

WATER INDUSTRY ACT 1999

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Water Industry Act 1999, which received Royal Assent on 30 June 1999. They have been prepared by the Department of the Environment, Transport and the Regions and the Scottish Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. For England and Wales, the Act provides new entitlements for water consumers, particularly household customers. It prohibits the disconnection of the water supply to homes for reasons of non-payment. It gives many water consumers new rights to choose the basis on which they are charged for water and sewerage services. It allows for rateable value to continue to be used as a basis of unmeasured charging after 31 March 2000. It also allows for the Secretary of State to make regulations concerning particular charges to be applied to particular groups.
4. For Scotland, the Act gives effect to the recommendations of the review of the water industry in Scotland carried out in 1997. It amends the Local Government etc. (Scotland) Act 1994, dissolving the Scottish Water and Sewerage Customers Council and establishing the Water Industry Commissioner for Scotland to promote the interests of customers of the water and sewerage authorities. The Commissioner will assume most of the existing duties of the Council and will have new advisory functions in relation to the fixing of water and sewerage charges. The provisions also establish Water Industry Consultative Committees for each of the water and sewerage authorities. The Consultative Committees will advise the Commissioner on the promotion of the interests of customers of the authority in question.

BACKGROUND

English and Welsh Provisions

5. The provisions in Part I of this Act are based on a Government consultation document, 'Water Charging in England and Wales: A New Approach', published in April 1998. A response by the Government to the consultation exercise, 'Water Charging in England and Wales: Government Decisions following Consultation', was published on 18 November 1998.

Water Charging in England and Wales

6. There are two principal ways in which water consumers are charged by water companies. Most are charged on the basis of an unmeasured charge, which is usually

based on the rateable value of the property. Others are charged by reference to volume, as measured by a water meter. Different water companies have different policies relating to water metering (e.g. whether they offered meter installation free of charge). The charges made by a water company for water and sewerage are set out in the company's charging scheme, and most domestic customers are charged on this basis. Some people are charged on the basis of an agreement with the water company.

Disconnection

7. Until now, if consumers did not pay their water and sewerage bills, water companies had the power to disconnect the supply. Water companies also argued that they were not prohibited from restricting the amount of water available for a consumer's use if they did not pay their bill. The Act removes the power to disconnect water supply for non-payment, or to limit the supply with the intention of enforcing payment, from a list of different premises. These premises are private dwelling houses, caravans, houseboats, houses in multiple occupation and sheltered accommodation (where these are someone's main home) and children's homes, residential care homes, prisons and detention centres, schools, premises used for children's daycare, institutions of further and higher education, hospitals, nursing homes, GPs' and dentists' surgeries (including surgeries set up as primary care pilot schemes) and premises occupied by the emergency services.

Basis of water charging - unmeasured charges

8. For properties built before 1990, where consumers pay on an unmeasured basis for water and sewerage services, their charges are usually calculated by reference to the rateable value of the property. Under section 145 of the Water Industry Act 1991, companies were prevented from continuing to base charges for water and sewerage services on rateable value after 31 March 2000.

Charging by reference to volume

9. The main alternative basis of charging for domestic customers for water and sewerage services is by reference to the volume of water used, as measured by a water meter. The present situation, which will continue until the relevant provisions of this Act come into force and charges schemes become subject to them, is as follows. Water companies are able, at their discretion, to require customers to move to a charge based on the volume of water supplied. Customers do not have a statutory right either to move to a measured charge or to remain on an unmeasured charge. Where water meters are fitted at the company's request, they have to be installed free of charge. Where a company agrees to install a meter at a customer's request, the company is not obliged to do that free of charge. Some water companies offer customers the option of a free meter. Other companies do not.
10. A relatively small but growing number of households in England and Wales (an expected average of 18% across the country by the end of the 1999-2000 charging year) pay on the basis of a measured charge, some through choice, some where a water company has required it (for example, where a household uses a garden sprinkler) or because the household has moved into a house with a meter. Since no property built since 1990 will have a rateable value, most new houses have meters. Some people's water bills will be lower if they pay on a measured basis, but some people will have higher bills than if they were paying on an unmeasured basis. Concern has been expressed that this could bring hardship to those with high water use who cannot reduce their demand, or who can do so only at the expense of health or hygiene. Two examples of these groups, mentioned in the Government's consultation document on water charging, are those with medical conditions requiring higher than usual water use and large families on low incomes.

Rights for tenants to choose the basis of water charging

11. In general, tenants have the same rights as any other consumers to choose the basis on which they are charged for water and sewerage services. However, some tenants need their landlords' consent for the alteration or improvement of their properties either under the statutory provisions of the Housing Acts 1980 and 1985 or under their agreements with their landlords.

Scottish Provisions

12. Part II of the Local Government etc. (Scotland) Act 1994 established three water and sewerage authorities for Scotland and the Scottish Water and Sewerage Customers Council.
13. The Customers Council is responsible for representing the interests of the water industry customers in Scotland, approving the water and sewerage authorities' customer codes of practice, and investigating any customer complaints not resolved between the complainant and the relevant water and sewerage authority. It also has primary responsibility for approving charges schemes proposed by the water and sewerage authorities. Responsibility for economic and efficiency regulation of the water and sewerage authorities is a function of the Secretary of State transferred to the Scottish Ministers under the Scotland Act 1998.
14. In June 1997, the Secretary of State for Scotland announced a review of the Scottish water industry, including consideration of the role and functions of the Customers Council in relation to the regulation of the industry. The review identified a consensus that the current division between price regulation by the Customers Council and efficiency regulation by the Secretary of State had proved untenable. It recommended creating a new statutory, professional regulator responsible for economic regulation in all its aspects, and for promoting the customer interest. The Secretary of State endorsed the recommendation in the statement about the review that he made to the House of Commons on 16 December 1997.
15. The Scottish provisions in the Act give effect to this recommendation. They dissolve the Customers Council and establish the Water Industry Commissioner for Scotland. The Commissioner will assume most of the existing duties of the Council and will have new advisory functions in relation to the fixing of water and sewerage charges. The provisions also establish Water Industry Consultative Committees for each of the water and sewerage authorities. The Consultative Committees will advise the Commissioner on the promotion of the interests of customers of the authority in question.

OVERVIEW OF THE ACT

16. The Act is in three parts. Part I relates to water charging in England and Wales. Part II relates to the water industry in Scotland. Part III contains supplemental provisions.

COMMENTARY ON SECTIONS

17. Part I of the Act replaces and amends certain sections of the Water Industry Act 1991 (the 1991 Act). Relevant extracts from the 1991 Act are given towards the end of this note, in Annex A. Part II of the Act replaces and amends certain sections of the Local Government etc. (Scotland) Act 1994. Relevant extracts from this Act are given at the end of this note, in Annex B.

Sections 1 & 2 and Schedule 1: Disconnection and restriction of supply

18. *Section 1* of the Act amends section 61 of the 1991 Act. It removes water companies' powers to disconnect for non-payment of bills the supply of water to those premises set out in a new Schedule to the Water Industry Act 1991. (*Schedule 1* to this Act inserts a new Schedule 4A into the 1991 Act.) These are premises are private dwelling houses,

caravans, houseboats, houses in multiple occupation and sheltered accommodation (where these are someone's main home) and children's homes, residential care homes, prisons and detention centres, schools, premises used for children's daycare, institutions of further and higher education, hospitals, nursing homes, GPs' and dentists' surgeries (including surgeries set up as primary care pilot schemes) and premises occupied by the emergency services (that is, police, fire and ambulance).

19. *Section 2* adds a new section to the 1991 Act (section 63A). It prohibits water companies from using devices designed to reduce the amount of water available for use (for instance, by using trickle valves) to enforce bill payment for those premises referred to in Schedule 4A.

Sections 3 & 4: Charges schemes and agreements

20. *Section 3* amends section 142 of the 1991 Act, so that charges for water and sewerage services for dwellings must be fixed on the basis set out in water companies' charges schemes rather than by agreement. An exception is made to allow agreements which have been entered into before this provision is brought into force to continue. *Section 4* amends section 143 of the 1991 Act, so that charges schemes must be approved by the Director General of Water Services (the Director) each year. The Director's power to approve charges schemes under section 143 (and the Secretary of State's power to make regulations under section 143A as inserted by section 5 of this Act) cannot be used to limit the total revenues available to water and sewerage undertakers from their charges schemes. Section 143 as amended also provides for the Secretary of State to give the Director guidance to take into account when approving schemes, and for the guidance to be published.

Section 5: Regulations concerning charges schemes

21. *Section 5* adds a new section to the 1991 Act (section 143A) which requires charges schemes for domestic customers to comply with any regulations made by the Secretary of State. Regulations could be used, for instance, to specify that particular tariffs or charging options be made available to consumers.
22. For those requiring special provision, the Secretary of State's regulations are intended to set out which groups of people are to be given special protection, and how eligibility for this protection should be demonstrated. These groups may include those who need special protection because of their age, health or financial circumstances, or due to disability. As well as prescribing those who should receive special treatment, the regulations will outline the nature of the assistance to be offered.

Section 6: rights of consumers to elect for charging by reference to volume

23. *Section 6* adds a new section (section 144A) to the 1991 Act. It covers homes which currently pay their water and sewerage bills on an unmeasured basis under a charges scheme. It gives these consumers a new right to require their water company to charge them by reference to volume (by sending their water company a 'measured charges notice'). Water companies would not have to install a meter where it would not be practicable or would be unreasonably expensive. Any dispute between the water company and the customer over whether installation of a meter would be impracticable or unreasonably expensive should be submitted to the Director General of Water Services. A company's charges scheme will set out the time within which the company will fit a meter and start charging the consumer by reference to volume. Tenants, other than those in fixed term tenancies of less than six months, will be able to exercise these rights irrespective of any term of their tenancy agreement which restricts or prohibits the exercise of these rights.
24. Section 144A enables consumers to revert to paying for their water on an unmeasured basis provided that they have not reverted previously, and that they, or a member of their household, were living in the property when the measured charges notice was issued.

The request for reversion must be made within 12 months of the first day on which a measured basis of charging applied. If a consumer requests reversion to an unmeasured basis of charging, water companies must start charging on that basis 12 months after the consumer was first charged on a measured basis, or as soon as possible thereafter. Finally, where a consumer is paying for water on a measured basis, the section provides that the foul water drainage element of the sewerage services must be charged on the same basis.

Section 7: restrictions on water companies' power to charge by reference to volume

25. *Section 7* adds another new section (section 144B) to the 1991 Act. It will allow consumers to stay on an unmeasured charge unless certain conditions are met. It does this by prohibiting water companies from beginning to charge domestic customers on a measured basis unless:

- a consumer has requested or agreed to be charged on that basis (either by sending the water company a measured charges notice under section 144A, or agreeing to a suggestion from the company that charges be on a measured basis); or
- the consumer has recently moved into the premises and has not yet received a water bill based on an unmeasured charge.

But for a consumer to benefit under section 144B, certain conditions must be satisfied. The Secretary of State may set out these conditions in regulations. The regulations might require, for example, that the consumer should not be using a garden sprinkler on the premises, or should not have water fittings which use considerable amounts of water.

Section 8: charging by reference to rateable value

26. Section 145 of the 1991 Act contained a deadline of 31 March 2000 after which rateable value could no longer be used as a basis for water charges. *Section 8* repeals section 145 which means that rateable value will still be one possible method of charging for water.

Sections 9 & 10: metering

27. *Section 9* amends section 148 of the 1991 Act so that consumers in private dwelling houses, who exercise their right to pay on the basis of volume, cannot be required to pay the water companies for installing water meters in their premises. *Section 10* amends section 162 of the 1991 Act. It ensures that water companies have the power to carry out works connected with meter installation (such as the installation of pipes), where they are needed to give effect to the provisions of the Act including cases where there is no immediate intention of using the meter as a basis of charging.

Section 11: rights of tenants in relation to metering

28. *Section 11* relates to the rights given by *section 6* in relation to metering. This section helps certain tenants, who might otherwise be prevented from exercising their entitlement to pay by reference to volume by conditions in their tenancy agreements. *Section 11* provides that no terms of any tenancy agreement of the types specified shall be regarded as restricting the tenant's rights (to give a measured charges notice and to consent to charges being fixed on a measured basis), preventing the consequent installation or connection of a meter or requiring consent to be obtained in relation to such installation or connection. The tenancies specified are those which are not fixed term tenancies for a term of less than six months.

Section 12 and Schedule 2: Water Industry Commissioner For Scotland

29. *Section 12* amends the Local Government etc. (Scotland) Act 1994 to establish the Commissioner and the three Consultative Committees. It dissolves the Customers Council and provides for the Transfer of Undertakings (Protection of Employment)

Regulations 1981 to apply in relation to the staff of the Customers Council who transfer to work for the Commissioner.

30. *Schedule 2* sets out a new Schedule 9A to the 1994 Act. Part I of Schedule 9A provides for the appointment of the Commissioner and his staff and allows normal public sector pension arrangements to be made for them. The office of Commissioner will not have Crown status. Part II of Schedule 9A provides the broad framework within which the Consultative Committees will operate.

Section 13 and Schedule 3, Part II: Commissioner's advice on charges

31. *Section 13* amends the 1994 Act to give the Commissioner the function of advising Ministers about water and sewerage charges. He is to offer advice on the fixing of charges over a period of years to be specified in advance by Ministers. In preparing his advice he must take into account information relevant to the performance and service standards which the water and sewerage authorities have to meet in consequence of statutory requirements and government policies, the investment programmes necessary to deliver those standards and the scope for the authorities to secure efficiency savings. Ministers can accept or modify the Commissioner's advice, or substitute their own advice. This process will be transparent to the general public through provision requiring the Commissioner to publish his advice as accepted by ministers and any substituted advice.
32. The published advice will provide the framework within which the Commissioner will agree annual charges schemes with the water and sewerage authorities. In effect, the result of the process will be to establish limits for annual price increases over the period of years in question. Within this longer term framework approved by Ministers, the Commissioner will agree annual charges schemes with the water and sewerage authorities in the same way as the Customers Council does at present under section 76 of the 1994 Act.
33. These new arrangements will differ from the current system in two respects. First, in preparing his advice the Commissioner will be required to consider charge levels over a number of years instead of one year at a time, as happens with the Customers Council at present. Secondly, the matters to be taken into account by the Commissioner in framing his advice, including matters of efficiency, will be specified (which they are not in respect of the Customers Council at present). The purpose of these changes is to assist the water and sewerage authorities to meet the needs of their customers as efficiently as possible by providing a stable business framework within which to make plans for future delivery of service.
34. *Schedule 3, Part II*, amends existing legislation in consequence of the creation of the Commissioner and the dissolution of the Customers Council. It applies mainly to the 1994 Act where the Commissioner will take over the role of the Council in connection with codes of practice, customer complaints and annual charges schemes. It also amends the Water (Fluoridation) Act 1985 to require the Commissioner, rather than the Council, to be consulted about proposals to introduce fluoride into water supplies in Scotland.

Section 14: application to Wales and Scotland

35. *Section 14* provides that if an Order in Council is made under section 22 of the Government of Wales Act 1998 transferring functions of the Secretary of State set out in this Act to the National Assembly for Wales, the order will be subject to negative, rather than affirmative, resolution procedure. The section also provides that this Act is a 'pre-commencement enactment' for the purposes of the Scotland Act 1998 and so ministerial functions under this Act transfer to the Scottish Ministers by virtue of the provisions of the Scotland Act 1998.

COMMENCEMENT

English and Welsh Provisions

36. The sections relating to disconnection, the use of limiting devices and removal of the restriction on charging with reference to rateable value take effect on Royal Assent. The provisions in the Act that provide for regulations to be made will also come into force on Royal Assent. The other provisions will come into force on a day or days determined by the Secretary of State.

Scottish Provisions

37. No date for commencement is included on the face of the Act. The intention is that Scottish Ministers should determine a commencement date in exercise of the functions transferred to them under the Scotland Act 1998.

HANSARD REFERENCES

38. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
House of Commons		
Introduction	25 November 1998	Vol 321 Col 208
Second Reading	7 December 1998	Vol 322 Cols 40-114
Committee	15 December 1998	Hansard Standing Committee A
	12 January 1999	
	14 January 1999	
Report and Third Reading	10 February 1999	Vol 325 Cols 384-436
House of Lords		
Introduction	11 February 1999	Vol 597 Col 329
Second Reading	4 March 1999	0 Vol 597 Cols 1856-1878
Committee	22 April 1999	Vol 599 Cols 1242-1295
Report	8 June 1999	1 Vol 601 Cols 1368-1401
Third reading	24 June 1999	2 Vol 602 Cols 1067-1075
Royal assent – 30 June 1999		House of Lords Hansard Vol 603 Col 271
		House of Commons Hansard Vol 334 Col 361

ANNEX A:

Extracts from the Water Industry Act 1991, referred to in paragraph 17 of the Notes. The amendments made by the Water Industry Act 1999 are shown in bold. These extracts have no authoritative status.

WATER INDUSTRY ACT 1991

“61 Disconnections for non-payment of charges.

- (1) Subject to the following provisions of this 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 the occupier of the premises-

- (a) 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
- (b) 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.

- (1A) **The power conferred by subsection (1) above is not exercisable in relation to premises specified in Schedule 4A.**

- (2) Where-

- (a) a water undertaker has served a notice for the purposes of paragraph (b) of subsection (1) above on a person; and
- (b) within the period of seven days mentioned in that paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of that subsection in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in subsection (3) below.

- (3) For the purposes of subsection (2) above charges are enforceable in a manner specified in this subsection against a person if-

- (a) the undertaker is able to enforce a judgement against that person for the payment of the charges; or
- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.

- (4) A water undertaker which exercises its power under this section 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.

- (5) Where-

- (a) a water undertaker has power under this section 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.

.....

Manner of fixing charges

142 Powers of undertakers to charge.

- (1) Subject to the following provisions of this Chapter, the powers of every relevant 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) **Subject to subsections (2A), (3) and (3A) below**, the powers conferred by subsection (1) above shall be exercisable-
 - (a) by or in accordance with a charges scheme under section 143 below; or
 - (b) by or in accordance with agreements with the persons to be charged.
- (2A) **Paragraph (b) of subsection (2) above shall not have effect in relation to-**
 - (a) **charges for the supply of water to a dwelling, or**
 - (b) **charges for the provision of sewerage services in respect of a dwelling,****but this subsection does not affect any agreement made before the commencement of section 3 of the Water Industry Act 1999.**
- (2B) **In subsection (2A) above, “dwelling” has the meaning given by paragraph 1(2) of Schedule 4A to this Act.**
- (3) Paragraph (b) of subsection (2) above shall have effect in relation to the exercise of 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 129 above.
- (3A) The power of a sewerage undertaker to charge, by virtue of subsection (1) above, for any services provided in the course of carrying out its duty under section 101A(1) above shall be exercisable only by or in accordance with a charges scheme under section 143 below.
- (4) Except in so far as this Chapter otherwise provides, a relevant 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.
- (5) 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.
- (6) Nothing in subsections (1) to (5) above or in any charges scheme under section 143 below shall affect any power of a relevant undertaker to fix charges under any power conferred otherwise than by virtue of this Chapter.
- (7) References in this section to a sewerage undertaker's trade effluent functions are references to its functions under Chapter III of Part IV of this Act.

143 Charges schemes.

- (1) A relevant undertaker may make a scheme ("a charges scheme") which **has effect in relation to a specified period of twelve months and** 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 notice containing an application for a consent is served on the undertaker under section 119 above;
 - (ii) such a consent as is necessary for the purposes of Chapter III of Part IV of this 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 subsection (1)(b) 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.
- (3) 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 subsection (1)(b) above 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.
- (3A) A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker's costs of providing a sewer by virtue of its duty under section 101A(1) above, causes those costs to be borne by the undertaker's customers generally; and a sewerage undertaker's duty under this subsection shall be enforceable under section 18 above-
 - (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.
- (4) 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.
- (5) Nothing in any charges scheme shall affect-
 - (a) any power of a relevant undertaker **in a case not falling within section 142(2A)** 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 129 above on terms that provide for the making of payments to the undertaker.
- (6) **A charges scheme shall not take effect unless it has been approved by the Director.**
- (7) **The Secretary of State may give guidance to the Director on the exercise of his power under subsection (6) above; and the Director shall have regard to that guidance in the exercise of that power.**

- (8) The Secretary of State shall arrange for any guidance given by him under subsection (7) above to be published in such manner as he considers appropriate.**
- (9) The Director may not exercise his power under subsection (6) above for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.**

143A Regulations as to provisions to be included in charges schemes.

- (1) The provisions of any charges scheme under section 143 above must comply with any requirements prescribed by the Secretary of State by regulations.**
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may-**
 - (a) prescribe items with respect to which a consumer is, or is not, to be liable to pay a charge;**
 - (b) make provision as to the matters by reference to which charges may be fixed and as to methods and principles to be adopted in calculating and imposing charges;**
 - (c) require alternative bases of charging to be made available to consumers; and**
 - (d) require special provision, including exemption from specified charges, to be made for the purpose of assisting individuals who are or would be liable to pay any charges and who fall within any class of individuals appearing to the Secretary of State to require special provision.**
- (3) Regulations under this section imposing requirements for the purpose mentioned in subsection (2)(d) may-**
 - (a) prescribe the classes of persons for whom special provision is to be made in relation to any premises by reference to matters such as age, ill-health or disability, the age, ill-health or disability of any of their dependants or of any other persons who have their homes in the premises, or their financial circumstances;**
 - (b) make provision as to the method by which a person may establish his entitlement to assistance under the regulations; and**
 - (c) make provision as to responsibility for costs incurred for the purpose of establishing that entitlement.**
- (4) The power to make regulations under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.**

144 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 relevant 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 relevant 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 the first relevant day.
- (4) For the purposes of subsection (3) above, "the first relevant day", in relation to a case in which a person has ceased to be the occupier of any premises in relation to which charges are fixed by a relevant undertaker, means whichever of the following first occurs after he ceases to occupy the premises, that is to say-
 - (a) where that person 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;
 - (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
 - (c) any day on which any other person informs the undertaker that he has become the new occupier of the premises.
- (5) 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 62 above; and
 - (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 the appropriate time.
- (6) In subsection (5) above "the appropriate time", in relation to a case in which a notice has been served for the purposes of section 62 above, means whichever is the later of-
 - (a) the expiry of the notice; and
 - (b) the end of the period of two working days beginning with the service of the notice.
- (7) In this section any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on-
 - (a) a Saturday or Sunday; or
 - (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.
- (8) Where, in the case of any premises-
 - (a) the person who was liable, immediately before 1st September 1989, to pay charges in respect of a supply of water to those premises was the owner of those premises, rather than the occupier;

- (b) that person was so liable (under section 54 of Schedule 3 to the Water Act 1945 or any other local statutory provision) otherwise than by virtue of an agreement; and
- (c) the person who was in fact the occupier of the premises on that date has not ceased to be the occupier before the coming into force of this Act,

then the person who is the owner from time to time of those premises shall continue, until the person mentioned in paragraph (c) above does cease to be the occupier of the premises, to be the person liable and, accordingly, shall be treated for the purposes of this section as if he were the occupier of the premises.

Restrictions on Charging

144A Right of consumer to elect for charging by reference to volume.

(1) Where-

- (a) water is supplied by a water undertaker to premises in which, or in any part of which, a person has his home, and
- (b) charges in respect of those premises are fixed by virtue of any charges scheme under section 143 above without reference to the volume of water supplied,

the consumer may at any time give the undertaker a notice (in this section referred to as a "measured charges notice") requiring the undertaker to fix charges in respect of the supply by reference to the volume of water supplied.

(2) Subject to subsection (3) below, a water undertaker must give effect to a measured charges notice before the end of a period determined in accordance with the undertaker's charges scheme.

(3) A water undertaker is not obliged to give effect to a measured charges notice if-

- (a) it is not reasonably practicable to fix charges in respect of the premises by reference to the volume of water supplied, or
- (b) to do so would involve the incurring by the undertaker of unreasonable expense.

(4) Any dispute between a water undertaker and a consumer as to the application of paragraph (a) or (b) of subsection (3) above may be referred to the Director for determination under section 30A above by either party to the dispute.

(5) Where-

- (a) either the conditions in subsection (6) below or the conditions in subsection (7) below are satisfied in relation to premises in respect of which a measured charges notice has been given, and
- (b) such other conditions as may be prescribed are also satisfied in relation to the premises,

the consumer may at any time before the end of the period of twelve months beginning with the day on which the supply began to be measured by volume for charging purposes, revoke the measured charges notice by notice to the water undertaker.

(6) The conditions in this subsection are-

- (a) that the person who gave the measured charges notice has not given any previous measured charges notice in relation to the premises, and
- (b) that he remains the consumer in respect of the premises.

(7) The conditions in this subsection are-

- (a) that the person who gave the measured charges notice has, since the notice was given, ceased to be the consumer in respect of the premises,
 - (b) that neither he nor the person who has become the consumer has given any previous measured charges notice in respect of the premises, and
 - (c) that any person who was in occupation of the premises when the measured charges notice was given remains in occupation.
- (8) Where a measured charges notice has been revoked under subsection (5) above, the water undertaker must-
 - (a) if reasonably practicable, before the end of the period of twelve months referred to in that subsection, or
 - (b) in any other case, as soon as reasonably practicable after the end of that period,revert to fixing the charges for the supply in respect of the premises without reference to the volume of water supplied.
- (9) If and so long as a water undertaker is obliged under subsection (2) above to fix charges for the supply of water in respect of any premises by reference to the volume of water supplied, a sewerage undertaker is under a corresponding obligation to fix charges in respect of foul water drainage provided by the sewerage undertaker in respect of those premises by reference to that volume.
- (10) If a water undertaker is obliged under subsection (8) above to fix charges without reference to volume, a sewerage undertaker is under a corresponding obligation in respect of charges for services provided by it.
- (11) Any charges scheme under section 143 above-
 - (a) must contain provision for determining the period mentioned in subsection (2) above, and
 - (b) shall have effect subject to the preceding provisions of this section.

144B Restriction on undertakers' power to require fixing of charges by reference to volume.

- (1) Subsection (2) below applies where-
 - (a) water is supplied to any premises in which, or in any part of which, a person has his home,
 - (b) charges in respect of those premises have previously been fixed without reference to volume, and
 - (c) such conditions as may be prescribed are satisfied in relation to the premises.
- (2) Where this subsection applies, a relevant undertaker may not by virtue of any charges scheme under section 143 above begin to fix the charges in respect of those premises by reference to volume unless either
 - (a) the consumer-
 - (i) has given the undertaker a measured charges notice under section 144A above which has not been revoked under that section, or
 - (ii) has consented to the charges in respect of the premises being so fixed and has not revoked that consent under section 144A, or
 - (b) there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer.
- (3) A change in the persons occupying any premises does not constitute a change in the occupation of the premises for the purposes of subsection (2)(b) above if any person

who was in occupation of the premises before the change remains in occupation after the change.

- (4) **Where a consumer gives consent for the purposes of subsection (2)(a)(ii) above in relation to premises in which, or in any part of which, a person has his home, he shall be treated for the purposes of subsections (5) to (8) of section 144A above as having given a measured charges notice under that section.**

General restrictions on charging

[This section is repealed by this Act.]

145 Charging by reference to rateable value.

- (1) Charges and other amounts to which this section applies shall not, by virtue of anything contained-
- (a) in this Chapter;
 - (b) in any local statutory provision;
 - (c) in any charges scheme under section 143 above; or
 - (d) in any agreement entered into on or after 1st September 1989,
- be recoverable by a relevant 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 relevant 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.

.....

Metering

148 Restriction on charging for metering works.

- (1) Subject to subsections (2) to (4) below and section 177 below, where any meter to be used in determining the amount of any charges is installed by or at the request of any relevant undertaker then, notwithstanding the provisions of any enactment or of any agreement to the contrary between the undertaker and any other person, the undertaker shall bear-
- (a) the expenses of installing and connecting the meter;
 - (b) any expenses incurred in maintaining, repairing, disconnecting or removing the meter in accordance with any requirements of the undertaker; and
 - (c) any expenses incurred in carrying out any works for purposes connected with the installation and connection of the meter or with the maintenance, repair, disconnection or removal of the meter in accordance with any such requirements.

- (1A) References in subsection (1) above to expenses include references to expenses incurred in meeting the needs of a disabled person.
- (2) Subject to subsection (3) below, subsection (1) above shall not require any relevant undertaker to bear, or prevent any such undertaker from recovering from any other person-
- (a) any expenses incurred for the purpose of enabling a condition imposed by virtue of subsection (2)(c) or (d) of section 47 above to be satisfied;
 - (b) any sums which it is entitled to recover in pursuance of any terms or conditions determined under section 56 above;
 - (c) **in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any sums which it is entitled to recover from that person by virtue of section 64(3)(b) above;**
 - (d) any expenses incurred in relation to a meter which is or is to be used in determining the amount of-
 - (i) any charges which are to be paid in connection with the carrying out of a sewerage undertaker's functions under Chapter III of Part IV of this Act; or
 - (ii) any charges provision for which is contained in an agreement entered into in accordance with section 129 above;
 - (e) **in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any expenses incurred in consequence of the exercise by the consumer of any option to be charged by the undertaker in relation to those premises by reference to volume rather than by reference to other matters.**
- (3) For the purposes of subsection (2) above the expenses which an undertaker may require someone else to bear, or may recover from another, by virtue of that subsection shall not include any expenses incurred for the purpose of enabling conditions such as are mentioned in paragraph (a) of that subsection to be satisfied in a case in which the conditions could not have been imposed but for the exercise by the undertaker of its power by virtue of paragraph (a), (b), (d) or (e) of section 64(2) above to require the provision of a separate service pipe to any premises.
- (4) The occupier of any premises where any relevant undertaker installs or as installed a meter shall in all cases bear so much of the expenses referred to in subsection (1) above as is attributable to compliance with a request made by him in accordance with any regulations under section 149 below for the positioning, in a place other than that reasonably proposed by the undertaker, either of the meter or of any pipe or apparatus installed for the purpose of facilitating the use of the meter.
- (4A) Subsection (4) above is subject to any regulations made by virtue of section 149(2)(aa) below.
- (5) Any dispute between a relevant undertaker and any other person (including another such undertaker)-
- (a) as to whether the undertaker or that other person should bear any expenses under this section; or
 - (b) as to the amount of any expenses to be borne by any person under this section, 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 Director.

.....

162 Works in connection with metering.

- (1) Subject to the following provisions of this section, to section 148 above and to the provisions of Chapter III of this Part, where-

- (a) **subsection (1A) below applies to a relevant undertaker in respect of any premises; and**
- (b) there is either-
 - (i) a service pipe which is connected with a water undertaker's water main and by which a supply of water is or could be provided to those premises or to any building in which those premises are contained; or
 - (ii) a drain or private sewer which connects those premises with a public sewer,

the undertaker shall have power, in accordance with section 172 below or otherwise, to carry out any works specified in subsection (3) below.

- (1A) **This subsection applies to a relevant undertaker in respect of any premises if-**

- (a) **the undertaker has fixed any charges in relation to any premises by reference to volume,**
- (b) **the undertaker is entitled so to fix any charges because the person who is the consumer in relation to the premises for the purposes of Chapter I of Part V of this Act has exercised his right to give-**
 - (i) **a measured charges notice under section 144A above, or**
 - (ii) **any consent for the purposes of section 144B(2)(a)(ii) above,****and has not revoked the measured charges notice or consent under section 144A, or**
- (c) **the undertaker has given notice of its intention of so fixing any charges-**
 - (i) **within the period specified in the notice, or**
 - (ii) **in a case where it is not for the time being entitled so to fix the charges, if and when it becomes entitled to do so.**

- (2) The power under subsection (1) above to carry out works specified in subsection (3) below shall include power to carry out any such works in a street; and the power conferred by virtue of subsection (1)(c) of section 158 above and subsection (6) of that section shall apply in relation to the power conferred by this subsection as they apply in relation to the powers conferred by that section.

- (3) The works mentioned in subsections (1) and (2) above are, in relation to any premises-

- (a) works consisting in the installation and connection of any meter for use in determining the amount of any charges which have been or may be fixed in relation to the premises;
- (b) where the premises comprise a house which is one of two or more houses to which the supply of water is wholly or partly by the same service pipe, works consisting in the installation and connection, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for that house;
- (c) works for the purpose of maintaining, repairing, disconnecting or removing-
 - (i) any meter which has been installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises; or
 - (ii) any pipes or apparatus installed in the course of any works specified in this section; and
- (d) any other works appearing to the undertaker to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c) above, including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.

- (4) A notice given for the purposes of **subsection (1A)(c)** above may relate to particular premises or to any description of premises and shall be given-
 - (a) by publishing the notice in the locality in which the premises to which it relates are situated in such a manner as the undertaker considers appropriate for bringing it to the attention of the persons likely to be affected by it; and
 - (b) by serving a copy of the notice on the Secretary of State.
- (5) Subject to subsection (6) below, any works carried out by a water undertaker by virtue of the provisions of this section shall be necessary works for the purposes of Chapter II of Part III of this Act.
- (6) Nothing in this section shall prevent the exercise by a water undertaker of its power by virtue of subsection (3)(b) of section 64 above to impose a condition by virtue of subsection (2)(c) or (d) of section 47 above in a case where it has, under the said section 64, required the provision of a separate service pipe to any premises.
- (7) Part II of Schedule 6 to this Act shall apply to the powers conferred by this section.
- (8) Any dispute between a relevant undertaker and any other person (including another such undertaker) as to the exercise of any power under this section to carry out any works on any premises shall be referred to the arbitration of a single arbitrator appointed-
 - (a) by agreement between the undertaker and that person; or
 - (b) in default of agreement, by the Director.
- (9) Without prejudice to subsection (2) above, nothing in section 158, 159 or 161 above shall authorise the installation of any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises where that apparatus is to be used for the purpose only of determining the amount of any charges fixed, or to be fixed, in relation to those premises wholly or partly by reference to the volume of that water or effluent.

ANNEX B:

Extracts from the Local Government etc. (Scotland) Act 1994, referred to in paragraph 17 of the Notes. The amendments made by the Water Industry Act 1999 are shown in bold. These extracts have no authoritative status.

By reason of the amendments made by this Act, sidenotes referring to the Customers Council are no longer accurate.

LOCAL GOVERNMENT ETC. (SCOTLAND) ACT 1994

“63 Alteration of water areas and sewerage areas

- (1) Subject to subsection (4) below, the Secretary of State may from time to time by order amend column 2 of Schedule 8 to this Act so as to alter water areas or sewerage areas of the new water and sewerage authorities.-
- (2) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.-(3) For the purposes of subsection (2) above charges are enforceable in a manner specified in this subsection against a person if-
- (3) An order under this section may include such incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient for the purposes of the order.
- (4) Before making an order under this section the Secretary of State shall prepare a draft of the order, shall consult with every new water and sewerage authority whose area would be altered by the order and with the **Commissioner (established under section 67A(1) of this Act)** and shall publish in the Edinburgh Gazette, and in one or more local newspapers circulating in the geographical area affected by the order, a notice
 - (a) stating the general effect of the order; and
 - (b) specifying the places where copies of the draft order, and of any maps relating to it, may be inspected, free of charge and at all reasonable times, during a period of not less than twenty-eight days which begins with the date on which the notice is so published; and
 - (c) stating that any person affected by the order may within that period, by intimation in writing to the Secretary of State, object to the proposed making of the order
- (5) The Secretary of State shall serve a copy of a notice published under subsection (4) above on every body which he has, in accordance with that subsection, consulted.
- (6) The Secretary of State shall have regard to any objection made by virtue of subsection (4)(c) above and timeously received; and he may then proceed to make the order, either in the form of the draft order or as amended by him
- (7) For the purposes of subsection (6) above, an objection is timeously received if received by the end of the specified period of not less than twenty-eight days which begins with the latest date on which is published an issue of the Edinburgh Gazette, or of a local newspaper, in which the notice mentioned in subsection (4) above appears by virtue of that subsection.

.....

66 Codes of Practice for new water and sewerage authorities

- (1) A new water and sewerage authority shall draft a code of practice which shall make provision
 - (a) as to their standards of performance in providing services to their customers;

- (b) for procedures for dealing with complaints by their customers or their potential or former customers;
 - (c) as respects the circumstances in which they will pay compensation if or in so far as those standards are not attained; and
 - (d) as respects such matters as are incidental to the provision made under paragraphs (a) to (c) above;
- and the code may include such supplemental provisions as appear to the authority to be appropriate.
- (2) [This subsection is repealed by the Act.]
 - (3) The authority shall endeavour to comply with their code of practice as for the time being approved by virtue of this section; but contravention of that code shall not of itself give rise to any criminal or civil liability.
 - (4) Subject to subsection (1) above, the authority may from time to time-
 - (a) vary; or
 - (b) revoke and replace,their code of practice as so approved; and the varied or new code shall be sent forthwith by them in draft to the **Commissioner**.
 - (5) Subsections (4) to (6) of section 76 of this Act shall apply as respects a draft sent under subsection (4) above as they apply to a **charges scheme made under that section**.
 - (6) The authority shall take such steps as appear to them appropriate to inform customers and potential or former customers of the contents for the time being of their code approved by virtue of this section.
 - (7) **The Commissioner-**
 - (a) **shall monitor the compliance by each authority with their code of practice as so approved.**
 - (b) **may advise the Secretary of State on such compliance, and**
 - (c) **may request an authority to review their code of practice, or any provision of it, in such respects as the Commissioner may specify.**
- 67 [This section is repealed by the Act.]

The Water Industry Commissioner for Scotland.

67A Water Industry Commissioner for Scotland and Consultative Committees

- (1) **There shall be a Water Industry Commissioner for Scotland (in this Part of this Act referred to as “the Commissioner”), who shall have the general function of promoting the interests of customers of the new water and sewerage authorities.**
- (2) **In respect of each new water and sewerage authority there shall be a Water Industry Consultative Committee, which shall have the general function of advising the Commissioner on the promotion of the interests of customers of that authority.**
- (3) **In exercising his functions in relation to an authority the Commissioner shall have regard to any advice given to him by the Consultative Committee in respect of that authority.**
- (4) **The Secretary of State may, after consulting the Commissioner, give him directions of a general or specific character as to the exercise of his functions; and the Commissioner shall comply with those directions.**

- (5) **Schedule 9A to this Act (which makes further provision about the Commissioner and Water Industry Consultative Committees) shall have effect.**

68 Functions of Customers Council

- (1) [This subsection is repealed by the Act.]
- (2) **The Commissioner shall investigate any complaint made to him, or to the appropriate Consultative Committee, by a current, potential or former customer of a new water and sewerage authority, as respects a function of that authority (whether as a water authority or as a sewerage authority).**
- (2A) **The Commissioner need not investigate such a complaint if-**
- (a) **the complainer has not pursued the complaint with the authority, or**
 - (b) **it appears to the Commissioner that the complaint is vexatious or frivolous.**
- (3) where the **Commissioner** considers it appropriate to do so in connection with a complaint investigated by **him** under subsection (2) above, **he** shall make representations on behalf of the complainer to the authority in question about any matter-
- (a) to which the complaint relates; or
 - (b) which appears to **him** to be relevant to the subject matter of the complaint.
- (4) **The Commissioner shall advise the Secretary of State on any matter which appears to either of them, to relate to -**
- (a) the standard of service provided by a new water and sewerage authority to their customers; or
 - (b) the manner in which any such authority conduct their relations with their customers or potential or former customers.
- (5) **The Commissioner shall have power to do anything which is calculated to facilitate, or is incidental or conducive to, the performance of any of his functions under this Act.**

69 Power of Customers Council to require information

A new water and sewerage authority shall, on being requested to do so by the **Commissioner**, supply the **Commissioner** with such information held by them as **he** may reasonably seek in the exercise of **his** functions under this Act; but where the authority and the **Commissioner** cannot agree as to whether the information is sought reasonably, either of them may refer the matter to the Secretary of State, whose determination in that regard shall be final.

70 Annual reports by, and information from, Customers Council

- (1) **Without prejudice to subsection (3) below, the Commissioner shall, as soon as practicable after the end of each financial year, submit to the Secretary of State a report on his exercise of his functions during that financial year.**
- (2) **The Commissioner shall arrange for the report to be published in such manner as he considers appropriate.**
- (3) **The Commissioner shall furnish the Secretary of State with such information regarding the exercise, or proposed exercise, of his functions under this Act as he may from time to time require.**

71 Funding of Customers Council

- (1) The Secretary of State may, to such extent as may be approved by the Treasury, defray or contribute towards the expenses of the **Commissioner**.
- (2) Any sums required by the Secretary of State for the purposes of subsection (1) above shall be paid out of money provided by Parliament.
- (3) A new water and sewerage authority shall contribute towards the expenses of the **Commissioner** by making payments of such amounts, and at such times, to the **Commissioner** as the Secretary of State may direct.

.....

75A Commissioner's advice on charges

- (1) The Commissioner shall, when required by the Secretary of State, advise him on the matters to be taken into, or left out of, account by the new water and sewerage authorities in fixing charges in charges schemes (within the meaning of section 76(1) of this Act).
- (2) The advice-
 - (a) shall, as the Secretary of State requires, relate to authorities generally or to a particular authority,
 - (b) shall apply in relation to charges schemes made during such period as the Secretary of State may specify (in this section referred to as "the period of the advice").
- (3) In preparing his advice the Commissioner shall have regard to-
 - (a) the economy, efficiency and effectiveness with which authorities are using their resources in exercising their functions,
 - (b) the likely cost to each authority, for the period of the advice, of exercising the functions mentioned in subsection (4) below,
 - (c) the likely borrowing capacity of each authority for the period of the advice,
 - (d) any guidance issued to authorities by the Secretary of State, and
 - (e) any directions issued under section 116 or 117 of this Act.
- (4) The functions referred to in subsection (3)(b) above are-
 - (a) complying with any duty to which an authority are subject by virtue of any enactment,
 - (b) complying with any such duty to which they will, or are likely to, become subject during the period of the advice, and
 - (c) providing services to their customers at the same standard, and protection of the environment at the same level, as those at the time when the advice is given, or at such other standard or level as the Secretary of State may specify.
- (5) The Secretary of State shall, within three months of receiving from the Commissioner advice under subsection (1) above--
 - (a) accept the advice, with or without modifications; or
 - (b) reject the advice and substitute his own advice for it.
- (6) Where the Secretary of State accepts the Commissioner's advice with modifications or rejects it, he shall give reasons for doing so.
- (7) The Commissioner shall arrange for the publication, in such manner as he considers appropriate, of advice as accepted, modified or substituted under subsection (5) above, together with any reasons given under subsection (6) above.

76 Charges Schemes

- (1) A new water and sewerage authority may, in accordance with this section, make a scheme (in this Part of this Act referred to as a "charges scheme") which (either or both)-
 - (a) fixes the charges to be paid for any relevant services provided by them;
 - (b) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.
- (2) Services are relevant for the purposes of subsection (1)(a) above if they are provided by the authority in the course of carrying out their functions and are not services as respects which conditions as to payment may be imposed under section 29(3)(j) of the 1968 Act (conditions relating to the reception, treatment and disposal of trade effluent).
- (3) A charges scheme may-
 - (a) make different provision for different cases, or classes of case, including different provision in relation to different circumstances or localities;
 - (b) contain supplemental, consequential and transitional provisions for the purposes of the scheme;
 - (c) revoke or amend a previous charges scheme.
- (4) A charges scheme shall not come into force before-
 - (a) it has been sent to, and approved by, the **Commissioner**, such approval being to the scheme having effect either- **the consumer**-
 - (i) without modifications; or
 - (ii) with such modifications as, after consulting with and obtaining the agreement of the authority, the **Commissioner** thinks fit to make; or
 - (b) where the **Commissioner** is not prepared to give approval under paragraph (a) above, or cannot obtain the agreement of the authority to some or all of the modifications which **he** would make under sub-paragraph (ii) of that paragraph, the **scheme** (with any modifications to it which may have been agreed between the **Commissioner** and the authority) has been sent by the Council to, and approved by, the Secretary of State, such approval being to the scheme having effect either-
 - (i) without modifications (or further modifications); or
 - (ii) with such modifications as, after consulting with **the authority**, he thinks fit to make, and the scheme shall have effect accordingly.
- (5) Where three months have elapsed since the **Commissioner** has received a charges scheme by virtue of paragraph (a) of subsection (4) above and the **Commissioner** has neither given approval under that paragraph nor sent the scheme to the Secretary of State under paragraph (b) of that subsection, the new water and sewerage authority which made the scheme may require the **Commissioner** so to send it to him.
- (6) Where, under-
 - (a) paragraph (a) of subsection (4) above, the **Commissioner** gives approval to a charges scheme **he** shall send a copy of the scheme as so approved to the Secretary of State;
 - (b) paragraph (b) of that subsection, the Secretary of State gives approval to such a scheme he shall send a copy of the scheme as so approved to the **Commissioner**.
- (7) A new water and sewerage authority in making a charges scheme, and the **Commissioner** and the Secretary of State in considering whether to give approval to such a scheme, shall
 - (a) endeavour to ensure that no undue preference is shown, and that there is no undue discrimination, in the fixing of charges, **and**

- (a) **have regard to any advice published under section 75A of this Act in force at the time of the making of the scheme under subsection (1) above.**
- (8) Nothing in any charges scheme shall affect any power of a new water and sewerage authority 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 them.