



Water Act 2003

2003 CHAPTER 37

PART 4

SUPPLEMENTARY

100 Devolution: Wales

- (1) In the entry relating to the Reservoirs Act 1975 (c. 23) in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) (referred to in this section as “the Order”), at the end there is inserted “except section 12A(4).”
- (2) The entry relating to the WIA in Schedule 1 to the Order is amended as follows—
 - (a) in the list of sections conferring on the Secretary of State functions which are not transferred by the Order—
 - (i) after “sections 1,” there is inserted “2A,”
 - (ii) for “17” there is substituted “16A, 17 to 17D, 17F to 17K, 17N to 17P, 17R, 22A to 22F,”
 - (iii) after “27(3),” there is inserted “27A, 27B, 27E, 27G, 27I to 27K, 29, 29A,”
 - (iv) after “35,” there is inserted “38B, 66B, 66F to 66L, 86(1A), 87B, 88A, 89,”
 - (v) after “92,” there is inserted “95B,”
 - (vi) after “152(2),” there is inserted “192A, 192B,”
 - (vii) before “206(3)(e)” there is inserted “195A,”
 - (viii) after “Schedules 1” there is inserted “, 1A, 3A,”
 - (ix) at the end there is inserted “and except functions under such other sections or Schedules as are expressly stated in the succeeding paragraphs to be so excepted (but only to the extent stated).”
 - (b) in the paragraph relating to functions under sections 2, 5 (etc)—
 - (i) the reference to section 2 is omitted,
 - (ii) the reference to sections 18 to 22 is omitted,
 - (iii) for “37 to 39” there is substituted “37, 38, 39, 51A”

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- (iv) the reference to sections 68 to 70 is omitted,
 - (v) the reference to section 93A is omitted,
 - (vi) for “94 to 96,” there is substituted “94, 95, 96,”
 - (vii) after “104,” there is inserted “105A to 105C,”
 - (viii) for “198 to 203” there is substituted “198 to 200”,
 - (ix) the reference to section 205 is omitted,
 - (x) at the end there is inserted “(but not in relation to any licensed water suppliers).”,
- (c) the paragraph relating to section 28(4) is omitted,
- (d) before the paragraph relating to functions under section 67 there is inserted—
- “Functions under sections 2, 18 to 22, 68 to 70, 93A and 201 to 203 are transferred to the Assembly in relation to—
- (a) any water or sewerage undertaker whose area is wholly or mainly in Wales;
 - (b) any licensed water supplier so far as relating to licensed activities using the supply system of any such water undertaker; and
 - (c) in the case of functions under section 70, any other person who is a relevant person (as defined in that section) in relation to any such undertaker or licensed water supplier.”,
- (e) in the paragraph relating to functions under section 67, for paragraphs (a) and (b) there is substituted—
- “(a) for the making of regulations concerning water supplied using the supply system of a water undertaker, the function is transferred in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales;
 - (b) for the making of regulations concerning water supplied other than using the supply system of a water undertaker, the function is transferred in relation to Wales.”,
- (f) in the paragraph relating to functions under sections 3, 86 (etc), for “86” there is substituted “86 (except subsection (1A))”,
- (g) after that paragraph there is inserted—
- “In respect of the functions under sections 37A to 37D, 39B and 39C it is provided as follows—
- (a) functions under those provisions so far as relating to matters concerning the construction or enlargement of reservoirs are transferred to the Assembly in relation to Wales;
 - (b) functions under those provisions so far as relating to matters other than the construction or enlargement of reservoirs are transferred to the Assembly in relation to any water undertaker whose area is wholly or mainly in Wales; and
 - (c) the functions of the Assembly referred to in paragraph (b) above so far as they are exercisable in relation to England shall be exercisable only after consultation with the Secretary of State.”,
- (h) in the paragraph relating to section 152(1), after “Wales” there is inserted “or (so far as relating to licensed activities using the supply system of any such water undertaker) any licensed water supplier”,

- (i) for the paragraph relating to section 208 there is substituted—
- “In respect of the functions under section 208 it is provided as follows—
- (a) the functions under that section of giving directions for the purpose of mitigating the effects of any civil emergency and the function (in the case of sub-paragraphs (i) and (ii) below) of enforcing such directions are transferred to the Assembly—
- (i) in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales;
- (ii) in relation to any licensed water supplier so far as relating to licensed activities using the supply system of any such water undertaker; and
- (iii) in relation to the Consumer Council for Water so far as relating to its functions in connection with any such water undertaker; and
- (b) it is directed that the other functions under that section shall be exercisable by the Assembly concurrently with the Secretary of State in relation to the bodies and so far as mentioned in paragraph (a)(i) to (iii) above.”
- (j) in the paragraph relating to Article 2(c), at the end there is inserted “or any licensed water supplier using the supply system of any such water undertaker.”

- (3) In Schedule 2 to the Order, after the entry relating to the Environmental Protection Act 1990 there is inserted a new entry as follows—

“Water Industry Act 1991 c 56

The functions of the Secretary of State under sections 37A to 37D, 39B and 39C so far as relating to matters other than the construction or enlargement of reservoirs shall be exercisable only after consultation with the Assembly.”

- (4) The entry relating to the WRA in Schedule 1 to the Order is amended as follows—
- (a) in the paragraph referring to the functions of a Minister of the Crown under sections 20(3) and 75(5)(c), after “20(3)” there is inserted “, 20B(3)”, and
- (b) in the list of provisions under which there are transferred functions of the Secretary of State to which paragraph 6 of Schedule 3 to the Government of Wales Act 1998 (c. 38) is applied, in the appropriate places there is inserted—
- (i) “section 27A and (so far as it relates to section 27A) Schedule 6,”
- (ii) “section 33A,”
- (iii) “section 51(1C) to 51(1F),”
- and in the entry in that list relating to section 161C, after “regulations)” there is inserted “, but not including section 161C as applied by section 25B.”
- (5) The entry relating to the Environment Act 1995 (c. 25) in Schedule 1 to the Order is amended as follows—
- (a) after paragraph (e) in the list of sections conferring functions which are not transferred by the Order there is inserted—

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- “(f) functions exercisable by the Secretary of State in pursuance of sub-paragraph (bb) of the definition of “the relevant Minister” in paragraph 1(5) of Schedule 4;
 - (g) the function of the Secretary of State under section 16A(5)(a);”;
 - (b) after paragraph (e) of the list of functions which are transferred not in relation to Wales but in the manner specified there is inserted—
 - “(ea) functions under section 18A are transferred to the Assembly in relation to the local flood defence scheme for a district which is in the area of a regional flood defence committee the whole or the greater part of which is in Wales;”.
- (6) Subject to subsections (1) to (5), the references in Schedule 1 to the Order to—
 - (a) the WIA generally and to specific sections of or Schedules to the WIA,
 - (b) the WRA generally and to specific sections of or Schedules to the WRA,
 - (c) the Reservoirs Act 1975 (c. 23), the Environmental Protection Act 1990 (c. 43), the Land Drainage Act 1991 (c. 59) and the Environment Act 1995 (c. 25) generally and (where applicable) to specific sections of or Schedules to those Acts, and
 - (d) any other Act generally and (where applicable) to specific sections of or Schedules to those Acts,

are to be treated as referring to those Acts (or those sections or Schedules) as amended by this Act.
- (7) Subsection (6), and the amendments made by subsections (1) to (5), do not affect the power to make further Orders varying or omitting the references mentioned in subsection (6) or the provisions amended by subsections (1) to (5).

101 Minor and consequential amendments and repeals

- (1) Schedules 7 and 8, which make minor amendments (including the repeal of certain spent enactments) and amendments consequential on the provisions of this Act, have effect.
- (2) The enactments and instrument mentioned in Schedule 9 are repealed or revoked to the extent specified.

102 Specific transitional and transitory provisions

- (1) Subject to subsection (2), each licence to abstract water under Chapter 2 of Part 2 of the WRA which is in force immediately before the coming into force of section 1 of this Act shall, after the coming into force of that section, be treated as a full licence within the meaning of that Act.
- (2) If—
 - (a) immediately before the coming into force of section 6 of this Act, a person is the holder of a licence under Chapter 2 of Part 2 of the WRA to abstract water, and
 - (b) upon the coming into force of that section an abstraction authorised by the licence becomes an abstraction to which the restriction on abstraction does not apply,

the licence shall cease to have effect (so far as it applies to that abstraction) upon the coming into force of that section.

- (3) Subject to subsection (4), the person who was the holder of a full licence which ceases (or ceases in part) to have effect by virtue of subsection (2), and who had been taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) of the WRA, shall continue to be taken to have that right for the purposes of Chapter 2 of Part 2 of the WRA.
- (4) A person shall cease to continue to be taken to have the right mentioned in subsection (3), for the purposes mentioned there, if during a period of—
 - (a) four years, or
 - (b) if the abstractions authorised under the licence (or relevant part of the licence) were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the Agency may determine on the application of the person,
he does not carry out any such abstraction as would have been authorised by the licence (or relevant part of the licence) if it had still been in force.
- (5) Where, immediately after the coming into force of any provision of this Act, an abstraction of water to which the restriction on abstraction did not apply becomes one to which the restriction on abstraction does apply, nothing in—
 - (a) section 39(1), 42(4) or 44(4) of the WRA (which relate to protected rights), or
 - (b) any other enactment specified in regulations made by the Secretary of State,
prevents the Agency from granting a licence under Chapter 2 of Part 2 of the WRA in respect of that abstraction, or the Secretary of State from giving the Agency a direction to do so.
- (6) In subsections (2)(b) and (5), “the restriction on abstraction” has the meaning given by section 72(1) of the WRA.

103 Powers to make further supplementary, consequential and transitional provision, etc

- (1) The Secretary of State may by regulations make—
 - (a) such supplementary, incidental or consequential provision, or
 - (b) such transitory, transitional or saving provision,as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act.
- (2) The provision which may be made under subsection (1) includes provision—
 - (a) amending or repealing any enactment, instrument or document (including in particular any instrument appointing a company to be a water or sewerage undertaker),
 - (b) conferring functions, powers or duties on any person.
- (3) The provision which may be made under subsection (1) also includes, in particular, provision for or in relation to the payment by the Environment Agency of compensation to any person who—
 - (a) before the coming into force of any provision of this Act was not required by or by virtue of the WRA to have a licence under Chapter 2 of Part 2 of the WRA in respect of any abstraction,

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- (b) following the coming into force of any provision of this Act does require such a licence in respect of that abstraction, and
 - (c) has suffered loss or damage as a result of his having been—
 - (i) refused such a licence in respect of that abstraction, or
 - (ii) granted such a licence, but in respect of an abstraction of more limited extent than that of the abstraction he was carrying out before the coming into force of the provision in question,
 or who is a person who falls within subsection (4).
- (4) A person falls within this subsection if he satisfies the Environment Agency of the following—
- (a) that the nature of his operations, or proposed operations, requires him to make plans about the abstraction of water,
 - (b) that before the coming into force of any provision of this Act he would not have required a licence under Chapter 2 of Part 2 of the WRA in respect of any such abstraction for which he had reasonably planned (or, if there has already been such an abstraction, he did not require such a licence in respect of it),
 - (c) that following the coming into force of any such provision he does require such a licence in respect of it, and
 - (d) that he has suffered loss or damage as a result of his having been—
 - (i) refused a licence under Chapter 2 of Part 2 of the WRA in respect of that abstraction, or
 - (ii) granted such a licence, but in respect of an abstraction of more limited extent than he had reasonably applied for,
 and he applies for compensation before any deadline provided for in the regulations under subsection (1).
- (5) The provision which may be made under subsection (1) also includes, in particular, provision for or in relation to the payment by the Water Services Regulation Authority of compensation to any person who—
- (a) before 31st July 2002 was carrying on any activities in respect of the supply of water,
 - (b) following the coming into force of any provision of this Act—
 - (i) is unable to continue to carry on those activities as a result of their having been prohibited,
 - (ii) is unable to continue to carry on those activities as a result of a licence under Chapter 1A of Part 2 of the WIA having been required in respect of them and his not having applied for, or his having been refused, a licence, or
 - (iii) is unable to continue to carry on those activities in the same manner as a result of his having been granted a licence the effect of which is to restrict the carrying on of the activities, and
 - (c) has suffered loss or damage as a result of—
 - (i) those activities having been prohibited,
 - (ii) a licence not having been granted, or
 - (iii) those activities having been restricted.
- (6) Where regulations made under subsection (1) include provision for the discharge by the Director General of Water Services instead of the Water Services Regulation Authority of any functions conferred on the Authority by or by virtue of any provision

of this Act, then, for the purposes of Schedule 3, any such function shall be treated as if it had been the subject of a transfer under section 36 when the provision in the regulations ceased to apply.

- (7) The power to make regulations under this section is also exercisable by the Assembly, in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly.
- (8) Nothing in this Act shall be read as affecting the generality of subsection (1).

104 Regulations and orders

- (1) Any power under this Act to make any order or regulations is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations—
 - (a) made by the Secretary of State under any provision of this Act except section 10 (but including section 105), and
 - (b) which contains (or contain) provision amending or repealing any enactment, shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Otherwise, a statutory instrument containing any order or regulations made by the Secretary of State under this Act, other than an order under section 105, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any power under this Act to make any order or regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act,
 - (iii) any such provision either unconditionally or subject to any specified condition.
- (5) Where any such power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for all or any of those purposes.
- (6) Any such power includes power—
 - (a) to make such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments or provisions of subordinate legislation) as the authority making the order or regulations considers to be expedient, and
 - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (7) In subsection (6)(a), “subordinate legislation” has the meaning given by the Interpretation Act 1978 (c. 30).
- (8) Nothing in this Act shall be read as affecting the generality of subsection (6).

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105 Interpretation, commencement, short title, and extent

- (1) This Act may be cited as the Water Act 2003.
- (2) In this Act—
 - (a) the “WIA” means the Water Industry Act 1991 (c. 56),
 - (b) the “WRA” means the Water Resources Act 1991 (c. 57),
 - (c) “the Assembly” means the National Assembly for Wales.
- (3) Apart from this section and sections 102 to 104, this Act comes into force on such day as the appropriate authority may by order appoint.
- (4) Different days may be appointed for different provisions and for different purposes.
- (5) Except as stated in subsection (6), the appropriate authority for the purposes of subsection (3) is the Secretary of State after consulting the Assembly.
- (6) In relation to the sections and Schedules listed in the first column of this table, the appropriate authority is as listed in the second column—

<i>Section or Schedule</i>	<i>Appropriate authority</i>
Section 73	The Secretary of State.
Section 67	The Assembly after consulting the Secretary of State.
Sections 58, 69, 75, 77, 78, 80, 81 and 86	The Secretary of State, in relation to England; the Assembly, in relation to Wales.
Section 101 and Schedules 7, 8 and 9	As respects any amendment or repeal consequential on a provision referred to above in this table, the same appropriate authority as listed in respect of the provision in question; otherwise, the Secretary of State after consulting the Assembly.

- (7) Subject to the following provisions of this section, this Act extends to England and Wales only.
- (8) Section 36 and Schedule 3 extend also to Scotland and Northern Ireland.
- (9) The following provisions extend also to Scotland—
 - (a) section 53(1) and (2),
 - (b) sections 66 and 68,
 - (c) section 73,
 - (d) section 74(1),
 - (e) section 76,
 - (f) section 85(3),
 - (g) section 103(1), (2), (7) and (8),
 - (h) section 104.
- (10) Section 58(10) extends to Scotland only.

- (11) Any amendment or repeal of a provision of the WRA made by this Act has the same extent as the provision being amended or repealed.
- (12) Sections 3, 4, 10 and 27 have the same extent as they would have if they were contained in the WRA, and section 224 of the WRA (application to Isles of Scilly) applies in relation to those sections as it applies to the WRA.
- (13) Any amendment or repeal made by Schedule 7 or 8 has the same extent as the enactment being amended or repealed.
- (14) Any repeal contained in Schedule 9 has the same extent as the provision elsewhere in this Act which provides for the repeal.