, the company which is directed to issue debentures is wholly owned by the Crown.

(5) Except as may be agreed between the Secretary of State and a company which is directed to issue debentures in pursuance of this section—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
- (b) the terms as to the payment of the principal sums payable under the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(6) For the purposes of subsection (5) above any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(7) Subsection (4) and subsections (6) and (7) of section 83 above shall apply for the purposes of this section as they apply for the purposes of that section.

87 Government investment in securities of the nominated holding companies

(1) The Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire—

- (a) securities of the nominated holding company of a successor company; or
- (b) rights to subscribe for any such securities.

(2) The Secretary of State shall not dispose of any securities acquired under this section without the consent of the Treasury.

(3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.

(4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

88 Exercise of functions through nominees

(1) The Treasury or, with the consent of the Treasury, the Secretary of State may for the purposes of section 83, 86 or 87 above appoint any person to act as the nominee, or one of the nominees, of the Treasury or, as the case may be, of the Secretary of State; but—

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- (a) the issue in pursuance of section 83 above of securities of a successor company to any nominee of the Secretary of State appointed for the purposes of that section;
- (b) the issue in pursuance of section 83 or 86 above of securities of such a company's nominated holding company to such nominee of the Treasury or the Secretary of State as is appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
- (c) the acquisition by any nominee of the Treasury or the Secretary of State who is appointed for the purposes of section 87 above of any securities or rights under that section,

shall be in accordance with such directions as may be given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.

- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of the preceding provisions of this section shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

89 Target investment limit for Government shareholding

- (1) The following provisions of this section shall apply separately in relation to each company which is the nominated holding company of a successor company.
- (2) As soon as he considers it expedient and, in any case, not later than six months after the company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the aggregate of the shares in the company which are for the time being held, by virtue of any provision of this Chapter, by any of the following, that is to say, the Treasury, the Secretary of State or any nominee of the Treasury or the Secretary of State (in this section referred to as “the Government shareholding”).
- (3) The target investment limit for the Government shareholding in the company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (in this section referred to as “the ordinary voting rights”).
- (4) The first target investment limit fixed under this section for the Government shareholding in the company shall not exceed, by more than 0.5 per cent of the ordinary voting rights, the proportion of the ordinary voting rights which is in fact carried by the Government shareholding in the company at the time when the order fixing the limit is made.
- (5) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in the company in place of the one previously in force under this section; but—
 - (a) any new limit must be lower than the one it replaces in relation to the company; and
 - (b) an order under this section may only be revoked by an order fixing a new limit.
- (6) It shall be the duty of the Treasury and of the Secretary of State—
 - (a) so to exercise their powers under section 87 above, any power to dispose of any shares held by virtue of any provision of this Chapter and their power to

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- give directions to their respective nominees as to secure that the Government shareholding in the company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section in relation to the company; and
- (b) not at any time on or after the fixing of the first target investment limit in relation to the company to exercise any power to acquire, or to authorise any nominee to acquire, any shares in the successor company of which the company is the nominated holding company.
- (7) Notwithstanding subsection (6) above but subject to subsection (8) below, the Treasury or the Secretary of State may take up, or direct any nominee of the Treasury or of the Secretary of State to take up, any rights for the time being available to them or him, or to the nominee—
- (a) as an existing holder of shares or other securities of the company; or
- (b) by reason of the rescission of any contracts for the sale of any such shares or securities.
- (8) If, as a result of anything done under subsection (7) above, the proportion of the ordinary voting rights carried by the Government shareholding in the company at any time exceeds the target investment limit for the time being in force under this section in relation to the company, it shall be the duty of the Treasury or, as the case may be, the Secretary of State to comply with subsection (6) above as soon after that time as is reasonably practicable.
- (9) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (10) 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.

90 Responsibility for listing particulars of nominated holding companies

- (1) Where—
- (a) the same document contains listing particulars for securities of two or more nominated holding companies; and
- (b) any person's responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,
- that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.
- (2) Sections 150 and 154 of the 1986 Act (advertisements etc. in connection with listing applications) shall have effect in relation to any information issued for purposes connected with any securities of a nominated holding company as if any reference to a person's incurring civil liability included a reference to any other person being entitled, as against that person, to be granted a civil remedy or to rescind or repudiate any contract.
- (3) In this section—
- “the 1986 Act” means the Financial Services Act 1986;

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“listing particulars” means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

“responsible” means responsible for the purposes of Part IV of the 1986 Act and “responsibility” shall be construed accordingly.

91 Statutory accounts of the group

(1) For the purposes of any statutory accounts of a water authority’s successor company—

(a) the vesting effected in accordance with any scheme under Schedule 2 to this Act shall be taken—

(i) to have been a vesting in that company of all the property, rights and liabilities to which that authority was entitled or subject immediately before the end of their last accounting date and which, at that time, were not property, rights and liabilities relating to Part III functions; and

(ii) to have been effected immediately after that date;

and

(b) the value of any asset and the amount of any liability of that authority which is taken by virtue of paragraph (a) above to have been vested in that company shall be taken to have been the value or (as the case may be) amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by that authority in respect of the complete accounting year ending with that date.

(2) For the purposes of any statutory accounts of a water authority’s successor company the amount to be included in respect of any item shall be determined as if the company had done anything not relating to Part III functions which has been done by that authority (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise).

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included from time to time in any reserves of a water authority’s successor company as representing the company’s accumulated realised profits shall be determined as if any profits realised and retained by that authority had been realised and retained by the company.

(3) For the purposes of any statutory accounts of the nominated holding company of a successor company—

(a) a successor company which becomes a subsidiary of the holding company in the course of an accounting reference period of that successor company shall be assumed to have become such a subsidiary at the beginning of that period; and

(b) the value, at the time of its issue, of any security issued to the holding company in pursuance of section 83 or 85 above shall be taken—

(i) in the case of a share, to have been equal to its nominal value; and

(ii) in the case of a debenture, to have been equal to the principal sum payable under the debenture.

(4) For the purposes of this section the question whether any property, right or liability of a water authority, or anything done by a water authority, relates to Part III functions shall

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be determined in accordance with such principles for determining whether anything so relates as the Secretary of State—

- (a) considers appropriate to apply in the case of that authority's successor company; and
 - (b) has notified to that company in writing.
- (5) References in this section to the statutory accounts of a company are references to any accounts prepared by the company for the purposes of any provision of the Companies Act 1985 (including group accounts); and in this section—
- “accounting reference period” has the same meaning, in relation to a successor company, as in that Act;
 - “complete accounting year,” in relation to a water authority, means an accounting year of the authority ending on 31st March;
 - “the last accounting date”, in relation to any water authority, means the last day of the last complete accounting year of that authority to end before the transfer date; and
 - “Part III functions”, in relation to a water authority, means the functions of that authority which are transferred to the Authority by virtue of this Act or correspond to any functions assigned to the Authority under this Act.

92 Temporary restrictions on borrowings etc. by the group

- (1) The aggregate amount outstanding in respect of the principal of the relevant borrowing of a group to which a successor company belongs shall not, at any time when the company is wholly owned by the Crown, exceed £1,400 million or such greater sum, not exceeding £1,800 million, as the Secretary of State may specify by order made by statutory instrument.
- (2) The power to make an order under subsection (1) above shall include power to specify different amounts in relation to different groups; and no order shall be made under that subsection unless a draft of the order has been laid before the House of Commons and has been approved by a resolution of that House.
- (3) If articles of association of a successor company or of such a company's nominated holding company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised during any period by the group to which that company belongs, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (4) For the purposes of subsection (3) above an alteration of the articles of association of a successor company or of such a company's nominated holding company shall be disregarded if the alteration—
 - (a) has the effect of conferring or extending any such power as is mentioned in that subsection; and
 - (b) is made at a time when that company has ceased to be wholly owned by the Crown.
- (5) In this section—
 - “group”, in relation to a successor company, means that company's nominated holding company and all of the nominated holding company's subsidiaries (including the successor company and its subsidiaries) taken together; and

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“relevant borrowing”, in relation to a group to which a successor company belongs, means—

- (a) such loans made or treated as made to any company in the group, including loans treated by virtue of the issue of debentures in pursuance of this Act as having been made to any such company, as are not loans made or treated as made by one company belonging to the group to another such company; and
 - (b) any sums borrowed or treated as borrowed by local authorities in respect of the repayment of which, or the payment of interest on which, the successor company is required to make contributions by virtue of the transfer of any liability in accordance with a scheme under Schedule 2 to this Act.
- (6) Where any amount outstanding in respect of the principal of any relevant borrowing of a group—
- (a) is treated as repaid or extinguished in connection with the issue of any securities of a company belonging to that group; or
 - (b) would fall to be so treated, in the case of an extinguishment under section 86 above, if the Secretary of State had given a direction under subsection (3) of that section,

that amount shall be deemed for the purposes of this section to continue to be outstanding except to the extent that any amount payable by the company by reason of the issue of securities in connection with the repayment or extinguishment itself falls to be treated for the purposes of this section as an amount outstanding in respect of the principal of any relevant borrowing of the group.

93 Reserves of the successor companies

- (1) Where the Secretary of State, at any time before the company ceases to be wholly owned by the Crown, so directs in relation to any successor company, such sums as may be specified in the direction shall, instead of being applied in any other way, be carried by the company to a reserve for the purposes of this section.
- (2) A company having a reserve for the purposes of this section shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

94 Application of Trustee Investments Act 1961 in relation to investment in the nominated holding companies

- (1) Subsection (2) below shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment, during the first investment year or any following year, in shares or debentures of a company which is the nominated holding company of a successor company.
- (2) The company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—

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- (a) in every year preceding the first investment year which is included in the relevant five years; and
 - (b) in the first investment year, if that year is included in the relevant five years and that company does not in fact pay such a dividend in that year.
- (3) In this section—
- “the first investment year”, in relation to a company which is the nominated holding company of a successor company, means the calendar year in which shares in that successor company are first issued, in pursuance of section 83(1) above, to the nominated holding company; and
 - “the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

95 Tax provisions

- (1) The Secretary of State may, for the purposes of section 2 of the Capital Allowances Act 1968 (writing-down allowance), by order make provision specifying—
 - (a) the amount to be taken for the purposes of subsection (3) of that section as the residue on the transfer date of any expenditure in relation to which any property vested in a successor company in accordance with a scheme under Schedule 2 to this Act is a relevant interest for the purposes of that section; and
 - (b) the part of the period mentioned in subsection (3) of that section which is to be treated, in relation to any such property, as unexpired on that date.
- (2) For the purposes of Chapter I of Part III of the Finance Act 1971 (capital allowances in respect of machinery and plant) property which is vested in a successor company in accordance with a scheme under Schedule 2 to this Act shall be treated as if—
 - (a) it had been acquired by that company on the transfer date for the purposes for which it is used by that company on and after that date; and
 - (b) capital expenditure of such amount as may be specified for the purposes of this subsection in an order made by the Secretary of State had been incurred on that date by that company on the acquisition of the property for the purposes mentioned in paragraph (a) above.
- (3) The Secretary of State shall not make an order under subsection (1) or (2) above in relation to any property of a successor company except with the consent of the Treasury and at a time when the company is wholly owned by the Crown; and the power to make such an order shall be exercisable by statutory instrument and shall include power to make different provision for different cases, including different provision in relation to different property or descriptions of property.
- (4) Subject to subsection (5) below, for the purposes of the Capital Gains Tax Act 1979 (“the 1979 Act”) the following securities of a successor company, that is to say—
 - (a) those issued to that company’s nominated holding company in pursuance of section 83 above;
 - (b) those issued to that company’s nominated holding company in pursuance of section 85 above, so far as they are not extinguished under section 86 above; and
 - (c) those not issued in pursuance of section 83 or 85 above which are—
 - (i) held by that holding company, or any of its nominees, on the transfer date; or

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- (ii) held by the Secretary of State, or any of his nominees, on that date and transferred to that holding company at any time when that holding company is wholly owned by the Crown,
- shall, together, be deemed to have been acquired by the nominated holding company on the transfer date for a consideration equal to whatever is the market value of the successor company's undertaking immediately after the coming into force, on that date, of the scheme under Schedule 2 to this Act in accordance with which property, rights and liabilities of a water authority are transferred to the successor company.
- (5) For the purposes of the 1979 Act—
- (a) any loan which is a relevant loan for the purposes of section 85 above shall be disregarded in determining the market value referred to in subsection (4) above; and
 - (b) where an apportionment of the aggregate amount for which securities of any company are treated under that subsection as having been acquired by any company falls to be made between different securities, any debenture to which that subsection applies shall be treated as having been acquired by that company for an amount equal to the principal sum payable under the debenture.
- (6) Where—
- (a) any debt owed to a water authority is transferred to its successor company in accordance with a scheme under Schedule 2 to this Act; and
 - (b) the authority would have been the original creditor in relation to that debt for the purposes of section 134 of the 1979 Act (disposal of debts),
- the successor company shall be treated as the original creditor for those purposes.
- (7) For the purposes of Part VI of the Income and Corporation Taxes Act 1988 (company distributions) any securities of a company issued in pursuance of section 83, 85 or 86 above shall be treated as having been issued for new consideration equal—
- (a) in the case of a share, to its nominal value; and
 - (b) in the case of a debenture, to the principal sum payable under the debenture.
- (8) Subsection (1) of section 400 of the Income and Corporation Taxes Act 1988 (write-off of government investment: restriction of tax losses) shall not have effect in relation to any extinguishment, at a time when the nominated holding company of a successor company is wholly owned by the Crown, of any liabilities of that holding company.
- (9) Subsection (6) of the said section 400 shall apply in relation to any such extinguishment of liabilities as is mentioned in subsection (8) above as if the reference to the body in question were a reference to the company whose liabilities are extinguished.
- (10) Where any debentures of any company are issued in pursuance of section 83, 85 or 86 above, any annual payment secured by those debentures shall be treated for all purposes of corporation tax as if it were a charge on income of that company.
- (11) The vesting in accordance with a scheme under Schedule 2 to this Act in a successor company of any liability for a loan made to a water authority shall not affect any direction in respect of the loan which has been given, or has effect as if given, under section 581 of the Income and Corporation Taxes Act 1988 (income tax exemption for interest on foreign currency securities).

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96 Interpretation of Chapter V

In this Chapter—

- “debentures” includes debenture stock;
- “nominated holding company”, in relation to a successor company, means the company nominated under section 83(1) above as that successor company’s nominated holding company;
- “securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company; and
- “shares” includes stock.

CHAPTER VI

STATUTORY WATER COMPANIES

97 General powers of appointed companies

- (1) Subject to the following provisions of this section, a statutory water company holding an appointment under Chapter I of this Part as a water undertaker for any area—
 - (a) shall have power to do anything (whether in that area or elsewhere) which, in the opinion of the company, is calculated to facilitate, or is conducive or incidental to, the carrying out of the functions which are functions of the company by virtue of the appointment;
 - (b) without prejudice to the generality of that power, shall have power, for the purposes of, or in connection with, the carrying out of those functions—
 - (i) to acquire and dispose of land and other property;
 - (ii) to carry out such engineering or building operations at such places (whether in that area or elsewhere) as the company considers appropriate; and
 - (iii) to supply water fittings to any person to whom they supply water and to install, repair and alter such a person’s water fittings, whether or not supplied by the company;

and

 - (c) without prejudice as aforesaid, shall have power—
 - (i) to provide for any person outside the United Kingdom advice or assistance, including training facilities, as respects any matter in which the company has skill or experience;
 - (ii) to become a member of any body formed for the purpose of promoting the interests of water undertakers or any description of water undertakers; and
 - (iii) to make donations and incur expenditure for the benefit of its officers and employees and in particular to pay, or make provision (whether by contributory or non-contributory schemes or otherwise) for the payment of, pensions, allowances or gratuities to or in respect of any persons who have been or are officers or employees of the company.
- (2) Nothing in this section with respect to the carrying out of works shall be construed as conferring any power otherwise than for the purpose of removing such a limitation on the capacity of a statutory water company as would, apart from this section, exist

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by virtue of the company's constitution; and, accordingly, without prejudice to the provisions of Part IV of this Act, this section shall be disregarded for the purpose of determining whether a statutory water company is liable, on grounds other than such a limitation, for any act or omission in exercise of a power to carry out works conferred by this section.

(3) Nothing in this section shall be construed as authorising a statutory water company to carry on the business of a manufacturer of water fittings.

(4) In this section—

“supply”, in relation to water fittings, has the same meaning as it has in Part II of the Consumer Protection Act 1987 by virtue of section 46 of that Act; and
“water fittings” has the same meaning as in Chapter II of this Part.

98 Relaxation of limits on capital, borrowing and dividends

(1) Subject to the following provisions of this section, so much of any provision contained in any local statutory provision or having effect by virtue of anything done under any local statutory provision, under section 41(5) of the 1945 Act (rate of dividend or interest etc. on redeemable stock) or under the Statutory Companies (Redeemable Stock) Act 1915, as—

- (a) imposes any limit to which this section applies in relation to any statutory water company; or
- (b) otherwise relates to any such limit,

shall have effect subject to such modifications as may be approved by special resolution of the company.

(2) This section applies, in relation to a statutory water company, to the following limits (whether they are expressed by reference to a specified sum or percentage or by reference to the respective proportions of, or of different descriptions of, capital raised and sums borrowed or to any other matter), that is to say—

- (a) a limit on the amount of capital, or of capital of a particular description, that may be raised by the company;
- (b) a limit on the amount that may be borrowed, or borrowed in a particular way or in particular circumstances, by the company; and
- (c) a limit on the dividends payable on shares or stock in the company, or on shares or stock of a particular description.

(3) Where there is a division of the shares or stock of a statutory water company into different classes, no modification of a limit falling within subsection (2)(c) above shall have effect by virtue of this section unless a consent to or approval of the modification has been given under subsection (4) below in respect of each class the rights attached to which are varied in consequence of the modification.

(4) A consent or approval is given for the purposes of subsection (3) above in respect of a class of shares or stock if—

- (a) consent in writing to the modification has been given by not less than three-quarters, in nominal value, of the members of the company holding shares or stock of that class; or
- (b) a resolution approving the modification is passed by not less than three-quarters, in nominal value, of the members of the company holding shares or stock of that class who are present (whether in person or by proxy) at a meeting

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- of which not less than twenty-one days' notice, specifying the intention to propose the resolution, has been duly given;
- and for the purpose of determining whether the requirements of subsection (3) above are satisfied in relation to any two or more classes of shares or stock in a statutory water company, it shall be immaterial that consents and approvals have been given in respect of different classes in accordance with different paragraphs of this subsection.
- (5) Where subsection (3) above applies in relation to a modification specified in a resolution passed for the purposes of this section, the holders of not less, in the aggregate, than fifteen per cent., in nominal value, of the issued shares or stock of any class of shares or stock of the company (being persons who have not for the purposes of this section consented to the modification or voted in favour of any resolution for the modification) may apply to the High Court to have the modification cancelled.
- (6) An application to the High Court under subsection (5) above—
- (a) may be made on behalf of the shareholders or stockholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose; but
 - (b) shall not be made in relation to any modification more than twenty-one days after the date of the giving of the last consent or approval to the modification to be given for the purposes of subsection (1) or (3) above.
- (7) Where an application is made under subsection (5) above—
- (a) the modification to which it relates shall have no effect unless and until it is confirmed by the High Court; and
 - (b) the High Court, after hearing the applicant and any other persons who apply to that Court to be heard and appear to that Court to be interested in the application—
 - (i) if satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders or stockholders of the class represented by the applicant, may disallow the modification; and
 - (ii) if not so satisfied, shall confirm it;and the decision of the High Court on an application under subsection (5) above shall be final.
- (8) Provision having effect by virtue of a resolution passed in accordance with this section may be modified by a subsequent such resolution.
- (9) Without prejudice to the definition in section 189(1) below of “modifications” and cognate expressions, references in this section, in relation to a statutory water company, to the modification of any provision imposing a limit to which this section applies—
- (a) include references to the removal of that limit and to the replacement of that provision with a provision imposing a different such limit in relation to that company; but
 - (b) do not include, in the case of a limit falling within subsection (2)(a) above, any modification having the effect of reducing the authorised share capital, or the authorised capital stock, of that company.
- (10) In this section “special resolution”, in relation to a statutory water company, means a resolution passed by a majority of not less than three-quarters of such of the members of the company as (being entitled to do so) vote (whether in person or by proxy) at

a meeting of the company of which not less than twenty-one days' notice, specifying the intention to propose the resolution, has been duly given; and in computing any majority for the purposes of this subsection the regulations contained in any local statutory provision as to the number of votes to which each member is entitled shall apply.

99 Removal of restrictions on payment of interest and application of profits etc

- (1) Nothing in so much of any local statutory provision as imposes a requirement as to the rate of interest at which sums may be borrowed by a statutory water company, or as to the rate at which interest on sums so borrowed is to be paid, shall apply in relation to any borrowing by a statutory water company after the coming into force of this subsection.
- (2) Notwithstanding the provisions of any local statutory provision, every statutory water company shall have power to form and maintain reserve and contingency funds by setting apart such sums in such circumstances, and to invest those funds in such manner, as it thinks fit.
- (3) Nothing in subsection (2) above shall authorise any failure by a statutory water company to meet any obligation imposed on it by virtue of any local statutory provision to pay any sum to any other person.
- (4) Nothing in so much of any local statutory provision as imposes a limit on the amount that may be carried forward at the end of any period to the credit of the profit and loss (net revenue) account of a statutory water company shall apply in relation to any such company after the coming into force of this subsection.

100 Sale of shares or stock

Nothing in any local statutory provision shall have effect at any time after the coming into force of this section so as to require any shares or stock in a statutory water company to be offered for sale to the public or so as to require any offer for the sale of any such shares or stock to be an offer for sale by auction or tender.

101 Registration of statutory water companies under the Companies Act 1985

- (1) Chapter II of Part XXII of the Companies Act 1985 (registration of companies not formed under that Act) shall have effect in relation to statutory water companies as if—
 - (a) any reference in that Chapter to a joint stock company included a reference to such a statutory water company as would not fall to be treated as a joint stock company for the purposes of that Chapter apart from this paragraph; and
 - (b) any reference in that Chapter to an Act of Parliament included a reference to a local statutory provision which is not contained in an Act of Parliament;and it is hereby declared that nothing in this Act or in the said Act of 1985 shall be construed as requiring a statutory water company to which a certificate has been issued under section 688 of that Act (certificates of registration under Chapter II of Part XXII) to be treated for the purposes of this Act or any other purposes as if it had been a different person in law before the issue of that certificate.
- (2) Where—
 - (a) provision for the constitution and regulation of a statutory water company holding an appointment under Chapter I of this Part—

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- (i) is contained in local statutory provisions having effect in accordance with paragraph 5 of Schedule 21 to the said Act of 1985 (enactments to have effect as if contained in memorandum and articles); or
- (ii) would, apart from this subsection, be so contained if the company became a registered water company;
- (b) the company has by special resolution proposed (whether before or after becoming a registered water company) that provision contained in a memorandum and articles shall have effect in substitution for those local statutory provisions;
- (c) the proposal that a memorandum and articles shall so have effect in relation to the company has been approved by order made by the Secretary of State; and
- (d) in the case of a company that has not already done so, the company becomes a registered water company,

those local statutory provisions shall cease to have effect on such date as may, for the purposes of this subsection, be specified or described in that order and the proposed memorandum and articles shall come into force on that date subject to any modifications, terms or conditions contained in any order made by the High Court under section 102 below.

- (3) The Secretary of State shall not make an order for the purposes of subsection (2)(c) above in relation to a proposal by any company unless it appears to him—
 - (a) that neither an application under section 102 below with respect to the company's proposal nor an appeal with respect to the subject-matter of such an application is pending and that the time within which any such application or appeal may be made or brought has expired; and
 - (b) where there is —
 - (i) a division of the shares or stock of the company into different classes; and
 - (ii) such a proposed difference between the memorandum and articles and the local statutory provisions which they will replace as will vary the rights attached to any such class,

that a consent to or approval of the difference has been given under subsection (4) below in respect of each class the rights attached to which would be varied if the order were made.

- (4) A consent to or approval of a proposal is given for the purposes of subsection (3)(b) above in respect of a class of shares or stock if—
 - (a) consent in writing to the proposal has been given by the holders of not less than three-quarters, in nominal value, of the issued shares or stock of that class; or
 - (b) an extraordinary resolution approving the proposal is passed at a separate general meeting of holders of shares or stock of that class;

and for the purpose of determining whether the requirements specified in subsection (3)(b) above are satisfied in relation to any two or more classes of shares or stock in a company, it shall be immaterial that consents and approvals have been given in respect of different classes in accordance with different paragraphs of this subsection.

- (5) Where an order has been made for the purposes of subsection (2)(c) above in relation to any company—
 - (a) nothing in sections 97 to 100 above or in section 41 of the 1945 Act (power to issue redeemable stock) shall have effect on and after the date specified

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or described in the order so as to confer powers in relation to the company in addition to those conferred by virtue of the company's memorandum and articles;

- (b) on and after that date, the memorandum and articles which come into force by virtue of the order shall have effect, in accordance with section 14 and the other provisions of the Companies Act 1985, as if they were the company's registered memorandum and articles; and
- (c) the company shall, before the end of the period of fifteen days beginning with the day after that date, deliver to the registrar of companies a printed copy of the memorandum and articles which have so come into force;

and subsection (3) of section 6 of the said Act of 1985 (penalty for default in delivering documents to the registrar of companies) shall apply in relation to the obligation imposed by paragraph (c) above as it applies in relation to the obligations imposed by subsection (1) of that section.

- (6) Where the Secretary of State makes an order for the purposes of subsection (2)(c) above in relation to any company and it appears to him to be appropriate to do so for the purposes of, or in consequence of, the approval contained in the order, he may by order repeal or amend any local statutory provision.
- (7) The power to make an order for the purposes of subsection (2)(c) above or an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and an order under subsection (6) above may—
 - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (8) In this section and section 102 below—
 - “extraordinary resolution”—
 - (a) in relation to a meeting held after the company in question has become a registered water company, means an extraordinary resolution within the meaning of the Companies Act 1985; and
 - (b) in relation to a meeting held before that company becomes a registered water company, means such a resolution as would be a special resolution within the meaning of section 98 above if the meeting were a meeting of the company;
 - “memorandum and articles” means a document containing only such provision as may be contained in a memorandum and articles of association registered under that Act;
 - “registrar of companies” has the same meaning as in that Act; and
 - “special resolution”—
 - (a) in relation to a time after the company in question has become a registered water company, means (subject to subsection (2) of section 102 below) a special resolution within the meaning of that Act; and
 - (b) in relation to a time before that company becomes a registered water company, means (subject to that subsection) a special resolution within the meaning of section 98 above;

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and in this section and section 102 below a reference to a company's becoming a registered water company is a reference to the issue to that company (whether before or on or after the transfer date) of a certificate under section 688 of that Act.

102 Procedure for cancelling resolutions for substituting memorandum and articles

- (1) Where a special resolution has been passed containing a proposal, in relation to a company, for a memorandum and articles to have effect as mentioned in subsection (2) of section 101 above, an application for the resolution to be cancelled may be made to the High Court—
 - (a) by the holders of not less, in the aggregate, than fifteen per cent., in nominal value of the company's issued share capital or issued stock;
 - (b) by the holders of not less, in the aggregate, than fifteen per cent., in nominal value, of the issued shares or stock of any class in respect of which a consent to or approval of the proposal to which the resolution relates is required for the purposes of subsection (3)(b) of that section; or
 - (c) if the resolution incorporates a modification of the company's objects, by the holders of not less than fifteen per cent. of such of the company's debentures as entitle the holders to object under this section to such a modification;

but an application under this section shall not be made by any person who has consented to or voted in favour of the proposal (whether for the purposes of subsection (2) or subsection (3)(b) of that section).
- (2) Accordingly, in the case of such a special resolution for the purposes of section 101(2) above as incorporates a modification of the company's objects—
 - (a) the same notice as is given for the purposes of that resolution to members of the company is required to be given to the holders of debentures entitling the holders to object under this section to a modification of the company's objects; and
 - (b) in the absence of any local statutory provision regulating the giving of that notice, that notice shall be given in accordance with the provisions regulating the giving of the notice to the members.
- (3) An application under this section—
 - (a) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose; but
 - (b) shall not be made in relation to any special resolution more than twenty-one days after the date of the last resolution, consent or approval to be passed or given for the purposes of subsection (2)(b) or (3)(b) of section 101 above or for the purposes, in connection with the company's becoming a registered water company, of section 681 of the Companies Act 1985 (procedural requirements for registration).
- (4) The powers of the High Court on an application under this section shall be to do one or more of the following, that is to say—
 - (a) to make an order, on such terms and conditions as it thinks fit, cancelling the resolution to which the application relates or confirming the proposal contained in that resolution either subject to such modifications of the proposed memorandum and articles as may be specified in the order or without modifications;

Status: This is the original version (as it was originally enacted).

- (b) if it thinks fit, to adjourn the proceedings in order that arrangements may be made to the Court's satisfaction for the purchase of the interests of dissentient members or for the payment of compensation to such members;
 - (c) to give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and
 - (d) to require that provision contained in any memorandum and articles, as confirmed by the Court, shall not at any time be modified in the respects specified in the Court's order except with the leave of the Court.
- (5) Without prejudice to the powers conferred by subsection (4)(c) above, an order of the High Court under this section may (if the Court thinks fit) provide for the purchase by a company of the shares or stock of any members of the company and for the reduction accordingly of the company's capital; and an order which so provides shall not confirm a proposal for a memorandum and articles to have effect in substitution for any local statutory provisions except subject to such modifications (if any) as may be required in consequence of that purchase and reduction.
- (6) The High Court shall not on an application under this section confirm any proposal in so far as it incorporates such an alteration of a company's objects as could not be made under section 4 of the Companies Act 1985 (alteration of objects) if the company were entitled to alter its objects under that section.
- (7) The debentures entitling the holders to object to a modification of a company's objects are any debentures secured on the company's undertaking which were issued or first issued before the day on which this Act is passed or which form part of the same series as any debentures so issued but have been issued on or after that date; and in this section "debentures" has the same meaning as in the said Act of 1985.