Water Industry Act 1991

1991 CHAPTER 56

PART I

PRELIMINARY

The Director General of Water Services

1 The Director General of Water Services.

(1) There shall continue to be an officer known as the Director General of Water Services (in this Act referred to as "the Director") for the purpose of carrying out the functions of that Director under this Act.

(2) Appointment of any person to hold office as the Director shall be made by the Secretary of State.

(3) An appointment of a person to hold office as the Director shall be for a term not exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.

(4) The Director may at any time resign his office as the Director by notice addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.

(5) Subject to the preceding provisions of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

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VALID FROM 01/04/2006

[F1 1A Water Services Regulation Authority

(1) There shall be a body corporate to be known as the Water Services Regulation Authority (in this Act referred to as "the Authority") for the purpose of carrying out the functions conferred on or transferred to it by this Act or under or by virtue of any other enactment.

(2) The functions of the Authority are performed on behalf of the Crown.

(3) Schedule 1A to this Act shall have effect with respect to the Authority.

(4) In Welsh the Authority may be known as "Awdurdod Rheoleiddio Gwasanaethau Dŵr".**]**

Textual Amendments

F1 S. 1A inserted (1.4.2006) by Water Act 2003 (c. 37), **ss. 34(1)**, 105(3); S.I. 2005/2714, **art. 4(a)** (with Sch. para. 8)

General duties

2 General duties with respect to water industry.

(1) This section shall have effect for imposing duties on the Secretary of State and on the Director as to when and how they should exercise and perform the following powers and duties, that is to say—

(a) in the case of the Secretary of State, the powers and duties conferred or imposed on him by virtue of the provisions of this Act relating to the regulation of relevant undertakers **[**F2and of licensed water suppliers**]** ; and

(b) in the case of the Director, the powers and duties conferred or imposed on him by virtue of any of those provisions, by the provisions relating to the financial conditions of requisitions or by the provisions relating to the movement of certain pipes.

[F3(2A) The Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

(a) to further the consumer objective;

(b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales;

(c) to secure that companies holding appointments under Chapter 1 of Part 2 of this Act as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of those functions; and

(d) to secure that the activities authorised by the licence of a licensed water supplier and any statutory functions imposed on it in consequence of the licence are properly carried out.

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(2B) The consumer objective mentioned in subsection (2A)(a) above is to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services.

(2C) For the purposes of subsection (2A)(a) above the Secretary of State or, as the case may be, the Authority shall have regard to the interests of—

(a) individuals who are disabled or chronically sick;

(b) individuals of pensionable age;

(c) individuals with low incomes;

(d) individuals residing in rural areas; and

(e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(2D) For the purposes of subsection (2C) above, premises are not eligible to be supplied by a licensed water supplier if—

(a) they are household premises (as defined in section 17C below); or

(b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D below is less than the quantity specified in that subsection.

(2E) The Secretary of State and the Authority may, in exercising any of the powers and performing any of the duties mentioned in subsection (1) above, have regard to—

(a) any interests of consumers in relation to electricity conveyed by distribution systems (within the meaning of the Electricity Act 1989);

(b) any interests of consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986);

(c) any interests of consumers in relation to communications services and electronic communications apparatus (within the meaning of the Communications Act 2003),

which are affected by the exercise of that power or the performance of that duty.**]**

[[F4](3) Subject to subsection (2A) above, the Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

(a) to promote economy and efficiency on the part of companies holding an appointment under Chapter 1 of Part 2 of this Act in the carrying out of the functions of a relevant undertaker;

(b) to secure that no undue preference is shown, and that there is no undue discrimination in the fixing by such companies of water and drainage charges;

(c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company's protected land or of an interest or right in or over any of that land;

(d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to

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the Secretary of State or (as the case may be) the Authority to be connected with the company, and in particular by ensuring—

(i) that any transactions are carried out at arm's length;

(ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;

(iii) that, if the person is a licensed water supplier, its licence does not authorise it to carry on any activities in the area of the company;

(e) to contribute to the achievement of sustainable development.

(4) In exercising any of the powers or performing any of the duties mentioned in subsection (1) above in accordance with the preceding provisions of this section, the Secretary of State and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).**]**

(5) In this section the references to water and drainage charges are references to—

(a) any charges in respect of any services provided in the course of the carrying out of the functions of a relevant undertaker; and

(b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any of its customers or potential customers to pay.

[F5(5A) In this section—

"consumers" includes both existing and future consumers; and

"the interests of consumers" means the interests of consumers in relation to—

(a) the supply of water by means of a water undertaker's supply system to premises either by water undertakers or by licensed water suppliers acting in their capacity as such; and

(b) the provision of sewerage services by sewerage undertakers.**]**

(6) For the purposes of this section—

[F6(a) subject to subsection (6A) below, the reference in subsection (1) above to the provisions of this Act relating to the regulation of relevant undertakers and of licensed water suppliers is a reference to the provisions contained in Part 2 of this Act (except section 27A, and Schedule 3A), or in any of sections 37A to 38, 39, 39B, 39C, 66B, 66D, 66F to 66H, 66K, 66L, 95, 96, 153, 181, 182, 192A, 192B, 195, 195A and 201 to 203 below;

(b) the reference in that subsection to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in sections 42, 43, 43A, 48, 51C, 99, 100 and 100A below; and**]**

(c) the reference in that subsection to the provisions relating to the movement of certain pipes is a reference to the provisions of section 185 below.

[F7(6A) **[**F8Subsections (2A) to (4) above and section 2A below**]** do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below ("Competition Act functions").

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of **[**F9subsections (2A) to (4) above and section 2A below**]** , if it is a matter to which **[**F10 the Office of

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Fair Trading (in this Act referred to as "the OFT")**]** could have regard when exercising that function.**]**

[F11(7) The duties imposed by subsections (2A) to (4) above and section 2A below do not affect the obligation of the Authority or, as the case may be, the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any Community obligation or otherwise).**]**

Textual Amendments

F2 Words in s. 2(1)(a) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(2)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F3 S. 2(2A)-(2E) substituted (1.4.2005) for s. 2(2) by Water Act 2003 (c. 37), **ss. 39(3)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F4 S. 2(3)(4) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(4)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F5 S. 2(5A) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(5)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F6 S. 2(6)(a)(b) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(6)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F7 S. 2(6A)(6B) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(4)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, art. 2, **Sch.**

F8 Words in s. 2(6A) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(7)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F9 Words in s. 2(6B) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(8)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

F10 Words in s. 2(6B) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(2)**; S.I. 2003/766, **art. 2**, Sch. (with transitional and transitory provisions in art. 3)

F11 S. 2(7) added (1.4.2005) by Water Act 2003 (c. 37), **ss. 39(9)**, 105(3); S.I. 2005/968, **art. 2(f)** (with savings in art. 4, Schs. 1, 2)

[F12**2A Guidance on social and environmental matters**

(1) Guidance may be issued from time to time—

(a) by the Assembly, with respect to appointment areas which are wholly or mainly in Wales; and

(b) by the Secretary of State, with respect to other appointment areas,

about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.

(2) In formulating guidance, the Secretary of State and the Assembly shall, where practicable, have regard to the costs and benefits which may be expected to result from the guidance.

(3) The Authority shall, in exercising and performing the powers and duties mentioned in section 2(1) above (subject to section 2(6) above), have regard to any guidance issued under this section.

(4) Before issuing guidance under this section the Secretary of State and the Assembly shall consult—

(a) the Authority;

(b) the Council;

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(c) in the case of the Secretary of State, the Assembly and *vice versa*;
(d) relevant undertakers;
(e) licensed water suppliers; and
(f) such other persons as the Secretary of State or the Assembly considers it appropriate to consult in relation to the guidance.

(5) A draft of any guidance proposed to be issued by the Secretary of State under this section shall be laid before each House of Parliament.

(6) Guidance shall not be issued by the Secretary of State under this section until after the period of forty days beginning with—
(a) the day on which the draft is laid before each House of Parliament; or
(b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.

(7) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.

(8) In reckoning any period of forty days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which—
(a) Parliament is dissolved or prorogued; or
(b) both Houses are adjourned for more than four days.

(9) The Secretary of State and the Assembly shall arrange for any guidance issued by him or it under this section to be published in such manner as he or it considers appropriate.

(10) In this section, an "appointment area" is an area for which an appointment is held under Chapter 1 of Part 2 of this Act.**]**

Textual Amendments

F12 S. 2A inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 40**, 105(3); S.I. 2005/968, **art. 2(g)** (with savings in art. 4, Sch. 1, 2)

3 General environmental and recreational duties.

(1) It shall be the duty of each of the following, that is to say—
(a) the Secretary of State;
(b) **F13** . . . . . .
(c) the Director; and
(d) every company holding an appointment as a relevant undertaker,

in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by subsections (2) and (3) below.

(2) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are—
(a) a requirement, so far as may be consistent—
(i) with the purposes of any enactment relating to the functions of the undertaker; and

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(ii) in the case of the Secretary of State and the Director, with their duties under section 2 above,

so to exercise any power conferred with respect to the proposals on the person subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest **[**F14and, in the case of the exercise of such a power by a company holding an appointment as a relevant undertaker, as to further water conservation**]** ;

(b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and

(c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(3) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are, subject to the requirements imposed by subsection (2) above—

(a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;

(b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and

(c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(4) Subsections (1) to (3) above shall apply so as to impose duties on the Director and any company holding an appointment as a relevant undertaker in relation to any proposal relating to—

(a) the functions of **[**F15the Environment Agency**]**; or

(b) the functions of an internal drainage board,

as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this subsection the reference in subsection (2)(a) above to the functions of the undertaker shall have effect as a reference to the functions of **[**F16the Environment Agency**]** or, as the case may be, of the internal drainage board in question.

(5) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—

(a) reasonably practicable; and

(b) consistent with the purposes of the enactments relating to the functions of the undertaker in question,

for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of

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subsection (5) above, to take into account the needs of persons who are chronically sick or disabled.

(7) The obligations under this section of a company holding an appointment as a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.

(8) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by a relevant undertaker to be made available free of charge.

(9) References in this section to the functions of a relevant undertaker shall be construed, without prejudice to section 156(7) below, as if those functions included the management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).

(10) In this section "building" includes structure.

Textual Amendments

F13 S. 3(1)(b) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002; S.I. 2002/794, art. 5(2), 6, **Sch. 2**

F14 Words in s. 3(2)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 82**, 105(3); S.I. 2004/641, **art. 3(u)** (with art. 6, Sch. 3)

F15 Words in s. 3(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 97** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F16 Words in s. 3(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 97** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

4 Environmental duties with respect to sites of special interest.

(1) Where **[**F17English Nature**]**or the Countryside Council for Wales are of the opinion that any area of land in England or, as the case may be, in Wales—

(a) is of special interest by reason of its flora, fauna or geological or physiographical features; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,

that Council shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.

(2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—

(a) is land in relation to which the matters for the purposes of which section 3 above has effect are of particular importance; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,

the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every relevant undertaker whose works, operations or activities may affect the land.

(3) Where a relevant undertaker has received a notification under subsection (1) or (2) above with respect to any land, that undertaker shall consult the notifying body before

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carrying out any works, operations or activities which appear to that undertaker to be likely—

(a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or

(b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.

(4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to **[**F17English Nature**]**, the Countryside Council for Wales, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) The obligations under this section of a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.

(6) In this section—

"the Broads" has the same meaning as in the M1Norfolk and Suffolk Broads Act 1988; F18. . .

F18. . .

and section 3(9) above shall apply, as it applies in relation to that section, for construing (in accordance with section 6 below) any references in this section to a relevant undertaker.

Textual Amendments

F17 Words in s. 4(1)(4) substituted (30.1.2001) by 2000 c. 38, ss. 73(4), 103(2), **Sch. 8 para. 1(p)(i)**

F18 Definition of "National Park authority" and the word "and" immediately preceding it repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

Marginal Citations

M1 1988 c. 4.

5 Codes of practice with respect to environmental and recreational duties.

(1) The Secretary of State may by order approve any code of practice issued (whether by him or by another person) for the purpose of—

(a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which sections 3 and 4 above have effect; and

(b) promoting what appear to him to be desirable practices by such undertakers with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this section shall not of itself constitute a contravention of any requirement imposed by section 3 or 4 above or give rise to any criminal or civil liability; but the Secretary of State F19. . . shall F20. . . be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how he should exercise his powers in relation to any relevant undertaker by virtue of this Act, any of the other consolidation Acts or the M2Water Act 1989.

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(3) The power of the Secretary of State 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.

(4) The Secretary of State shall not make an order under this section unless he has first consulted—

(a) **[**F21the Environment Agency**]**;

(b) the **[**F22Countryside Agency**]**, **[**F23EnglishNature**]** and the Countryside Council for Wales;

(c) the Historic Buildings and Monuments Commission for England;

(d) the Sports Council and the Sports Council for Wales; and

(e) such relevant undertakers and other persons as he considers it appropriate to consult.

(5) In this section "the other consolidation Acts" means the M3Water Resources Act 1991, the M4Statutory Water Companies Act 1991, the M5Land Drainage Act 1991 and the M6Water Consolidation (Consequential Provisions) Act 1991.

Textual Amendments

F19 Words in s. 5(2) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 5(2), **Sch. 2** (with art. 6)

F20 Word in s. 5(2) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 5(2), **Sch. 2** (with art. 6)

F21 Words in s. 5(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 98** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F22 Words in s. 5(4)(b) substituted (20.2.1999) by S.I. 1999/416, art. 3, **Sch. 1 para. 15(2)**

F23 Words in s. 5(4)(b) substituted (30.1.2001) by 2000 c. 38, ss. 73(4), 103(2), **Sch. 8 para. 1(p)(ii)**

Marginal Citations

M2 1989 c. 15.

M3 1991 c. 57.

M4 1991 c. 58.

M5 1991 c. 59.

M6 1991 c. 60.

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PART II

APPOINTMENTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

Making of appointments

6 Appointment of relevant 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 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 relevant 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.

(4) 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.

(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.

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(6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to the Director.

7 Continuity of appointments, replacement appointments etc.

(1) It shall be the duty of the Secretary of State 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 both—

(a) a company holding an appointment under this Chapter as water undertaker; and

(b) 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.

(2) Subject to the following provisions of this section—

(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.

(3) 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 replacing that company as a relevant undertaker 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.

(4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—

(a) that company 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 that company; 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 that company's appointment.

8 Procedure with respect to appointments and variations.

(1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.

(2) Within fourteen days after making an application under this section, the applicant shall—

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(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.

(3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall give notice—

(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.

(4) A notice under subsection (3) 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.

(5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, 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,

and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to the Director.

(6) In this section "the existing appointee", in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

9 Duties affecting making of appointments and variations.

(1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.

(2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult the Director.

(3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) above in relation to any part of an 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 that appointee.

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(4) It shall be the duty of the Secretary of State or, as the case may be, of the Director—

(a) in making an appointment or variation replacing a company as a relevant undertaker; and

(b) 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 any water or drainage charges,

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.

(5) In this section—

"existing appointee", in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

"new appointee", in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

"water or drainage charges" means

(a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage 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.

10 Transitional provision with respect to replacement appointments.

Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

Conditions of appointments

11 Power to impose conditions.

(1) An appointment under this Chapter may include—

(a) such conditions 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 7(4)(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.

(2) Conditions may be included by virtue of subsection (1)(a) above in an appointment under this Chapter whether or not they are 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.

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(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.

(4) Any provision included by virtue of subsection (3) above 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.

(5) 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.

(6) Where an instrument of appointment has been served under subsection (3) of section 6 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.

(7) If the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in subsection (6) above, 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.

(8) 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.

12 Determinations under conditions of appointment.

(1) Without prejudice to the generality of paragraph (a) of section 11(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; and

(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.

(2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—

(a) the Secretary of State or the Director; or

(b) 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.

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(3) 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—

(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—

(i) any regulations under subsection (4) below; and

(ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.

(4) 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.

(5) Without prejudice to the generality of the power conferred by subsection (4) above, regulations under that subsection may, in relation to any such reference as is mentioned in that subsection, apply (with or without modifications) the provisions of any enactment relating to references to the Monopolies Commission under the following provisions of this Act, the 1973 Act or the 1980 Act.

Modification of appointment conditions

13 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

(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—

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(a) the modification is a modification of provision contained in the appointment for the purposes of section 7(4)(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 16 below.

14 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—

(a) adding to the matters specified in the reference; or

(b) 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

(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—

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(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 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (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 1973 Act;

(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 1973 Act 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, there shall be not less than eight additional members of the Monopolies Commission appointed from time to time by the Secretary of State; 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

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

14A References under section 14: time limits

(1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Competition Commission on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.

(3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report

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cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under subsection (3) above in relation to the same reference.

(5) The Director shall, in the case of an extension made by him under subsection (3) above—

(a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(b) send a copy of what has been published by him under paragraph (a) above to the company whose appointment is mentioned in the reference.

14B References under section 14: powers of investigation

(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; and

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—

(a) for the words "published (or, in the case of a report under section 50 or 65, given)" there were substituted "made";

(b) for the words "published (or given)", in both places where they appear, there were substituted "made"; and

(c) the words "by this Part" were omitted.

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

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15 Reports on modification references.

(1) In making a report on a reference under section 14 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 14 above, the Monopolies Commission conclude that a company holding an appointment under this Chapter is a party to an agreement to which the **No commentary item could be found for this reference c13216881**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 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 14 above as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under section 14 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.

16 Modification following report.

(1) Where a report of the Monopolies Commission on a reference under section 14 above—

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(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 7(4)(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.

16A Commission's power of veto following report

(1) The Competition Commission (in this section referred to as "the Commission") may, within the period of four weeks after the date on which it is given a notice under section 16(4A) above, direct the Authority—

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 16(4A) above and on the application of the

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Commission, direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 16(4C) above) shall be extended by fourteen days.

(3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 16(4A)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under subsection (1) above, it—

(a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—

(i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 16(4C)(b) above.

(5) In exercising its power under subsection (4)(b) above, the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.

(6) Before making modifications under subsection (4)(b) above the Commission shall give notice—

(a) stating that it proposes to make the modifications and setting them out;

(b) stating the reason why it proposes to make them;

(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.

(7) A notice under subsection (4)(a) or (6) above shall be given—

(a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.

(8) The Commission may not make any modification under this section which the Authority could not make under section 16 above.

(9) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

(10) This section does not apply to the modification of the conditions of a company's appointment following a report of the Commission made before the commencement of section 55 of the Water Act 2003.

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16B Commission's power of veto following report: supplementary

(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.

(2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the Commission must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable) —

(a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

(b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) subsection (2) were omitted;

(b) in subsection (4), for the words "the publication of the report of the Commission on the reference concerned" there were substituted the publication by the Commission of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; and

(c) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—

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(ii) if earlier, the day on which a notice is published by the Commission under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

(10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

17 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—

(a) Parts I and II of Schedule 8 to the 1973 Act; or

(b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of the conditions of a company's appointment under this Chapter to such extent as may 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 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying out of any of the functions of a relevant 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 relevant undertaker; or

(c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying out of any of the functions of a relevant 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 7(4)(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) Expressions used in this section and in the 1973 Act or the 1980 Act have the same meanings in this section as in that Act.

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[F26CHAPTER 1A

LICENSING OF WATER SUPPLIERS

Textual Amendments

F26 Pt. 2 Ch. 1A inserted (1.4.2004 for specified provisions and purposes and 1.8.2005 for further specified provisions and purposes and 1.10.2005 for further specified provisions and 1.12.2005 otherwise) by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2004/641, **art. 3(l)**, Sch. 1 (with art. 6, Sch. 3); S.I. 2005/968, **art. 3(b)** (with savings in art. 4, Sch. 1, 2); S.I. 2005/2714, **arts. 2(h)**, **3(a)** (with Sch. para. 5)

Granting of licences

17A Licensing of water suppliers

(1) Subject to the following provisions of this Chapter—

(a) the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State (after consulting the Assembly), the Authority,

may grant to a company a licence (a "water supply licence") giving it the retail authorisation referred to in subsection (2) below, or both that and the supplementary authorisation referred to in subsection (5) below.

(2) The retail authorisation is an authorisation to the company to use a water undertaker's supply system for the purpose of supplying water to the premises of customers of the company (subject to subsection (3) below) in accordance with Chapter 2A of Part 3 of this Act.

(3) The following requirements must be satisfied in relation to each of the premises supplied by the company—

(a) the requirement that the premises are not household premises (as defined in section 17C below);

(b) the threshold requirement (construed in accordance with section 17D below); and

(c) the requirement that the premises are not being supplied with water by another company pursuant to a water supply licence,

and those requirements shall be enforceable under section 18 below by the Authority.

(4) A water supply licence which gives a company only the retail authorisation is referred to in this Chapter as a "retail licence".

(5) The supplementary authorisation is an authorisation to the company to introduce water into a water undertaker's supply system, by means of which any particular supply of water in accordance with the retail authorisation is to take place, in connection with that supply and in accordance with Chapter 2A of Part 3 of this Act.

(6) A water supply licence which gives a company also the supplementary authorisation is referred to in this Chapter as a "combined licence".

(7) Before granting a combined licence—

(a) the Secretary of State shall consult the Assembly; and

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(b) the Authority shall consult the Secretary of State and the Assembly.

(8) A water supply licence shall not be granted to a company unless—

(a) it is a limited company; and

(b) it is not a relevant undertaker.

(9) The Authority may, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of subsection (3) above.

(10) Before giving his approval to any guidance issued under subsection (9) above, the Secretary of State shall consult the Assembly.

Modifications etc. (not altering text)

C1 S. 17A(1) applied (1.4.2005) by The Water Industry (Determination of Turnover for Penalties) Order 2005 (S.I. 2005/477) ,{art. 2}

17B Section 17A: supplementary

(1) The Authority shall publish guidance issued under section 17A(9) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(2) The Authority may, with the approval of the Secretary of State, revise the guidance so issued.

(3) Before giving his approval to guidance revised under subsection (2) above, the Secretary of State shall consult the Assembly.

(4) Subsection (1) above applies to guidance revised under subsection (2) above as it applies to guidance issued under section 17A(9) above.

(5) In this Chapter, references to the supply system of a water undertaker are to the system comprising the following—

(a) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37 below and which are used for the purpose of conveying water from the undertaker's treatment works to the premises of customers; and

(b) any water mains and other pipes which—

(i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and

(ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),

and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.

(6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.

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(7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.

(8) A list of any works designated for the purposes of subsection (6) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

(9) References in this Act to a licensed water supplier are references to a company which is the holder for the time being of a water supply licence.

17C Meaning of household premises

(1) For the purposes of section 17A(3)(a) above, "household premises" means premises in which, or in any part of which, a person has his home.

(2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.

(3) The Secretary of State may by regulations make provision as to—

(a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and

(b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.

(4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

17D The threshold requirement

(1) This section applies for the purpose of construing the reference to the threshold requirement in section 17A(3)(b) above in relation to the supply of water to any premises.

(2) The requirement is that, at the time when the licensed water supplier first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually pursuant to the undertaking is not less than 50 megalitres.

(3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued by the Authority with the approval of the Secretary of State.

(4) Any guidance issued under subsection (3) above may, in particular—

(a) specify—

(i) the factors to be, and not to be, taken into account;

(ii) the assumptions to be made; and

(iii) the method of calculation to be employed,

in making estimates; and

(b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.

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(5) Before giving his approval to any guidance issued under that subsection, the Secretary of State shall consult the Assembly.

(6) Subsections (1) to (4) of section 17B above apply to guidance issued under subsection (3) above as they apply to guidance issued under section 17A(9) above.

(7) The Secretary of State may make provision by regulations as to the circumstances in which a licensed water supplier is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises (subject to subsection (12) below).

(8) The Secretary of State may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water (subject to subsection (12) below).

(9) Regulations under subsection (8) above—

(a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and

(b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.

(10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(11) Before making regulations under subsection (8) above, the Secretary of State shall consult—

(a) the Authority; and

(b) such other persons (if any) as the Secretary of State thinks it appropriate to consult.

(12) The powers to make regulations under subsections (7) and (8) above are exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

(13) Subsections (9) and (11) above apply in relation to regulations made by the Assembly under subsection (8) above by virtue of subsection (12) above as they apply in relation to regulations made by the Secretary of State under subsection (8) above.

17E Determinations by the Authority

(1) The Authority may determine, in a case referred to it by a licensed water supplier or a potential customer of a licensed water supplier, whether a proposed supply of water by the supplier to the customer would be in accordance with the retail authorisation given to the supplier in the licence.

(2) The matters which the Authority may determine include the following matters—

(a) the extent of the premises to be supplied for the purposes of section 17A(3) above;

(b) whether the premises to be supplied are household premises (as defined in section 17C above); and

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(c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),

and also include any other matter the determination of which is relevant to those matters.

17F Procedure for granting water supply licences

(1) An application for—

(a) a water supply licence;

(b) the variation of a retail licence so that it gives also the supplementary authorisation; or

(c) the variation of a combined licence so that it gives only the retail authorisation,

shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.

(2) Within the prescribed period after the making of such an application, the applicant shall publish in the prescribed manner a notice of the application containing such particulars as may be prescribed.

(3) The particulars which may be prescribed by virtue of subsection (2) above include the time within which, and the address at which, representations or objections with respect to the application may be made.

(4) If the Secretary of State or the Authority proposes to refuse the application, he or it shall give to the applicant a notice—

(a) stating that he or it proposes to refuse the application;

(b) stating the reasons why he or it proposes to refuse the application; and

(c) specifying the time within which representations or objections with respect to the proposed refusal may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The Secretary of State may make provision by regulations disapplying subsections (2) and (3) above in relation to an application under subsection (1) above in such circumstances as may be prescribed.

(6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.

(7) As soon as practicable after granting a licence or variation of a licence, the Secretary of State or the Authority shall serve a copy of the licence or licence as varied—

(a) on the licence holder;

(b) on the Assembly;

(c) on the Chief Inspector of Drinking Water;

(d) on the Environment Agency;

(e) on the Council;

(f) on each relevant undertaker;

(g) on each licensed water supplier (other than the holder of the licence in question);

(h) if the licence or variation is granted by the Secretary of State, on the Authority;

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(i) if the licence or variation is granted by the Authority, on the Secretary of State.

(8) Any sums received by the Secretary of State or by the Authority by virtue of this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C2 S. 17F(2)(3) excluded (1.8.2005) by The Water Supply Licence (Application) Regulations 2005 (S.I. 2005/1638), **reg. 5(7)**

Licence conditions

17G Water supply licence conditions

(1) A water supply licence may include—

(a) such conditions as appear to the Secretary of State or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on him or it by Part 1 of this Act;

(b) conditions requiring the rendering to the Secretary of State of a payment on the grant of a water supply licence, or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker's supply system.

(3) Conditions included in a water supply licence may—

(a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;

(b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder's not doing or doing them; and

(c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.

(4) For the purposes of subsection (3) above—

(a) the following are relevant persons—

(i) the Secretary of State;

(ii) the Authority;

(iii) the Assembly;

(iv) the Environment Agency; and

(b) "specified" means specified in the licence in question.

(5) Conditions included in a water supply licence may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined in accordance with the conditions.

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(6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.

(7) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

17H Standard conditions of water supply licences

(1) Such conditions as may be—

(a) determined by the Secretary of State (after consulting the Assembly); and

(b) published by him in such manner as he considers appropriate,

shall be standard conditions of water supply licences granted by the Secretary of State or the Authority.

(2) The standard conditions which may be determined may be different for—

(a) retail licences; and

(b) combined licences,

and standard conditions relating to the retail authorisation may be different depending on whether they are to relate to retail licences or combined licences.

(3) The power to determine standard conditions in relation to retail licences and combined licences may be exercised only before the grant of (respectively) the first retail licence and the first combined licence (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).

(4) The standard conditions for the purposes of water supply licences of either description may contain provision—

(a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;

(b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and

(c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.

(5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).

(6) Subject to the following provisions of this section, the Secretary of State or the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as he or it considers requisite to meet the circumstances of a particular case.

(7) Before excluding any standard conditions or making any modifications under subsection (6) above, the Secretary of State or the Authority shall give notice—

(a) stating that he or it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;

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(b) stating the reasons why he or it proposes to exclude the conditions or make the modifications; and

(c) specifying the time (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 exclusions or modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(8) A notice under subsection (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 Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and

(b) by serving a copy of the notice—

(i) on the Assembly;

(ii) on the Chief Inspector of Drinking Water;

(iii) if the notice is published by the Secretary of State, on the Authority;

(iv) if the notice is published by the Authority, on the Secretary of State.

(9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting the Assembly) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.

(10) The Secretary of State or the Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless he or it is of the opinion that the exclusions or modifications are such that—

(a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and

(b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).

(11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.

17I Modification of water supply licences by agreement

(1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular water supply licence.

(2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—

(a) are requisite to meet the circumstances of the particular case; and

(b) are such that—

(i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and

(ii) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).

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(3) Before making modifications under this section, the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it 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 Authority 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—

(i) the licence holder;

(ii) the Council;

(iii) the Secretary of State;

(iv) the Assembly; and

(v) the Chief Inspector of Drinking Water.

(5) If, within the period specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.

(6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

17J Modification of standard conditions of water supply licences

(1) Subject to the following provisions of this section, the Authority may modify the standard conditions of retail licences or combined licences.

(2) Where at any time the Authority modifies the standard conditions of retail licences or combined licences under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that description.

(3) Before making any modifications under this section, the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it proposes to make the modifications; and

(c) specifying the time (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 Authority 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

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(b) by serving a copy of the notice on—

(i) each relevant licence holder;

(ii) the Council;

(iii) the Secretary of State;

(iv) the Assembly; and

(v) the Chief Inspector of Drinking Water.

(5) If, within the time specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.

(6) The Authority may not under this section make any modifications of the standard conditions of retail licences or combined licences unless—

(a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;

(b) if one or more relevant licence holders give notice of objection to the Authority within that time—

(i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and

(ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or

(c) subsection (8) below applies to the case.

(7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.

(8) This subsection applies where the Authority is satisfied that—

(a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;

(b) the modifications would remove or reduce the burden without removing any necessary protection; and

(c) the modifications are such that no holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences.

(9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(10) Before making an order under subsection (6) above, the Secretary of State shall consult the Assembly.

(11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(12) Where the Authority modifies the standard conditions of retail licences or combined licences, the Authority shall—

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(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and

(b) publish the modifications in such manner as it considers appropriate.

(13) In this section "relevant licence holder", in relation to proposed modifications of standard conditions of retail licences or combined licences, means the holder of a licence of that description—

(a) which is to be modified under the proposals by the inclusion of any new standard condition; or

(b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 17H(4) above) at the time specified in the notice under subsection (3) above.

17K Water supply licences: modification references to Competition Commission

(1) The Authority may make to the Competition Commission (in this section and the following provisions of this Chapter referred to as "the 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 on of activities authorised or regulated by a particular licence; 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 licence.

(2) The Authority may make to the 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 on of activities authorised or regulated by retail licences or combined licences; 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 standard conditions of licences of that description.

(3) The Authority may, at any time, by notice given to the Commission vary a reference under this section by—

(a) adding to the matters specified in the reference; or

(b) excluding from the reference some of the matters so specified,

and on receipt of any such notice the Commission shall give effect to the variation.

(4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—

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(a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and

(b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.

(5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—

(a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and

(b) serve a copy of the reference or variation on—

(i) the licence holder or, as the case may be, the relevant licence holders;

(ii) the Council;

(iii) the Secretary of State;

(iv) the Assembly; and

(v) the Chief Inspector of Drinking Water.

(6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission—

(a) not to proceed with the reference; or

(b) not to give effect to the variation,

the Commission shall comply with the direction.

(7) It shall be the duty of the Authority, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the Commission—

(a) any information in the Authority's possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—

(i) requested by the Commission for that purpose; or

(ii) information which, in the Authority's 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 the Authority's power to give, in relation to any such matters,

and the Commission, for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.

(8) In this section and the following provisions of this Chapter—

"relevant conditions"—

(a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and

(b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and

"relevant licence holder" means the holder of a licence to which a reference under subsection (2) above relates.

(9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have

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regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.

17L References under section 17K: time limits

(1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Commission on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.

(3) The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under subsection (3) above in relation to the same reference.

(5) The Authority shall, in the case of an extension made by it under subsection (3) above—

(a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

17M References under section 17K: powers of investigation

(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; and

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—

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(a) for the words "published (or, in the case of a report under section 50 or 65, given)" there were substituted made;

(b) for the words "published (or given)", in both places where they appear, there were substituted made; and

(c) the words "by this Part" were omitted.

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

17N Water supply licences: reports on modification references

(1) In making a report on a reference under section 17K above, the Commission—

(a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;

(b) where it concludes 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 it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) For the purposes of section 17O below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 17K above.

(5) In making any report on a reference under section 17K above the Commission must have regard to the following considerations before disclosing any information.

(6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(7) The second consideration is the need to exclude from disclosure (so far as practicable) —

(a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

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(b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.

(9) A report of the Commission on a reference under section 17K above shall be made to the Authority.

(10) Subject to subsection (13) below, the Authority shall—

(a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—

(i) the licence holder;

(ii) the Council;

(iii) the Secretary of State; and

(iv) the Assembly; and

(b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(11) Subject to subsection (13) below, the Authority shall—

(a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—

(i) the Secretary of State; and

(ii) the Assembly; and

(b) not earlier than the relevant time—

(i) serve another copy on each relevant licence holder; and

(ii) not less than twenty-four hours after complying with sub-paragraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(12) For the purposes of subsections (10) and (11) above, the "relevant time" means—

(a) fourteen days after the copy of the report in question is received by the Secretary of State and the Assembly, or

(b) if copies are received by them on different days, fourteen days after the later day.

(13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—

(a) the public interest; or

(b) the commercial interests of any person.

(14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.

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17O Water supply licences: modification following report

(1) Where a report of the Commission on a reference under section 17K 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 relevant conditions; and

(d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

(3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.

(4) Before making modifications under this section, the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it 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.

(5) A notice under subsection (4) above shall be given—

(a) by publishing the notice in such manner as the Authority 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;

(b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and

(c) by serving a copy of the notice on—

(i) the Council;

(ii) the Secretary of State;

(iii) the Assembly; and

(iv) the Chief Inspector of Drinking Water.

(6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the Commission—

(a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and

(b) stating the reasons for making the modifications.

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(7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.

(8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—

(a) make the modifications set out in the notice; or

(b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.

(9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(10) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority shall—

(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and

(b) publish the modifications made for those purposes in such manner as it considers appropriate.

17P Water supply licences: Commission's power of veto following report

(1) The Commission may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Secretary of State may—

(a) within the period of four weeks after the date on which the Commission is given a notice under section 17O(6) above; and

(b) on the application of the Commission,

direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.

(3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under subsection (1) above, it shall—

(a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—

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(i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.

(5) In exercising its power under subsection (4)(b) above the Commission shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.

(6) Before making modifications under subsection (4)(b) above the Commission shall give notice—

(a) stating that it proposes to make the modifications and setting them out;

(b) stating the reason why it proposes to make them;

(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.

(7) A notice under subsection (4)(a) or (6) above shall be given—

(a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;

(b) by serving a copy of the notice on—

(i) the Authority;

(ii) the holder of the licence in question or, as the case may be, the relevant licence holders;

(iii) the Council;

(iv) the Secretary of State;

(v) the Assembly; and

(vi) the Chief Inspector of Drinking Water.

(8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

(9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(10) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

(11) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority shall—

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(a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time, and

(b) publish the modifications made for those purposes in such manner as it considers appropriate.

17Q Section 17P: supplementary

(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.

(2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the Commission must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable) —

(a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

(b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) subsection (2) were omitted,

(b) in subsection (4), for the words "the publication of the report of the Commission on the reference concerned" there were substituted the publication by the Commission of a notice under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted

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for that purpose, the latest day on which it was possible to give such a direction within the permitted period; and

(c) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—

(ii) if earlier, the day on which a notice is published by the Commission under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

(10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

17R Water supply licences: modification by order under other enactments

(1) Where the OFT, the Commission or the Secretary of State (the "relevant authority") makes a relevant order, the order may also provide for the modification of—

(a) the conditions of a particular retail licence or combined licence; or

(b) the standard conditions of retail licences or combined licences,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or

(b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a retail licence or combined licence.

(3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(4) Where at any time the relevant authority modifies under subsection (1)(b) above the standard conditions of retail licences or combined licences, the relevant authority—

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(a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and

(b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences of that description granted before that time.

(5) Where at any time the relevant authority modifies standard conditions of retail licences or combined licences under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.

(6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.**]**

CHAPTER II

ENFORCEMENT OF INSOLVENCY

Enforcement orders

18 Orders for securing compliance with certain provisions.

(1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part **[**F27or a licence under Chapter 1A of this Part**]** the Secretary of State or the Director is satisfied—

(a) that that company is contravening—

(i) any condition of the company's appointment **[**F28or licence**]** in relation to which he is the enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority;

or

(b) that that company **[**F29is likely to contravene any such condition or requirement**]** ,

he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

[F30(1A) Subject to subsection (2) and sections 19 and 20 below, where—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—

(i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding a licence under Chapter 1A of this Part; or

(ii) is likely to cause or contribute to any such contravention; or

(b) in the case of any company holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that the company—

(i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of

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subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or

(ii) is likely to cause or contribute to any such contravention,

he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.**]**

(2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part **[**F31or a licence under Chapter 1A of this Part**]**—

(a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) **[**F32or (1A)**]** above; and

(b) it appears to him that it is requisite that a provisional enforcement order be made,

he may (instead of taking steps towards the making of a final order) by a provisional enforcement 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 enforcement 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 or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to sections 19 and 20 below, where the Secretary of State or the Director has made a provisional enforcement 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 or other requirement in relation to which he is the enforcement authority; or

[F33(ii) is likely to contravene any such condition or requirement;**][**F34or

(iii) is causing or contributing to a contravention of any such condition or requirement; or

(iv) is likely to cause or contribute to any such contravention;**]**

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) An enforcement order—

(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.

(6) For the purposes of this section and the following provisions of this Act—

(a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part **[**F35or a licence under Chapter 1A of this Part**]** shall be such of the requirements of any enactment or of any subordinate legislation as—

(i) are imposed in consequence of that appointment **[**F36or licence**]** ; and

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(ii) 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 Chapter I of this Part **[**F37or of a licence under Chapter 1A of this Part**]** ; and

(c) the enforcement authority in relation to each of the statutory and other 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.

(7) In this section and the following provisions of this Chapter—

"enforcement order" means a final enforcement order or a provisional enforcement order;

"final enforcement order" means an order under this section other than a provisional enforcement order;

"provisional enforcement 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.

[F38(8) Where any act or omission—

(a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or

(b) causes or contributes to a contravention of any such condition or requirement,

the only remedies for, or for causing or contributing to, 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, or causing or contributing to, such a contravention.**]**

Textual Amendments

F27 Words in s. 18(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F28 Words in s. 18(1)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F29 Words in s. 18(1)(b) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(2)(a)**, 105(3); S.I. 2004/2528, **art. 2(f)** (with art. 4, Sch.)

F30 S. 18(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F31 Words in s. 18(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(4)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F32 Words in s. 18(2)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(4)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F33 S. 18(4)(a)(ii) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(2)(b)**, 105(3); S.I. 2004/2528, **art. 2(f)** (with savings in art. 4)

F34 S. 18(4)(iii)(iv) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F35 Words in s. 18(6)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(a)(i)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

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F36 Words in s. 18(6)(a)(i) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(a)(ii)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F37 Words in s. 18(6)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

F38 S. 18(8) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

Modifications etc. (not altering text)

C3 S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 20(3)**, 225(2).

C4 S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 197(6)**, 225(2).

C5 S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 203(5)**, 225(2).

C6 S. 18: power to extend conferred (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 219(2)(a)**, 225(2).

C7 S. 18 extended (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(2)**.

C8 S. 18 extended (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 52(3)**, 66

C9 S. 18 extended (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 25(7)**, 66

19 Exceptions to duty to enforce.

(1) **[**F39Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000**]**Neither the Secretary of State nor the Director shall be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if he is satisfied—

(a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;

[F40(aa) that the extent to which the company caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;**]**

(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.

[F41(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.**]**

(2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement 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.

(3) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), **[**F42(aa),**]**(b) or (c) of subsection (1) above **[**F43or, in the case of the Director, is satisfied as mentioned in subsection (1A) above,**]** he shall—

(a) serve notice that he is so satisfied on the company;

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(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.

(4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Textual Amendments

F39 Words in s. 19(1) inserted (14.6.2000) by S.I. 2000/1297, **art. 8**

F40 S. 19(1)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F41 S. 19(1A) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(6)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**

F42 Words in s. 19(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F43 Words in s. 19(3) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(7)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**

Modifications etc. (not altering text)

C10 S. 19(1)(b) restricted (14.6.2000) by S.I. 2000/1297, **art. 2**

C11 S. 19(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

20 Procedure for enforcement orders.d1>

(1) Before making a final enforcement order **[**F44under section 18(1) above**]** or confirming a provisional enforcement order **[**F45in a case in which section 18(4)(a)(i) or (ii) above applies**]** , 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—

(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 **[**F46twenty-one**]** 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.

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[F47(1A) Before making a final enforcement order under section 18(1A) above or confirming a provisional enforcement order in a case in which section 18(4)(a)(iii) or (iv) above applies, the Secretary of State or the Authority shall give notice—

(a) stating that he or it proposes to make or confirm the order and setting out the effect of the order;

(b) setting out—

(i) the condition or requirement for the purposes of securing compliance with which the order is to be made or confirmed;

(ii) the acts or omissions which, in his or its opinion, cause or contribute to or would cause or contribute to the contravention of that condition or requirement; and

(iii) the other facts which, in his or its opinion, justify the making or confirmation of the order; and

(c) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections 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) **[**F48or (1A)**]** 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 enforcement order with modifications, or confirm a provisional enforcement 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 **[**F49twenty-one**]** 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 an enforcement order or confirming a provisional enforcement 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

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(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 an enforcement order, other than an unconfirmed provisional order, 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

(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 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Textual Amendments

F44 Words in s. 20(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F45 Words in s. 20(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F46 Words in s. 20(1)(c) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(3)(4)**, 105(3); S.I. 2004/2528, **art. 2(f)**

F47 S. 20(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F48 Words in s. 20(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 6(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F49 Words in s. 20(4)(b) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(3)(4)**, 105(3); S.I. 2004/2528, **art. 2(f)**

Modifications etc. (not altering text)

C12 S. 20(9): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

21 Validity of enforcement orders.

(1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—

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(a) that its making or confirmation was not within the powers of section 18 above; or

(b) that any of the requirements of section 20 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 an enforcement order shall not be questioned in any legal proceedings whatsoever.

22 Effect of enforcement order.

(1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

(2) Where a duty is owed by virtue of subsection (1) 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.

(3) In any proceedings brought against any company in pursuance of subsection (2) 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 68(1)(a) **[**[F50]or (1A)(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.

(4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement 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.

(5) In subsection (4) above "the relevant enforcement authority", in relation to any enforcement 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.

Textual Amendments

F50 Words in s. 22(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 7**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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[F51 Financial penalties

Textual Amendments

F51 Ss. 22A-22F and preceding cross-heading inserted (1.10.2004 for specified purposes and otherwise 1.4.2005) by Water Act 2003 (c. 37), **ss. 48(1)**, 105(3); S.I. 2004/2528, **art. 2(e)** (with savings in art. 4); S.I. 2005/968, **art. 2(i)** (with savings in art. 4, Sch. 1, 2)

22A Penalties

(1) Where the Authority is satisfied—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—

(i) has contravened or is contravening any condition of the appointment;

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any condition of the licence; or

(iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or

(b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—

(i) has contravened or is contravening any condition of the licence; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment,

the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where the Authority, the Secretary of State or the Assembly is satisfied—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—

(i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any such requirement; or

(b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—

(i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(3) In a case in which—

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(a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or

(b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,

references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.

(4) Before imposing a penalty on a company under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the "enforcement authority") shall give notice—

(a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;

(b) setting out the condition, requirement or standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and

(d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—

(a) setting out the proposed variation and the reasons for it; and

(b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—

(a) stating that he or it has imposed a penalty on the company and its amount;

(b) setting out the condition, requirement or standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and

(d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the company, by which the penalty is required to be paid.

(7) The company may, within twenty-one days of the date of service on it of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.

(8) Any notice required to be given under this section shall be given—

(a) by publishing the notice in such manner as the enforcement authority 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;

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(b) by serving a copy of the notice on the company;

(c) by serving a copy of the notice on the Council; and

(d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.

(9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.

(10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.

(11) No penalty imposed by an enforcement authority under this section may exceed 10% of the turnover of the company (determined in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).

(12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(13) An enforcement authority shall not impose a penalty under this section where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

22B Statement of policy with respect to penalties

(1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure an enforcement authority shall have regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.

(3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.

(4) Publication under this section shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.

22C Time limits on the imposition of financial penalties

(1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of twelve months from the time of the contravention or failure, unless before the end of that period—

(a) the notice under section 22A(4) above relating to the penalty is served on the company under section 22A(8) above; or

(b) a notice relating to the contravention or failure is served on the company under section 203(2) below.

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(2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the company under section 22A(8) above—

(a) within three months from the confirmation of the provisional order or the making of the final order; or

(b) where the provisional order is not confirmed, within six months from the making of the provisional order.

22D Interest and payment of instalments

(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.

(2) If an application is made under subsection (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the enforcement authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

22E Appeals

(1) If the company on which a penalty is imposed is aggrieved by—

(a) the imposition of the penalty;

(b) the amount of the penalty; or

(c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the company may make an application to the court under this section.

(2) An application under subsection (1) above must be made—

(a) within forty-two days from the date of service on the company of a notice under section 22A(6) above; or

(b) where the application relates to a decision of an enforcement authority on an application by the company under section 22A(7) above, within forty-two days from the date the company is notified of the decision.

(3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4) below, the court—

(a) may quash the penalty;

(b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or

(c) in the case of an application under subsection (1)(c) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.

(4) The grounds falling within this subsection are—

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(a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;

(b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or

(c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

(5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.

(7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

(8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

(9) In this section "the court" means the High Court.

22F Recovery of penalties

Where a penalty imposed under section 22A(1) or (2) above, or any portion of it, has not been paid by the date on which it is required to be paid and—

(a) no application relating to the penalty has been made under section 22E above during the period within which such an application can be made; or

(b) an application has been made under that section and determined,

the enforcement authority may recover from the company, as a civil debt due to him or it, any of the penalty and any interest which has not been paid.**]**

Special administration orders

23 Meaning and effect of special administration order.

(1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part **[**F52or which is a qualifying licensed water supplier**]** and 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—

(a) for the achievement of the purposes of such an order; and

(b) in a manner which protects the respective interests of the members and creditors of the company.

(2) The purposes of a special administration order made in relation to any company **[**F53holding an appointment under Chapter 1 of this Part**]** shall be-

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(a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, 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 which replaces the former company as a relevant undertaker).

[F54(2A) The purposes of a special administration order made in relation to any company which is a qualifying licensed water supplier shall be—

(a) the transfer to another company or companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below may be properly carried on; and

(b) the carrying on of those activities pending the making of the transfer.**]**

(3) Schedule 3 to this Act shall have effect for applying provisions of the M7Insolvency Act 1986 where a special administration order is made.

(4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which

[F55(a) a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter 1 of this Part; or

(b) a company carries on activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below formerly carried on by another company,

in pursuance of a special administration order.**]**

(5) In this section "business" and "property" have the same meanings as in the M8Insolvency Act 1986.

[F56(6) For the purposes of this section, sections 24 to 26 below and Schedule 2 to this Act, a licensed water supplier is a qualifying licensed water supplier if—

(a) it is the holder of a combined licence (within the meaning of Chapter 1A of this Part); and

(b) the introduction of water by it which is permitted under section 66B or 66C below is designated as a strategic supply under section 66G below or the introductions of water by it which are so permitted are designated as a collective strategic supply under section 66H below.**]**

Textual Amendments

F52 Words in s. 23(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F53 Words in s. 23(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F54 S. 23(2A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F55 Words in s. 23(4) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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F56 S. 23(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)
C13 S. 23(1) restricted (15.11.1999) by S.I. 1999/2787, **art. 4**

Marginal Citations
M7 1986 c. 45.
M8 1986 c. 45.

24 Special administration orders made on special petitions.

(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 Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

[F57(1A) If on an application made to the High Court by petition presented—

(a) by the Secretary of State (after consulting the Assembly); or

(b) with the consent of the Secretary of State (after consulting the Assembly), the Authority,

the Court is satisfied in relation to any company which is a qualifying licensed water supplier that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.**]**

(2) The grounds mentioned in **[**F58subsections (1) and (1A)**]** 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 any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment **[**F59or licence**]** ;

(b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—

(i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and

(ii) if it is a provisional enforcement order, has been confirmed,

as is serious enough to make it inappropriate for the company to continue to hold its appointment **[**F59or licence**]** ;

[F60(bb) in the case of a company which is a qualifying licensed water supplier, that—

(i) action taken by the company has caused a contravention by a water undertaker of any principal duty; and

(ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;**]**

(c) that the company is or is likely to be unable to pay its debts;

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(d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under section 440 of the [M9]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 Chapter I of this Part **[**[F61]or was not a qualifying licensed water supplier**]** ; or

(e) **[**[F62]in the case of a company holding an appointment under Chapter 1 of this Part,**]**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 section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.

(3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the [M10]Insolvency Act 1986 ("the 1986 Act"); and no such petition shall be withdrawn except with the leave of the High Court.

(4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a special administration order in relation to any company as they apply on the hearing of a petition for an administration order.

(5) Subsections (1), (2) and (4) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a special administration order in relation to any company as if—

(a) the reference in subsection (1) to an administration order were a reference to a special administration order;

(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 18 above.

(6) For the purposes of this section a company is unable to pay its debts if—

(a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or

(b) 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).

[[F63](7) In this section "principal duty" means—

(a) in relation to a company holding an appointment under Chapter 1 of this Part, a requirement imposed on the company by section 37 or 94 below;

(b) in relation to a company which is a qualifying licensed water supplier, any condition of its licence or any statutory requirement imposed on it in consequence of its licence.**]**

Textual Amendments

F57 S. 24(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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F58 Words in s. 24(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F59 Words in s. 24(2)(a)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F60 S. 24(2)(bb) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(c)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F61 Words in s. 24(2)(d) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(d)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F62 Words in s. 24(2)(e) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(3)(e)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F63 S. 24(7) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 9(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Marginal Citations
M9 1985 c. 6.
M10 1986 c. 45.

25 Power to make special administration order on winding-up petition.

On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part **[**F64or is a qualifying licensed water supplier**]**—

(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 **[**F65or a qualifying licensed water supplier**]** , it shall, instead, make a special administration order in relation to the company.

Textual Amendments
F64 Words in s. 25 inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 10(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F65 Words in s. 25(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 10(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Restrictions on voluntary winding up and insolvency proceedings

26 Restrictions on voluntary winding up and insolvency proceedings.

(1) Where a company holds an appointment under Chapter I of this Part **[**F66or is a qualifying licensed water supplier**]**—

(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 M11Insolvency 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) In this section "security" and "property" have the same meanings as in Parts I to VII of the M12Insolvency Act 1986.

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Textual Amendments

F66 Words in s. 26 inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 11**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Marginal Citations

M11 1986 c. 45.
M12 1986 c. 45.

CHAPTER III

PROTECTION OF CUSTOMERS ETC..

General provisions

27 General duty of Director to keep matters under review.

(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

[F67(a) water undertakers or sewerage undertakers carry out functions; and

(b) licensed water suppliers carry on activities authorised by their licences.**]**

(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 Chapter I of this Part of the functions of relevant undertakers; or

[F68(aa) the carrying on by companies holding licences under Chapter 1A of this Part of the activities authorised by their licences; or**]**

(b) any **[**F69company mentioned in paragraph (a) or (aa) above**]** ,

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 Parts II to V and VII of this Act 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 **[**F70the OFT**]** to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to—

(a) the functions of either description of relevant undertaker; or

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(b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part**[**F71 or

(c) the activities authorised by retail licences or combined licences (within the meanings of Chapter 1A of this Part); or

(d) the carrying on of any such activities by a company holding any such licence.**]**

Textual Amendments

F67 S. 27(1)(a)(b) substituted (1.12.2005) for words by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F68 S. 27(2)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(3)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F69 Words in s. 27(2)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(3)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F70 Words in s. 27(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(7)**; S.I. 2003/766, **art. 2**, Sch. (with transitional and transitory provisions in art. 3)

F71 S. 27(4)(c)(d) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 12(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

C14 S. 27(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

*I*F72*The Consumer Council for Water*

Textual Amendments

F72 Ss. 27A, 27B and preceding cross-heading inserted (1.8.2005 for specified provisions and purposes and 1.10.2005 for further specified provisions and purposes and 1.4.2006 otherwise) by Water Act 2003 (c. 37), **ss. 35(1)**, 105(3); S.I. 2005/968, **art. 3(a)**; S.I. 2005/2714, **arts. 2(a)**, **4(b)** (with Sch. para. 8)

27A Establishment of the Council and committees

(1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as "the Council") for the purpose of carrying out the functions of the Council under this Act.

(2) In Welsh the Council may be known as "Cyngor Defnyddwyr Dŵr".

(3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(4) The Council shall establish such committees of the Council—

(a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and

(b) as the Secretary of State may direct, for other relevant undertakers.

(5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.

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(6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.

(7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—

(a) establish such committees for relevant undertakers as it considers appropriate; or

(b) alter the allocation of a relevant undertaker to a committee established under this section.

(8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.

(9) A committee established under this section is referred to in this Act as a "regional committee".

(10) The purposes of a regional committee shall be—

(a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;

(b) such other purposes as the Council may determine.

(11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.

(12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.

(13) In this Chapter—

"consumers" includes both existing and future consumers;

"the interests of consumers" means the interests of consumers in relation to—

(a) the supply of water by means of a water undertaker's supply system to premises either by water undertakers or by licensed water suppliers acting in their capacity as such; and

(b) the provision of sewerage services by sewerage undertakers; and

"consumer matter" means any matter connected with the interests of consumers.

27B Co-operation between Council and other authorities

(1) This section imposes duties on—

(a) the Authority and the Council;

(b) the Council and the Secretary of State; and

(c) the Council and the Assembly.

(2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—

(a) co-operation and the exchange of information between them; and

(b) the consistent treatment of matters which affect both of them.

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(3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.

(4) Arrangements under this section shall be kept under review by the parties.

(5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.

(6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).

(7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.**]**

[F73 General functions of the Council

Textual Amendments

F73 Ss. 27C-27G and preceding cross-heading inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 43(1)**, 105(3); S.I. 2005/2714, **art. 2(c)** (with Sch. 2 para. 8)

27C The interests of consumers

(1) In considering the interests of consumers, the Council shall have regard to the interests of—

(a) individuals who are disabled or chronically sick;

(b) individuals of pensionable age;

(c) individuals with low incomes;

(d) individuals residing in rural areas; and

(e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(2) For the purposes of subsection (1) above, premises are not eligible to be supplied by a licensed water supplier if—

(a) they are household premises (as defined in section 17C above); or

(b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.

27D Acquisition and review of information

The Council shall have the function of obtaining and keeping under review—

(a) information about consumer matters (including matters affecting consumers in different areas); and

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(b) information about the views of consumers on such matters (including the views of consumers in different areas).

27E Provision of advice and information to public authorities

(1) The Council shall have the function of—

(a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and

(b) representing the views of consumers on such matters (including the views of consumers in different areas),

to public authorities, companies holding an appointment under Chapter 1 of this Part, licensed water suppliers and other persons whose activities may affect the interests of consumers.

(2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

(a) the individual or body has consented to the disclosure;

(b) it is information that is available to the public from some other source; or

(c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

(7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.

(8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

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27F Provision of information to consumers

(1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.

(2) That function may be exercised by—

(a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or

(b) furnishing information to any consumer (whether in response to a request or otherwise).

(3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.

(4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

27G Power to publish information and advice about consumer matters

(1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

(2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be published if—

(a) the individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

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(7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).

[F74 27H Provision of information to the Council

(1) The Council may direct—

(a) the Authority;

(b) a company holding an appointment under Chapter 1 of this Part; or

(c) a licensed water supplier,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

(2) A body to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.

(3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to whom the direction is given.

(4) If a body to whom a direction under this section is given fails to comply with the direction it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

Textual Amendments

F74 Ss. 27H-27K inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with Sch. 2 para. 8)

27I Publication of notice of reasons

(1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.

(2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be published if—

(a) that individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

(a) consult that individual or body; and

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(b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

(7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

Textual Amendments

F74 Ss. 27H-27K inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with Sch. 2 para. 8)

27J Provision of information by the Council

(1) Any of—

(a) the Authority;

(b) the Secretary of State; or

(c) the Assembly,

may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.

(2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.

(3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.

(4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

Textual Amendments

F74 Ss. 27H-27K inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with Sch. 2 para. 8)

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27K Sections 27H to 27J: supplementary

(1) The Secretary of State may make regulations prescribing—

(a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or

(b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.

(2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment or a licensed water supplier to comply with a direction under section 27H above to the Authority.

(3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.

(4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—

(a) consider any representations made by either party;

(b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and

(c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.

(5) The duty of a company holding an appointment and a licensed water supplier to comply with an order under this section shall be enforceable by the Authority under section 18 above.

(6) A notice under subsection (4) above may be published by either party to the reference.

(7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.**]**

Textual Amendments

F74 Ss. 27H-27K inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with Sch. 2 para. 8)

[X1]28 Customer service committees.

[F75] . . . . . .

Editorial Information

X1 The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

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Textual Amendments

F75 S. 28 repealed (1.10.2005) by Water Act 2003 (c. 37), ss. 35(4), 105(3), **Sch. 9 Pt. 2**; S. I. 2005/2714, **art. 2(a)(m)**

[F76X2 29 Consumer complaints

(1) This section applies to a complaint which any person ("the complainant") has against a relevant undertaker or a licensed water supplier in relation to any matter connected with the functions of that undertaker or the services provided by that licensed water supplier.

(2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.

(3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.

(4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.

(5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—

(a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided by a licensed water supplier using the supply system of a water undertaker whose area is wholly or mainly in Wales; or

(b) to the Secretary of State, in any other case.

(6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.

(7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.

(8) The Council is not required to investigate any matter if it appears to the Council that—

(a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker or the licensed water supplier;

(b) the relevant undertaker or the licensed water supplier has not been given a reasonable opportunity to deal with the complaint; or

(c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.

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(9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker or the licensed water supplier about anything to which the complaint relates.

(10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.

(11) A report under subsection (10) above may include information about—

(a) any representations made by the Council under subsection (9) above; and

(b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.

(12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.

(13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—

(a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and

(b) to have been made by or on behalf of the complainant,

that person shall refer the matter to the Council.**]**

Editorial Information

X2 The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F76 S. 29 substituted (1.10.2005) by Water Act 2003 (c. 37), **ss. 46(1)**, 105(3); S.I. 2005/2714, **art. 2(f)** (with Sch. paras. 3, 8)

[F77**29A** Power of Council to investigate other matters

(1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.

(2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.

(3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the OFT, the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.

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(4) Subject to subsection (5) below, the Council may—

(a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and

(b) publish any such report in such manner as the Council thinks appropriate.

(5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—

(a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and

(b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.

(6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—

(a) that individual or body has consented to the disclosure;

(b) it is information that is available to the public from some other source; or

(c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—

(a) that individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.**]**

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Textual Amendments

F77 S. 29A inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 47**, 105(3); S.I. 2005/2714, **art. 2(g)** (with Sch. 2 para. 8)

X3 30 Duties of Director with respect to complaints

F78 . . . . . .]

Editorial Information

X3 The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F78 S. 30 repealed (1.10.2005) by Water Act 2003 (c. 37), ss. 46(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/2714, **art. 2(f)(m)** (with Sch. paras. 3, 8)

[F79 Further functions of Authority

Textual Amendments

F79 Ss. 30ZA, 30ZB and preceding cross-heading inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 43(2)**, 105(3); S.I. 2005/2714, **art. 2(c)** (with Sch. 2 para. 8)

30ZA Duty to consult Council

(1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—

(a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or

(b) the Authority considers that it would be clearly inappropriate to consult the Council.

(2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

30ZB Copies of notices

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.

[X4 30A F80 Determination of disputes by the Director.

(1) In this section "relevant dispute" means a dispute which, by virtue of any provision of this Act, may be referred to the Director for determination under this section.

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(2) The practice and procedure to be followed in connection with the reference to the Director of any relevant dispute shall be such as he considers appropriate.

(3) Where the Director determines any dispute under this section he shall give his reasons for reaching his decision with respect to the dispute.

(4) On making a determination under this section the Director may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Director) as he considers appropriate.

(5) A determination under this section—

(a) shall be final; and

(b) shall be enforceable as if it were a judgment of a county court, in so far as it includes such provision as to costs or expenses as is mentioned in subsection (4) above.

(6) The Director shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(7) In including in any determination under this section any provision as to costs or expenses, the Director shall have regard to the conduct and means of the parties and any other relevant circumstances.**]]**

Editorial Information

X4 The insertion of the new cross-heading "Further functions of Authority" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F80 S. 30A inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s.34**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 4, Sch. Pt.II

Provisions with respect to competition

31 Functions of Director with respect to competition.

(1) [F81] . . . . . .

[[F82](2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the OFT.

(2A) This subsection applies to the functions of the OFT under Part 4 of the 2002 Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.**]**

[[F83](3) The Director shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to —

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act,

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(c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or

(d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.**]**

[F84(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the 2002 Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).**]**

[F85(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to **[**F86the OFT**]** are to be read as including a reference to the Director (**[**F87except in sections 31D(1) to (6), 38(1) to (6)**]** , 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).**]**

[F88(5) Before the OFT or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the OFT nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.**]**

(7) It shall be the duty of the Director, for the purpose of assisting the **[**F89Competition Commission**]** in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) F90. . . 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.

(8) If any question arises as to whether subsection (2) or (3) above F91. . . 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) **[**F92Part 4 of the 2002 Act**]**; or

[F93(b) Part I of the Competition Act 1998 (**[**F94other than sections 31D(1) to (6), 38(1) to (6)**]** and 51),**]**

by or in relation to the Director on the ground that it should have been done by or in relation to **[**F95the OFT**]** .

[F96(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to the Director.**]**

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(9) [F97] . . . . . .

Textual Amendments

F81 S. 31(1) ceases to have effect (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. (8)(a), Sch. 26; S.I. 2003/766, **art. 2**, Sch. (with transitional and transitory provisions in art. 3)

F82 S. 31(2)(2A) substituted (20.6.2003) for s. 31(2) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(2)**; S.I. 2003/ 1397, {art. 2(1)}, Sch.

F83 S. 31(3) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 5, **Sch. 2 para.4(2)(a)**

F84 S. 31(4) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(3)**; S.I. 2003/ 1397, {art. 2(1)}, Sch.

F85 S. 31(4A) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(8)** (with s. 73); S.I. 1997/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**

F86 Words in s. 31(4A) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(8)(c)**; S.I. 2003/766, **art. 2**, Sch. (with transitional and transitory provisions in art. 3)

F87 Words in s. 31(4A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), **reg. 5**, Sch. 2 para. 4(2)(b)

F88 S. 31(5)(6) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(4)**; S.I. 2003/1397, art. 2(1), Sch.

F89 Words in s. 31(7) substituted (1.4.1999) by S.I. 1999/506, **art. 30(b)**

F90 Words in s. 31(7) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. II para. 5(5)(11), **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**

F91 Words in s. 31(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 178, 179, Sch. 9 para. 19(5)(a), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 10)

F92 Words in s. 31(8) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(5)(b)**; S.I. 2003/1397, art. 2(1), Sch.

F93 S. 31(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(12)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**

F94 Words in s. 31(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 5, **Sch. 2 para. 4(2)(c)**

F95 Words in s. 31(8) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(8)(d)**; S.I. 2003/766, **art. 2**, Sch. (with transitional and transitory provisions in art. 3)

F96 S. 31(8A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(6)**; S.I. 2003/1397, art. 2(1), Sch.

F97 S. 31(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 278, 279, Sch. 9 para. 19(7), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 10)

Modifications etc. (not altering text)

C15 S. 31(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 para. 5(1)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
S. 31(3) amended (1.3.2000) by 1998 c. 41, ss. 54, 66(5), **Sch. 10 Pt. I para. 5(1)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**

[F98 32 Duty to refer merger of water or sewerage undertakings.

Subject to section 33 below, it shall be the duty of the OFT to make a merger reference to the Competition Commission if the OFT believes that it is or may be the case—

(a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or

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(b) that such a merger has taken place 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.**]**

Textual Amendments

F98 Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in arts. 3-5)

[F99 33 Exclusion of small mergers from duty to make reference.

(1) The OFT shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the OFT—

(a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or

(b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.

(2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—

(a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or

(b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.

(3) For the purposes of subsection (1)(b) above—

(a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and

(b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.

(4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.

(5) Regulations under subsection (4) above may, in particular, make provision as to—

(a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and

(b) the date or dates by reference to which an enterprise's turnover is to be determined.

(6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).

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(7) The Secretary of State may by regulations amend subsection (1) above so as—

(a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or

(b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.

(8) Regulations under subsection (7) above—

(a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and

(b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.

(9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.**]**

Textual Amendments

F99 Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in arts. 3-5)

[F100 34 Application of provisions of Enterprise Act 2002

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.**]**

Textual Amendments

F100 Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in arts. 3-5)

[F101 35 Construction of merger provisions.

(1) In this Chapter (including Schedule 4ZA)—

"enterprise" has the same meaning as in Part 3 of the 2002 Act; and

"water enterprise" means an enterprise carried on by a **[**F102relevant undertaker**]**.

(2) References in this Chapter (including Schedule 4ZA), 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 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.

(3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the OFT or the Secretary of State, in a case in which, or to any extent to which, the OFT is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.

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(4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.

(5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the OFT is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.**]**

Textual Amendments

F101 Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in arts. 3-5)

F102 S. 35(1): words in definition of "water enterprise" substituted (29.12.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(2)**; S.I. 2004/2528, **art. 3** (with savings in art. 4)

[F103 Disclosure of arrangements for remuneration

Textual Amendments

F103 S. 35A and preceding cross-heading inserted (1.10.2004) by Water Act 2003 (c. 37), ss. 50, 105(3); S.I. 2004/2528, **art. 2(g)**

35A Remuneration and standards of performance

(1) This section applies to any company holding an appointment under Chapter 1 of this Part.

(2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—

(a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and

(b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.

(3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.

(4) A description under subsection (2)(b) above must include in particular—

(a) a statement of when the arrangements were made;

(b) a description of the standards of performance in question;

(c) an explanation of the means by which the standards of performance are assessed; and

(d) an explanation of how the remuneration was calculated.

(5) The statement required by subsection (2) above must also state—

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(a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or

(b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.

(6) A description under subsection (5) above must—

(a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and

(b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.

(7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.

(8) The statement required by subsection (2) above—

(a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and

(b) may be published by the Authority in such manner as it may consider appropriate.

(9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.

(10) In this section—

"remuneration" in relation to a director of a company—

(a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and

(b) includes remuneration in respect of any of his services while a director of the company;

"standards of performance", in relation to any company, include any standards which are—

(a) set by or under any conditions of the company's appointment under Chapter 1 of this Part;

(b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or

(c) set or agreed to by the company.

(11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.**]**

CHAPTER IV

INTERPRETATION OF PART II

36 Interpretation of Part II.

(1) In this Part—

[F104"the 1973 Act" means the M13Fair Trading Act 1973; and**]**

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"the 1980 Act" means the [M14]Competition Act 1980.

[[F105]"the 2002 Act" means the Enterprise Act 2002;**]**

(2) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following, that is to say—

(a) the 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 area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or

(b) a variation by virtue of which the area for which a company holds an appointment under Chapter I of this Part is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

(3) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I of this Part—

(a) in relation to an appointment or variation by virtue of which that company 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 that company; or

[F106](ii) . . . . . .

and

(b) in relation to an appointment or variation by virtue of which that company 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 **[**[F107]or drain**]** ; or

[F108](ii) . . . . . .

(4) In this section—

"distribution main" means a water main that is not a trunk main; and

[[F109]"relevant sewer or drain", in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—

(a) a public sewer or lateral drain vested in that company;

(b) a sewer or lateral drain in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;

(c) a sewer or lateral drain in relation to which that company has entered into an agreement under section 104 below.**]**

Textual Amendments

F104 Words in s. 36(1) ceased to have effect (29.12.2004) and repealed (prosp.) by Enterprise Act 2002 (c. 40), ss. 168(9), 278, 279, **Sch. 9 para. 8(a)**, Sch. 26; S.I. 2004/3233, **art. 2**, Sch. (with arts. 3-5)

F105 Words in s. 36(1) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 8(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.

F106 S. 36(3)(a)(ii) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 40(5)(a), 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

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F107 Words in s. 36(3)(b)(i) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(2)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)
F108 S. 36(3)(b)(ii) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 40(5)(b), 56(7), **Sch.2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
F109 S. 36(4): definition substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(2)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)

Marginal Citations
M13 1973 c. 41.
M14 1980 c. 21.

PART III

WATER SUPPLY

Modifications etc. (not altering text)
C16 Part III: definition of "consumer" applied (01.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 176(7)**, 225(2).
C17 Part III: definition of "water fittings" applied (01.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 15(1)**, 17(2).

CHAPTER I

GENERAL DUTIES OF WATER UNDERTAKERS

37 General duty to maintain water supply system etc.

(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 Part.

(2) The duty of a water undertaker under this section 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.

(3) The obligations imposed on a water undertaker by the following Chapters of this Part, 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

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this section or section 38 below and shall not be in any way qualified by any such provision.

Modifications etc. (not altering text)
C18 S. 37 saved (01.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 19(2)**, 225(2).

[F110 37A Water resources management plans: preparation and review

(1) It shall be the duty of each water undertaker to prepare and maintain a water resources management plan.

(2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.

(3) A water resources management plan shall address in particular—

(a) the water undertaker's estimate of the quantities of water required to meet those obligations;

(b) the measures which the water undertaker intends to take or continue for the purpose set out in subsection (2) above (also taking into account for that purpose the introduction of water into the undertaker's supply system by or on behalf of licensed water suppliers);

(c) the likely sequence and timing for implementing those measures; and

(d) such other matters as the Secretary of State may specify in directions.

(4) The procedure for preparing a water resources management plan (including a revised plan) is set out in section 37B below.

(5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall —

(a) review its plan; and

(b) send a statement of the conclusions of its review to the Secretary of State.

(6) The water undertaker shall prepare a revised plan in each of the following cases—

(a) following conclusion of its annual review, if the review indicated a material change of circumstances;

(b) if directed to do so by the Secretary of State;

(c) in any event, not later than the end of the period of five years beginning with the date when the plan (or revised plan) was last published,

and shall follow the procedure in section 37B below (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

(7) The Secretary of State may give directions specifying—

(a) the form which a water resources management plan must take;

(b) the planning period to which a water resources management plan must relate.

(8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—

(a) the Environment Agency;

(b) the Authority;

(c) the Secretary of State; and

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(d) any licensed water supplier which supplies water to premises in the undertaker's area via the undertaker's supply system.

(9) The Secretary of State shall consult the Environment Agency before giving a direction under subsection (6)(b) above.

(10) In this section, in relation to a water resources management plan, "published" means published in accordance with section 37B(8)(a) below.

Textual Amendments

F110 Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by Water Act 2003 (c. 37), **ss. 62**, 105(3); S.I. 2004/2528, **art. 2(j)** (with art. 4); S.I. 2005/2714, **art. 2(i)** (with Sch. paras. 6, 8); S.I. 2006/984, **art. 2(q)** (with art. 3, Sch.); S.I. 2007/1021, **art. 2(a)**

Modifications etc. (not altering text)

C19 Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in art. 4); S.I. 2005/2714, **art. 2(k)** (with Sch. 2 para. 8); S.I. 2007/1021, **art. 2(c)**

37B Water resources management plans: publication and representations

(1) A water undertaker shall—

(a) send a draft water resources management plan to the Secretary of State;

(b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and

(c) give the Secretary of State the name of each such other person and his address for service of a notice under subsection (2)(a) below.

(2) If the water undertaker states that it so appears in relation to any such information, the Secretary of State shall—

(a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless subsection (10) below applies, is required to be published under this section; and

(b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—

(i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and

(ii) of making representations to the Secretary of State for the purpose of justifying any such objection,

and shall determine, taking any objections and representations under paragraph (b) into account, whether the information is or is not commercially confidential.

(3) A water undertaker shall—

(a) (subject to subsection (10) below) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;

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(b) publish with it a statement—

(i) whether any information has been excluded from the published draft plan by virtue of subsection (10) below and, if it has, the general nature of that information; and

(ii) that any person may make representations in writing about the plan to the Secretary of State before the end of a period specified in the statement; and

(c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.

(4) The Secretary of State shall send to the water undertaker a copy of any representations he receives following publication of the draft plan under subsection (3) above and shall give it a reasonable period of time within which to comment on the representations.

(5) The Secretary of State may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.

(6) Regulations under subsection (5) above—

(a) may provide for the Secretary of State to cause an inquiry or other hearing to be held in connection with the draft water resources management plan; and

(b) if they do so provide, may provide for subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) to apply with prescribed modifications to such an inquiry or hearing as they apply to inquiries under that section.

(7) The Secretary of State may direct a water undertaker that its water resources management plan must differ from the draft sent to him under subsection (1) above in ways specified in his direction, and (subject to subsection (9) below) it shall be the duty of the water undertaker to comply with the direction.

(8) The water undertaker shall—

(a) (subject to subsection (10) below) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and

(b) publish with it a statement whether any information has been excluded from the published plan by virtue of subsection (10) below and, if it has, the general nature of that information.

(9) If the water undertaker considers that publishing a water resources management plan complying with a direction under subsection (7) above would mean including in the published plan any information (other than any information in relation to which the Secretary of State has already made a determination under subsection (2) above) which might be commercially confidential (as regards itself or another person)—

(a) the water undertaker shall send the Secretary of State a notice saying so, and giving the Secretary of State the name of any such other person and his address for service of a notice under subsection (2)(a) above as applied by paragraph (b) below; and

(b) subsection (2) above shall apply in relation to that information as it applies in relation to the information referred to there;

and the Secretary of State may either confirm his direction under subsection (7) above (which is to be treated as a new direction under subsection (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.

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(10) The published version of a draft water resources management plan published under subsection (3)(a) above, and a water resources management plan published under subsection (8)(a) above, shall exclude any information which the Secretary of State—

(a) has determined under subsection (2) above (or that subsection as applied by subsection (9) above) is commercially confidential; or

(b) directs the water undertaker to exclude on the ground that it appears to him that its publication would be contrary to the interests of national security.

(11) Any steps to be taken by a water undertaker under this section shall be completed by such time or within such period as the Secretary of State may direct.

Textual Amendments

F110 Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by Water Act 2003 (c. 37), **ss. 62**, 105(3); S.I. 2004/2528, **art. 2(j)** (with art. 4); S.I. 2005/2714, **art. 2(i)** (with Sch. paras. 6, 8); S.I. 2006/984, **art. 2(q)** (with art. 3, Sch.); S.I. 2007/1021, **art. 2(a)**

Modifications etc. (not altering text)

C20 Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in art. 4); S.I. 2005/2714, **art. 2(k)** (with Sch. 2 para. 8); S.I. 2007/1021, **art. 2(c)**

VALID FROM 01/04/2007

37C Water resources management plans: provision of information

(1) It shall be the duty of each licensed water supplier to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its water resources management plan.

(2) In the event of any dispute between a water undertaker and a licensed water supplier as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.

(3) For the purposes of paragraph (b) of section 37B(1) above, the water undertaker shall identify in its statement under that paragraph any information—

(a) provided by a licensed water supplier pursuant to subsection (1) above; and

(b) contained in the water undertaker's draft water resources management plan,

which the licensed water supplier has (at the time of providing it to the water undertaker) specifically identified as being, in the licensed water supplier's opinion, commercially confidential.

(4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.

(5) In subsection (4) above—

(a) "unpublished information" means confidential information which—

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(i) is provided to the water undertaker by a licensed water supplier under this section;

(ii) relates to the affairs of any individual or to any particular business; and

(iii) by virtue of section 37B above, is not published;

(b) "the other consolidation Acts" has the same meaning as in section 206 below.

Textual Amendments

F110 Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by Water Act 2003 (c. 37), **ss. 62**, 105(3); S.I. 2004/2528, **art. 2(j)** (with art. 4); S.I. 2005/2714, **art. 2(i)** (with Sch. paras. 6, 8); S.I. 2006/984, **art. 2(q)** (with art. 3, Sch.); S.I. 2007/1021, **art. 2(a)**

Modifications etc. (not altering text)

C21 Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in art. 4); S.I. 2005/2714, **art. 2(k)** (with Sch. 2 para. 8); S.I. 2007/1021, **art. 2(c)**

VALID FROM 01/04/2006

37D Water resources management plans: supplementary

(1) Directions given under section 37A or 37B above may be—

(a) general directions applying to all water undertakers; or

(b) directions applying only to one or more water undertakers specified in the directions,

and shall be given by an instrument in writing.

(2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(3) The duties of—

(a) a water undertaker under sections 37A to 37C above and under this section; and

(b) a licensed water supplier under section 37C above,

shall be enforceable by the Secretary of State under section 18 above.]

Textual Amendments

F110 Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by Water Act 2003 (c. 37), **ss. 62**, 105(3); S.I. 2004/2528, **art. 2(j)** (with art. 4); S.I. 2005/2714, **art. 2(i)** (with Sch. paras. 6, 8); S.I. 2006/984, **art. 2(q)** (with art. 3, Sch.); S.I. 2007/1021, **art. 2(a)**

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Modifications etc. (not altering text)

C22 Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in art. 4); S.I. 2005/2714, **art. 2(k)** (with Sch. 2 para. 8); S.I. 2007/1021, **art. 2(c)**

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 Part 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, in accordance with section 39 below, 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, in accordance with section 39 below, 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.

(3) Regulations under subsection (2) above may provide that if a water 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.

(4) 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.

[F111(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.**]**

Textual Amendments

F111 S. 38(5) added (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 18**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt.I

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[38A F112 Information with respect to levels of performance.

(1) The Director shall from time to time collect information with respect to—

(a) the compensation paid by water undertakers under regulations under section 38(2) above; and

(b) the levels of overall performance achieved by water undertakers in connection with the provision of water supplies.

(2) At such times as the Director may direct, each water undertaker shall give the following information to the Director—

(a) as respects each standard prescribed by regulations under section 38(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and

(b) as respects each standard established by regulations under section 38(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

(3) A water undertaker who without reasonable excuse fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of water undertakers.

(5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—

(a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion 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 Director, seriously and prejudicially affect the interests of that body.**]**

Textual Amendments

F112 S. 38A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s.27**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

[F113 38B Publication of statistical information about complaints

(1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of water undertakers or licensed water suppliers and the handling of such complaints.

(2) In subsection (1) above, "complaints" includes complaints made directly to water undertakers or licensed water suppliers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.**]**

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Textual Amendments

F113 S. 38B inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 45(1)**, 105(3); S.I. 2005/2714, **art. 2(e)** (with Sch. para. 8)

39 Procedure for regulations under section 38.

[F114(A1) The Secretary of State may make regulations under section 38 above—

(a) on an application by the Authority, in accordance with subsections (1) to (3) below; or

(b) otherwise than on such an application, in accordance with subsections (4) to (8) below.**]**

(1) **[**F115Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 38 above if—**]**

[F116(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—

(i) on every water undertaker specified in the application;F117. . .

(ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;**]**

[F118(iii) on the Council; and

(iv) on such other persons or bodies as the Secretary of State may consider appropriate;**]**

(c) such period as the Secretary of State considers appropriate has been allowed for the making—

(i) by the Director; and

(ii) by any affected water undertaker **[**F119or person or body on whom a copy of the application has been served under paragraph **[**F120(b)**]** above**]**,

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

(d) the Secretary of State has considered **[**F121the summary mentioned in subsection (2)(bb) below,**]** 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.

[F122(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.**]**

(2) An application made by the Director to the Secretary of State complies with this subsection if it—

(a) sets out **[**F123the Authority's proposals for the making of**]** regulations under section 38 above;

(b) specifies the water undertaker or undertakers in relation to which it is proposed **[**F124the regulations**]** should apply

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[F125(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;**]** ; and

(c) summarises the Director's reasons for his proposals.

(3) The Secretary of State shall not make any regulations **[**F126on an application by the Authority under this section**]** except where—

(a) the only provisions of the regulations are **[**F127those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority's application or to those proposals**]** with such modifications as the Secretary of State considers appropriate; and

(b) each of the modifications (if any) of the Director's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—

(i) to the Director;F128. . .

(ii) to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications **[**F129and

(iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above.**]**

[F130(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 38 above only if he considers—

(a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or

(b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.

(5) Before making regulations under section 38 above by virtue of subsection (4) above, the Secretary of State shall—

(a) give notice of his proposals;

(b) consider the results of the research carried out in accordance with subsection (7) below; and

(c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.

(6) A notice under subsection (5)(a) above must—

(a) summarise the Secretary of State's reasons for his proposals;

(b) specify the water undertaker or undertakers in relation to which it is proposed the regulations should apply; and

(c) specify the period within which objections or representations with respect to the proposals may be made.

(7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.

(8) A notice under subsection (5)(a) above shall be given by serving a copy on—

(a) the Authority;

(b) the Council;

(c) every water undertaker to which the regulations will apply;

(d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and

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(e) such other persons or bodies as the Secretary of State may consider appropriate.**]**

Textual Amendments

F114 S. 39(A1) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F115 S. 39(1): words substituted (1.4.2005) for para. (a) and preceding words by virtue of Water Act 2003 (c. 37), **ss. 41(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F116 S. 39(1)(b) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 19(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt.I

F117 Word in s. 39(1)(b)(i) repealed (1.4.2005) by Water Act 2003 (c. 37), ss. 41(3)(b), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in art. 4, Sch. 1, 2)

F118 S. 39(1)(b)(iii)(iv) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F119 Words in s. 39(1)(c)(ii) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 19(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt. I

F120 Words in s. 39(1)(c)(ii) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(3)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F121 Words in s. 39(1)(d) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 26(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt.I

F122 S. 39(1A) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 26(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt. I

F123 Words in s. 39(2)(a) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(4)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F124 Words in s. 39(2)(b) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(4)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F125 S. 39(2)(bb) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 26(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt.I

F126 Words in s. 39(3) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(5)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F127 Words in s. 39(3)(a) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(5)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F128 Word in s. 39(3)(b)(i) repealed (1.4.2005) by Water Act 2003 (c. 37), ss. 41(5)(c), 105(3), 101(2), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in art. 4, Sch. 1, 2)

F129 S. 39(3)(b)(iii) and preceding word inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(5)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

F130 S. 39(4)-(8) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 41(6)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

[39A F131Information to be given to customers about overall performance.

(1) Each water undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers **[**F132, and, if the direction so specifies, licensed water suppliers using the undertaker's supply system for the purpose of supplying water to the premises of customers or those customers,**]** of—

(a) the standards of overall performance established under section 38(1)(b) above which are applicable to that undertaker; and

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(b) that undertaker's level of performance as respects each of those standards.

(2) In giving any such direction, the Director shall not specify a frequency of less than once in every period of twelve months.

[F133(2A) The licensed water suppliers referred to in subsection (1) above shall, if the Authority so directs, pass on the information about the matters mentioned in that subsection to their customers.

(2B) In subsection (1) above, the reference to the water undertaker's supply system shall be construed in accordance with section 17B(5) above.**]**

(3) The duty of a water undertaker **[**F134or licensed water supplier**]** to comply with this section shall be enforceable by the Director under section 18 above.**]**

Textual Amendments

F131 S. 39A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 28**; Competition and Service (Utilities) Act. 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F132 Words in s. 39A(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 13(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F133 S. 39A(2A)(2B) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 13(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F134 Words in s. 39A(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 13(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

[F135**39B Drought plans: preparation and review**

(1) It shall be the duty of each water undertaker to prepare and maintain a drought plan.

(2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits under Chapter 3 of Part 2 of the Water Resources Act 1991.

(3) The duties referred to in subsection (2) above include in particular those imposed under or by virtue of—

(a) section 37 above;

(b) sections 67 to 69 below.

(4) A drought plan shall address, in particular, the following matters—

(a) what measures the water undertaker might need to take to restrain the demand for water within its area;

(b) what measures the water undertaker might need to take to obtain extra water from other sources (also taking into account for that purpose the introduction of water into the undertaker's supply system by or on behalf of licensed water suppliers);

(c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;

(d) such other matters as the Secretary of State may specify in directions.

(5) Section 37B above (water resources management plans: publication and representations), including any power in that section to make regulations or give

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directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.

(6) Each water undertaker shall review (or further review) its drought plan and prepare a revised plan in each of the following cases—

(a) if there is a material change of circumstances;

(b) if directed to do so by the Secretary of State;

(c) in any event, not later than the end of the period of three years beginning with the date when the plan (or revised plan) was last published in accordance with section 37B(8)(a) above as applied by subsection (5) above,

and shall follow the procedure in section 37B above as applied by subsection (5) above (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

(7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—

(a) the Environment Agency;

(b) the Authority;

(c) the Secretary of State; and

(d) any licensed water supplier which supplies water to premises in the undertaker's area via the undertaker's supply system.

(8) The Secretary of State may give directions specifying the form which a drought plan must take.

(9) Directions given under this section (including directions given under section 37B above as applied by subsection (5) above) may be—

(a) general directions applying to all water undertakers; or

(b) directions applying only to one or more water undertakers specified in the directions,

and shall be given by an instrument in writing.

(10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(11) The Secretary of State shall consult the Environment Agency before giving a direction under subsection (6)(b) above.

(12) The duty of a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.

Textual Amendments

F135 Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by Water Act 2003 (c. 37), **ss. 63**, 105(3); S.I. 2004/2528, **art. 2(j)** (with savings in art. 4); S.I. 2005/2714, **art. 2(j)** (with Sch. 2 para. 8)

Modifications etc. (not altering text)

C23 S. 39B modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in art. 4); S.I. 2005/2714, **art. 2(k)** (with Sch. 2 para. 8); S.I. 2007/1021, **art. 2(c)**

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39C Drought plans: provision of information

(1) It shall be the duty of each licensed water supplier to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its drought plan.

(2) In the event of any dispute between a water undertaker and a licensed water supplier as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.

(3) For the purposes of paragraph (b) of section 37B(1) above as applied by section 39B(5) above, the water undertaker shall identify in its statement under that paragraph any information—

(a) provided by a licensed water supplier pursuant to subsection (1) above; and

(b) contained in the water undertaker's draft drought plan,

which the licensed water supplier has (at the time of providing it to the water undertaker) specifically identified as being, in the licensed water supplier's opinion, commercially confidential.

(4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.

(5) In subsection (4) above—

(a) "unpublished information" means confidential information which—

(i) is provided to the water undertaker by a licensed water supplier under this section;

(ii) relates to the affairs of any individual or to any particular business; and

(iii) by virtue of section 37B above as applied by section 39B(5) above, is not published;

(b) "the other consolidation Acts" has the same meaning as in section 206 below.

(6) The duties of a licensed water supplier and a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.**]**

Textual Amendments

F135 Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by Water Act 2003 (c. 37), **ss. 63**, 105(3); S.I. 2004/2528, **art. 2(j)** (with savings in art. 4); S.I. 2005/2714, **art. 2(j)** (with Sch. 2 para. 8)

Modifications etc. (not altering text)

C24 S. 39C modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in art. 4); S.I. 2005/2714, **art. 2(k)** (with Sch. 2 para. 8); S.I. 2007/1021, **art. 2(c)**

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CHAPTER II

SUPPLY DUTIES

Major supplies

[40 F136Bulk supplies.

(1) Where, on the application of any qualifying person—

(a) it appears to the Director that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the water undertaker specified in the application ("the supplier") should give a supply of water in bulk to the applicant, and

(b) the Director is satisfied that the giving and taking of such a supply cannot be secured by agreement,

the Director may by order require the supplier to give and the applicant to take such a supply for such period and on such terms and conditions as may be provided in the order.

(2) In this section "qualifying person" means—

(a) a water undertaker; or

(b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.

(3) Where the application is made by a person who is a qualifying person by virtue of subsection (2)(b) above, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a water undertaker for the area specified in the order, or for an area which includes that area.

(4) Subject to subsection (3) above, an order under this section shall have effect as an agreement between the supplier and the applicant.

(5) The Director shall not make an order under this section unless he has first consulted **[**F137the Environment Agency**]]**.

(6) In exercising his functions under this section, the Director shall have regard to the desirability of—

(a) facilitating effective competition within the water supply industry;

(b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

(c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;

(d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

Textual Amendments

F136 Ss. 40 and 40A substituted (1.7.1992) for s. 40 by Competition and Service (Utilities) Act 1992 (c. 43), **s. 44**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

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F137 Words in s. 40(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 99** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F138 40A Variation and termination of bulk supply agreements.

(1) This section applies where, on the application of any party to a bulk supply agreement—

(a) it appears to the Director that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, to vary the agreement or to terminate it, and

(b) the Director is satisfied that that cannot be achieved by agreement between the parties to the agreement.

(2) The Director may by order—

(a) vary the agreement by—

(i) varying the period for which the supply of water is to be given; or

(ii) varying any of the terms or conditions on which that supply is to be given; or

(b) terminate the agreement.

(3) Before making any order under this section the Director shall consult **[**F139the Environment Agency**]**.

(4) Where an order is made under this section the agreement concerned shall have effect subject to the provision made by the order or (as the case may be) shall cease to have effect.

(5) An order under this section may require the payment of compensation by any party to the agreement to any other party.

(6) The obligations of a water undertaker under subsection (5) above shall be enforceable under section 18 above by the Director.

(7) In exercising his functions under this section, the Director shall have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement and to the desirability of—

(a) facilitating effective competition within the water supply industry;

(b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

(c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;

(d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

(8) In this section—

"bulk supply agreement" means an agreement between one or more water undertakers for the supply of water in bulk and includes—

(a) an order under section 40 above which is deemed to be an agreement by virtue of subsection (4) of that section; and

(b) any agreement which has been varied by order under this section; and

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"supplier", in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.**]**

Textual Amendments

F138 Ss. 40 and 40A substituted (1.7.1992) for s. 40 by Competition and Service (Utilities) Act 1992 (c. 43), **s. 44**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F139 Words in s. 40A(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 100** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

41 Duty to comply with water main requisition.

(1) It shall be the duty of a water undertaker (in accordance with section 44 below) 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 42 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;

(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 [M15]New Towns Act 1981—

(i) the Commission for the New Towns; and

(ii) [F140]. . . the development corporation for the new town, [F140]. . .;

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 [M16]Local Government, Planning and Land Act 1980, the urban development corporation.

(3) 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.

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(4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, 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) 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.

Textual Amendments

F140 Words in s. 41(2)(d)(ii) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt.IV** (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, **art. 4**

Marginal Citations

M15 1981 c. 64.

M16 1980 c. 65.

42 Financial conditions of compliance.

(1) The conditions mentioned in section 41(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, under subsection (3) below, may be required to secure his undertakings.

(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—

[[F141](a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—

(i) 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; or

(ii) following provision of the main, a single amount not exceeding the discounted aggregate deficit on that main; and**]**

(b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a water main if—

(a) it was by virtue of section 41(2)(a) or (b) above that he required, or joined in requiring, the provision of the main; and

(b) he is not a public authority.

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(4) 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.

(5) An approval or determination given or made by the Director for the purposes of subsection (4) 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.

(6) 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,

[F142may be referred to the Authority for determination under section 30A above by either party to the dispute.**]**

[F143(7) In this section "relevant deficit" and "discounted aggregate deficit" have the meanings given by sections 43 and 43A below, respectively.**]**

Textual Amendments

F141 S. 42(2)(a) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 90(2)(5)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F142 Words in s. 42(6) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 90(3)(5)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F143 S. 42(7) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 90(4)(5)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

43 Calculation of "relevant deficit" for the purposes of section 42.

(1) For the purposes of section 42 above the relevant deficit for any year on a water main is the amount (if any) by which the **[**F144relevant revenue in respect of that main for that year is**]** exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

(2) 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

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(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 for the purposes of this subsection.

(3) A determination for the purposes of subsection (2) above shall be made either—

(a) by the undertaker with the approval of the Director; or

(b) in default of such a determination, by the Director.

(4) For the purposes of this section the costs reasonably incurred in providing a water main ("the new main") shall include—

(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 **[**F145or procuring the provision of**]** any such additional capacity in an earlier main as falls to be used in consequence of the provision of the new main.

[F146(5) In subsection (4) above the reference to an earlier main, in relation to the new main, is a reference to any water main which—

(a) has been provided in pursuance of a water main requisition; or

(b) has been vested (by virtue of a declaration made under this Chapter) in the water undertaker,

in the period of twelve years immediately before the provision of the new main.**]**

(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.

[F147(7) Any reference in this section to the relevant revenue in respect of a main provided by a water undertaker for any year is—

(a) in relation to premises connected with the main which are supplied with water by the undertaker, is a reference to so much of the aggregate of any charges payable to the undertaker in respect of services provided in the course of that year as represents charges which—

(i) have been imposed by the undertaker in relation to those premises; and

(ii) 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;

(b) in relation to premises connected with the main which are supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges made during the course of that year which—

(i) are payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and

(ii) are reasonably attributable to the use of that main for the purpose of the supplier supplying water to those premises.**]**

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(8) An approval or determination given or made by the Director for the purposes of subsection (2) 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 relation to a water main **[**F148in respect of which the conditions referred to in section 42(1) above have already been satisfied.**]** .

(9) In this section "water main requisition" means—

(a) a requirement under section 41 above (including, by virtue of paragraph 1 of Schedule 2 to the M17Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 40 of the M18Water Act 1989);

(b) a requirement under the provisions of section 36 or 37 of the M19Water Act 1945 or of section 29 of Schedule 3 to that Act (water main requisitions); or

(c) a requirement under any local statutory provision corresponding to section 41 above or to any of those provisions of that Act of 1945.

Textual Amendments

F144 Words in s. 43(1) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 14(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F145 Words in s. 43(4)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(1)(a)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F146 S. 43(5) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(1)(b)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F147 S. 43(7) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 14(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F148 Words in s. 43(8)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(1)(c)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

Marginal Citations

M17 1991 c. 60.

M18 1989 c. 15.

M19 1945 c. 42.

[F149**43A Calculation of "discounted aggregate deficit" for the purposes of section 42**

(1) For the purposes of section 42 above the discounted aggregate deficit on a water main is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the main, in each case discounted in accordance with subsection (6) below.

(2) The estimated relevant deficit for any year is the amount (if any) by which the estimated revenue in respect of the water main for that year would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

(3) Subsections (2) to (6), (8) and (9) of section 43 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a water main) shall apply for the purposes of this section as they apply for the purposes of that.

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(4) Any reference in this section to the estimated revenue in respect of a water main for any year—

(a) in relation to premises expected to be connected with the main and supplied with water by a water undertaker, is a reference to so much of the aggregate of any charges expected to be payable to the undertaker for the provision of services in the course of that year as would represent charges—

(i) imposed by the undertaker in relation to those premises, and

(ii) reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main; and

(b) in relation to premises expected to be connected with the main and supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges expected to be made during the course of that year as would be—

(i) payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and

(ii) reasonably attributable to the use of that main for the purpose of the supplier's supplying water to those premises.

(5) For the purpose of calculating estimated revenue under subsection (4) above, a thing is expected to be the case if, at the time the calculation is made, it is reasonably likely to occur.

(6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.

(7) A determination made by the Authority for the purposes of subsection (6) above—

(a) may be made in relation to the provision of a particular water main or in relation to the provision of water mains generally; and

(b) may be revoked at any time except in relation to a water main in respect of which the conditions referred to in section 42(1) above have already been satisfied.**]**

Textual Amendments

F149 S. 43A inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(2)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

44 Determination of completion date and route for requisitioned main.

(1) A water undertaker shall not be in breach of a duty imposed by section 41 above in relation to any locality unless-

(a) the period of three months beginning with the relevant day has expired; and

[F150(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—

(i) service pipes to premises in that locality; or

(ii) a water main which is the subject of an agreement under section 51A below ("the self-laid main"),

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to connect with the main at the place or places determined under subsection (3) below.**]**

(2) The period mentioned in subsection (1)(a) above may be extended in any case—

(a) by agreement between the water undertaker and the person or persons who required the provision of the main; or

(b) where there is a dispute as to whether the period should be extended, by **[**F151the Authority**]** on a reference under subsection (4) below.

(3) The places mentioned in subsection (1)(b) above shall be—

(a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or

(b) in default of agreement, such places as are determined by **[**F152the Authority**]** , on a reference under subsection (4) below, to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question **[**F153, or (as the case may be) the self-laid main,**]** to connect with the water main.

[F154(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.**]**

(5) In this section "relevant day", in relation to a requirement to provide a water main F155. . . , 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 42 above are satisfied in relation to the requirement; and

[F156(b) the day on which the place or places where (as the case may be)—

(i) service pipes to premises in the locality in question; or

(ii) the self-laid main,

will connect with the main are determined under subsection (3) above.**]**

Textual Amendments

F150 S. 44(1)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(3)(a)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F151 Words in s. 44(2)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(3)(b)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F152 Words in s. 44(3)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(3)(c)(i)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F153 Words in s. 44(3)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(3)(c)(ii)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F154 S. 44(4) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(3)(d)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F155 Words in s. 44(5) omitted (28.5.2004) and repealed (1.4.2005) by virtue of Water Act 2003 (c. 37), **ss. 91(3)(e)(4)**, 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3); S.I. 2005/968, **art. 2(n)** (with savings in art. 4, Schs. 1, 2)

F156 S. 44(5)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 91(3)(e)(ii)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

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Domestic connections

45 Duty to make connections with main.

(1) Subject to the following provisions of this section and to sections 46 and 47 below, it shall be the duty of a water undertaker (in accordance with section 51 below) to make a connection under this section where the owner or occupier of any premises [F157]. . .which—

(a) consist in the whole or any part of a building; or

(b) are premises on which any person is proposing to erect any building or part of a building,

serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

[[F158](1A) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

(a) subsection (1) above is subject to section 51D(1) below; and

(b) any such service pipe which is to vest in the undertaker by virtue of an agreement under section 51A below shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.**]**

(2) Where a notice has been served for the purposes of this section, the duty imposed by subsection (1) above shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice 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 sections 47 to 50 below have been satisfied;

and, subject to section 51 below, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(3) A notice for the purposes of this section—

(a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and

(b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of section 46(4) below, shall set out the matters that have given rise to the imposition of that requirement;

but, subject to section 51(5) below and without prejudice to the effect (if any) of any other contravention of this subsection, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(4) The duty imposed on a water undertaker by this section shall be owed to the person who served the notice by virtue of which the duty arises.

(5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, 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.

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(6) Where a water undertaker carries out any works which it is its duty under this section to carry out at another person's expense, 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.

[[F159](6A) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

(7) Nothing in this section or in sections 46 to 51 below shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(8) In the following provisions of this Chapter a notice served for the purposes of this section is referred to as a connection notice.

Textual Amendments

F157 Words in s. 45(1) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 43(1), 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F158 S. 45(1A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(2)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F159 S. 45(6A) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

46 Duty to carry out ancillary works for the purpose of making domestic connection.

(1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the works to which this section applies as need to be carried out before the connection can be made.

(2) This section applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.

(3) In a case where—

(a) the water main with which the service pipe is to be connected is situated in a street;

(b) 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

(c) the service pipe to those premises will—

(i) enter the premises otherwise than through an outer wall of a building abutting on the street; and

(ii) have a stopcock fitted to it by the undertaker in the premises,

this section applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.

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(4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by a local authority under section 80 below, this section applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by that authority—

(a) to have unreasonably refused his consent to the laying of the service pipe; or

(b) to have sought to make the giving of his consent subject to unreasonable conditions.

(5) Where a water main is alongside a street and within eighteen metres of the middle of that street, subsections (2) to (4) 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.

(6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.

(7) Subsections (4) to **[**F160(6A)**]** of section 45 above shall have effect-

(a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this section; and

(b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out under this section at another person's expense,

as they have effect by virtue of that notice in relation to the duty which arises under that section or, as the case may be, to works which the undertaker carries out under that section at another person's expense.

(8) Subject to subsection (9) 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 section 45 above or this section shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.

(9) Where a water undertaker exercises its power under subsection (8) above to lay a water main instead of a service pipe—

(a) paragraph (a) of section 51(1) below 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 section 45(6) and subsection (7) 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.

Textual Amendments

F160 Words in s. 46(7) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

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47 Conditions of connection with water main.

(1) Subject to subsection (3) and sections 48 to 50 below, where the owner or occupier of any premises ("the relevant premises") serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in subsection (1) above are—

(a) a requirement that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of section 45(6) or 46(7)(b) above on the person who served the connection notice;

(b) a requirement, in a case where the connection required by the connection 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 connection notice has paid any amount owed by him to the undertaker—

(i) in respect of a supply of water to the relevant premises; or

(ii) in respect of expenses **[**F161reasonably**]**incurred in the making of the disconnection;

(c) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—

(i) by the undertaker; or

(ii) in accordance with specifications approved by the undertaker;

(d) a requirement that—

[F162(i) subject to section 51D(1) below, so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and**]**

(ii) 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 as is mentioned in paragraph (c) above to be installed and connected as so mentioned;

(e) a requirement that a separate service pipe has been provided—

(i) to each house or building on the relevant premises; or

(ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;

(f) a requirement, in relation to the relevant premises—

(i) that such a requirement as may be imposed under section 66 below has been complied with; or

(ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;

(g) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—

(i) the supply of water to the relevant premises; or

(ii) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this paragraph; and

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(h) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.

[F163(2A) No condition shall be imposed by a water undertaker under subsection (2)(e) above unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.**]**

(3) A condition shall not be imposed by a water undertaker under this section on a person who has served a connection notice 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 connection notice.

[F164(3A) Any dispute as to whether any requirement of a kind mentioned in subsection (2)(a), (b), (e) or (f) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.

(3B) Any dispute between a water undertaker and any other person as to whether—

(a) any security required by a condition imposed under subsection (2)(a) above was reasonably required,

(b) the expenses referred to in subsection (2)(b)(ii) above were incurred reasonably, or

(c) in a particular case, subsection (2A) above prevents a water undertaker from imposing a condition under subsection (2)(e) above,

may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

(4) This section shall be without prejudice to the provisions of sections 233 and 372 of the M20Insolvency Act 1986 (conditions of supply after insolvency).

Textual Amendments

F161 Word in s. 47(2)(b)(ii) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 51(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F162 S. 47(2)(d)(i) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(3)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F163 S. 47(2A) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 51(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F164 S. 47(3A)(3B) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 51(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

Marginal Citations

M20 1986 c. 45.

48 Interest on sums deposited in pursuance of the deposit condition.

(1) Where for the purposes of subsection (2)(a) of section 47 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

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(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.

(2) An approval or determination by the Director for the purposes of this section—

(a) may be given or made in relation to a particular case or description of cases or generally; and

(b) may be revoked at any time.

49 Supplemental provisions with respect to the metering conditions.

(1) The power conferred on a water undertaker to impose conditions under section 47 above for the purposes of metering—

(a) 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

(b) shall not be exercisable so as to require the alteration or removal of any pipe laid or plumbing installed before 1st April 1989.

(2) Specifications approved by any water undertaker for the purposes of subsection (2)(c) or (d) of section 47 above may be approved—

(a) in relation to particular premises; or

(b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.

[F165(3) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under section 47 above for the purposes of metering shall be referred—

(a) to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person; or

(b) if no agreement is reached, for determination by the Director under section 30A above.**]**

(4) References in this section to the imposition of a condition under section 47 above for the purposes of metering are references to the imposition of conditions by virtue of subsection (2)(c) or (d) of that section.

Textual Amendments

F165 S. 49(3) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

50 Restriction on imposition of condition requiring separate service pipes.

(1) This section applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.

(2) Where this section applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this section, may be imposed by virtue of section 47(2)(e) above unless the

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undertaker would have been entitled under section 64 below to require the provision of a separate service pipe if the reconnection had already been made.

51 Time for performance of connection etc. duties.

(1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice 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.

(2) In any case in which a water undertaker is subject to any such duty as is mentioned in subsection (1)(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.

(3) Where—

(a) a connection notice is served in respect of any premises; and

(b) at the time when the notice is served, the customer's part of the service pipe to those premises has not been laid,

the duties of the undertaker under sections 45 and 46 above 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 subsections (3) to (5) of section 46 above.

(4) In subsection (3) above the reference to the customer's part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of section 46 above.

(5) Where—

(a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under section 45(3)(a) above to supplement that notice with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

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(6) In this section "the relevant day", in relation to a duty imposed on a water undertaker by virtue of a connection notice, 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 sections 47 to 50 above, made conditions of its compliance with that duty.

[F166 Adoption of water mains and service pipes

Textual Amendments

F166 Ss. 51A-51E and preceding cross-heading inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(1)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

51A Agreements to adopt water main or service pipe at future date

(1) Subject to subsections (2) and (10) below, a water undertaker may agree with any person constructing or proposing to construct—

(a) any water main; or

(b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay, to be vested in that undertaker.

(2) Subsection (1) above shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

(a) nothing in this section shall prevent a water undertaker from agreeing apart from this section to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and

(b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which subsection (1) above applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this section.

(4) An application under subsection (3) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to subsection (5) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

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(a) a person who has made an application to a water undertaker under subsection (3) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 51B below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under subsection (3) above, a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under subsection (1) above relating to a water main may, in particular, include terms—

(a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—

(i) that person; or

(ii) the water undertaker,

of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;

(b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;

(c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—

(i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and

(ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;

(d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;

(e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.

(8) The terms of an agreement under subsection (1) above relating to a service pipe may, in particular, include terms—

(a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;

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(b) for such requirements of the kind referred to in section 47(2) above as may be applicable to be complied with before connection takes place.

(9) An agreement made under this section by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.

(10) A water undertaker shall not make an agreement under this section with respect to a water main or a service pipe situated within the area of another water undertaker, until either—

(a) that other undertaker has consented in writing to the making of the agreement; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

51B Appeals with respect to adoption

(1) Subject to section 51A(5) above, a person constructing or proposing to construct a water main or service pipe may appeal to the Authority where the water undertaker—

(a) has refused an application under section 51A above;

(b) has offered to grant such an application on terms to which that person objects; or

(c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.

(2) On the hearing of an appeal under this section, the Authority may—

(a) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or

(b) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application.

(3) Where the Authority makes an agreement under subsection (2)(b) above on behalf of a water undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable.

(4) An agreement entered into on behalf of a water undertaker under subsection (2)(b) above shall be deemed, for the purposes of this Act, to have been entered into under section 51A above.

(5) In deciding on an appeal under this section, the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it thinks fit, and any such provision as to costs or expenses shall be enforceable as if it were a judgment of a county court.

51C Financial conditions of compliance

(1) This section applies where an agreement is, or is to be, entered into under section 51A above in relation to a water main ("the adopted main") by, or on behalf of, a water undertaker and a person constructing or proposing to construct that water main.

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(2) Where this section applies, the water undertaker may, as a condition of the undertaker's compliance with the agreement, require that person to pay to it the costs mentioned in subsection (3) below.

(3) The costs are those reasonably incurred by the undertaker in connection with the adopted main equivalent to the costs referred to in section 43(4)(a) and (b) above, as if references there (and in section 43(5)) to the provision of the new main were references to the incorporation of the adopted main into the undertaker's supply system.

(4) For the purposes of any payment required to be made by virtue of subsection (2) above, the water undertaker may require the person to provide such security as it may reasonably request, and the provisions of subsections (4) and (5) of section 42 above shall apply to any security so required as they apply to security required under that section.

(5) Where this section applies, the water undertaker shall pay to the person referred to in subsection (1) above, upon declaring the water main to be vested in the undertaker, a sum equal to the discounted offset amount.

(6) For the purposes of subsection (5) above, the discounted offset amount is the sum of the estimated offsets for each of the twelve years following the vesting in the undertaker of the water main, in each case discounted in accordance with subsection (9) below.

(7) The estimated offset for any year is the lesser of—

(a) the estimated revenue (if any) in respect of the adopted main for that year; and

(b) the annual borrowing costs of a loan of the amount required for the provision of that main.

(8) The amounts referred to in paragraphs (a) and (b) of subsection (7) above shall be calculated in accordance with the provisions of subsections (3) to (5) of section 43A above as if the adopted main had been provided in pursuance of a water main requisition (as defined in section 43 above).

(9) The estimated offset for a year shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.

(10) A determination made by the Authority for the purposes of subsection (9) above—

(a) may be made in relation to a particular water main or in relation to water mains generally; and

(b) may be revoked at any time except in relation to an adopted main in respect of which the agreement referred to in subsection (1) above has already been made.

(11) Any dispute between the water undertaker and the other person as to the payments required to be made or the security required to be provided by virtue of this section may be referred to the Authority for determination under section 30A above by either party to the dispute.

51D Prohibition on connection without adoption

(1) Where a person (other than a water undertaker) constructs a water main or service pipe which is to be used, in whole or in part, for supplying water for domestic or food production purposes, no water undertaker may permit that water main or service pipe

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to become connected with its supply system unless it vests (to the relevant extent) in a water undertaker.

(2) In subsection (1) above, "the relevant extent" means the extent specified in the agreement for the vesting in the undertaker of the water main or service pipe in question.

(3) The prohibition imposed on a water undertaker by subsection (1) above shall be enforceable under section 18 above by the Authority.

51E Sections 51A to 51D: supplementary

(1) For the purposes of sections 51A to 51D above, the definition of "water main" in section 219(1) below shall be treated as if the words "not being a pipe for the time being vested in a person other than the undertaker" were omitted.

(2) In sections 51A to 51C above, references to so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay shall be construed disregarding section 46(8) above.

(3) In this Act, references to vesting or the making of a declaration of vesting with respect to a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant vesting agreement.**]**

Domestic supplies

52 The domestic supply duty.

(1) The domestic supply duty of a water undertaker in relation to any premises is a duty, 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.

(2) Subject to the following provisions of this section and to section 53 below, a water undertaker shall owe a domestic supply duty in relation to any premises to which this section applies [F167]. . . if—

(a) a demand for a supply of water for domestic purposes has been made, in accordance with subsection (5) below, to the undertaker in respect of those premises; or

(b) those premises are premises to which this section applies by reason of a supply of water provided before 1st September 1989,

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 1st September 1989.

(3) **[**[F168]Subject to subsection (4A) below,**]**this section applies to any premises if—

(a) they consist in the whole or any part of a building and are connected by means of a service pipe to **[**[F169]one of the water undertaker's water mains**]**; and

(b) the requirements of subsection (4) below are satisfied in relation to those premises.

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(4) The requirements of this subsection are satisfied in relation to any premises if—

(a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served 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 1st September 1989;

(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 1st September 1989; or

(d) the condition specified in any of the preceding paragraphs—

(i) has been satisfied in relation to the premises at any time on or after 1st September 1989; and

(ii) would continue to be satisfied in relation to the 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).

[[F170](4A) This section does not apply to any premises if—

(a) they are not in the area of the water undertaker;

(b) they are not household premises (as defined in section 17C above); and

(c) the total quantity of water estimated to be supplied to them annually for the purposes of subsection (2) of section 17D above is not less than the quantity specified in that subsection.**]**

(5) For the purposes of this section a demand in respect of any premises is made in accordance with this subsection if it is made—

(a) by the person who is the occupier of the premises at the time when the demand is made; or

(b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker's charges in respect of the supply demanded.

(6) 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 of its disconnection powers, 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 as interrupted by reason only of a change of the occupier or owner of the premises.

[[F171](6A) For the purposes of this section, there is also an interruption of the domestic supply duty owed by a water undertaker in relation to any premises where—

(a) a notice is served in respect of those premises under section 63AA below; and

(b) the time specified in that notice has passed.**]**

(7) Nothing in this section shall impose any duty on a water undertaker—

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(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—

(i) for the supply of water to those premises to be cut off or reduced; or

(ii) for the pipe to be disconnected,

for the purposes of the carrying out of any necessary works.

(8) In this section references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of sections 60 to 62 and 75 below.

Textual Amendments

F167 Words in s. 52(2) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 41, 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F168 Words in s. 52(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F169 WOrds in s. 52(3)(a) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 20**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F170 S. 52(4A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F171 S. 52(6A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

53 Conditions of compliance with domestic supply duty.

(1) Where a demand for the purposes of section 52(2) above has been made to a water undertaker in respect of any premises ("the relevant premises"), the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of providing his first supply of water in compliance with that demand.

(2) The requirements mentioned in subsection (1) above are—

(a) a requirement, 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 making the demand has paid any amount owed by him to the undertaker—

(i) in respect of a supply of water to the relevant premises; or

(ii) in respect of expenses **[**F172reasonably**]** incurred in cutting off any such supply;

(b) a requirement, in relation to the relevant premises

(i) that such a requirement as may be imposed under section 66 below has been complied with; or

(ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;

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(c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—

(i) the supply of water to the relevant premises; or

(ii) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection; and

(d) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.

[F173(2A) Any dispute between a water undertaker and any other person as to whether the expenses referred to in subsection (2)(a)(ii) above were incurred reasonably may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

[F174(2A) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in subsection (2)(a) or (b) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

(3) This section shall be without prejudice to the provisions of sections 233 and 372 of the M21Insolvency Act 1986 (conditions of supply after insolvency).

Textual Amendments

F172 Word in s. 53(2)(a)(ii) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 51(5)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F173 S. 53(2A) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 51(5)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

F174 S. 53(2A) inserted (1.9.1992) by Competition and Service (Utilitites) Act 1992 (c. 43), **s. 35(5)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

Marginal Citations

M21 1986 c. 45.

54 Enforcement of domestic supply duty.

(1) A duty imposed on a water undertaker under section 52 above—

(a) to provide a supply of water to any premises; or

(b) 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.

(2) Where a duty is owed by virtue of this section to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, 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.

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Other supplies

55 Supplies 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.

[F175(1A) This section also applies where—

(a) a water undertaker is requested to provide a supply of water to premises which are not in the undertaker's area by the owner or occupier of the premises;

(b) the premises are household premises (as defined in section 17C above) or the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection; and

(c) paragraph (a) or (b) of subsection (1) above applies.**]**

(2) Where this section applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under section 56 below—

(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 the provision of that supply or the taking of those steps would—

(a) 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

(b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(4) 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 there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to those premises; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.

(5) 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 the carrying out by the undertaker of any works,

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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.

(6) 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.

(7) 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 section 56 below in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.

(8) Except so far as otherwise provided by the terms and conditions determined under section 56 below in relation to any supply, the duties of a water undertaker under this section shall have effect subject to the provisions of sections 60 to 63 **[**[F176]and 63AB**]** and 75 below.

Textual Amendments

F175 S. 55(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 16(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F176 Words in s. 55(8) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 16(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

C25 S. 55 extended (01.12.1991) By Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para.8**.

56 Determinations on requests for non-domestic supplies.

(1) Subject to subsection (3) below, 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 for the purposes of section 55 above shall be determined—

(a) by agreement between that person and the water undertaker; or

(b) in default of agreement, by the Director according to what appears to him to be reasonable.

(2) Subject to subsection (3) below, the Director shall also determine any dispute arising between any person and a water undertaker by virtue of subsection (3) or (4) of section 55 above.

(3) The Director may, instead of himself making a determination under subsection (1) or (2) above, refer any matter submitted to him for determination under that subsection to the arbitration of such person as he may appoint.

(4) For the purposes of any determination under this section by the Director or any person appointed by him it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of section 55 above.

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(5) The charges in respect of a supply provided in compliance with any request made for the purposes of section 55 above—

(a) shall not be determined by the Director or a person appointed by him, except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under section 143 below in respect of supplies of the applicable description; and

(b) in so far they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—

(i) recovering the expenses of complying with its obligations under section 55 above; and

(ii) securing a reasonable return on its capital.

(6) To the extent that subsection (5)(a) above excludes any charges from a determination under this section, those charges shall be fixed from time to time by a charges scheme under section 143 below, but not otherwise.

(7) The determination of any matter under this section shall be without prejudice to the provisions of sections 233 and 372 of the [M22]Insolvency Act 1986 (conditions of supply after insolvency).

Marginal Citations

M22 1986 c. 45.

57 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.

(2) Every water undertaker shall, at the request of the **[**[F177]fire and rescue 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) 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.

(4) It shall be the duty of a water undertaker to ensure that a **[**[F177]fire and rescue 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.

[[F178](4A) Where a fire-hydrant is removed (other than at the request of the fire authority concerned) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.**]**

(5) Subject to **[**[F179]subsection (5A) and**]** section 58(3) below, the expenses incurred by a water undertaker in complying with its obligations under subsections (2) to (4) above shall be borne by the **[**[F180]fire and rescue authority**]** concerned.

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[F181(5A) Where a fire-hydrant is damaged as the result of any use made of it with the authority of a water undertaker, other than use for the purposes of fire-fighting or for any other purposes of a fire and rescue authority, the fire and rescue authority is not liable for the cost of repairing or replacing the hydrant.**]**

(6) 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.

(7) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

(8) In addition, where a water undertaker is in breach of its obligations 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) F182 . . . . . .

Textual Amendments

F177 Words in s. 57(2)(4) substituted (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 53, 61,{Sch. 1 para. 76(2)}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

F178 S. 57(4A) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 84(1)**, 105(3); S.I. 2004/641, **art. 3(v)** (with art. 6, Sch. 3)

F179 Words in s. 57(5) inserted (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 53, 61,{Sch. 1 para. 76(3)(a)}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

F180 Words in s. 57(5) substituted (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 53, 61,{Sch. 1 para. 76(3)(b)}; S.I. 2004/2304, **art. 2(2)** (subject to art. 2); S.I. 2004/2917, **art. 2**

F181 S. 57(5A) inserted (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 53, 61,{Sch. 1 para. 76(4)}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

F182 S. 57(10) repealed (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 54, 61,{Sch. 2}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

58 Specially requested fire-hydrants.

(1) 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.

(2) For the purposes of subsection (1) 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

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(b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.

(3) Subsection (5) of section 57 above shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under subsections (3) and (4) of that section.

(4) Any expenses incurred by a water undertaker—

(a) in complying with its obligations under subsection (1) above; or

(b) in complying, in relation to a specially requested fire-hydrant, with its obligations under section 57(3) or (4) above,

shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.

[F183(4A) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.**]**

(5) Subsections (6) to (9) of section 57 above shall apply in relation to the obligations of a water undertaker under this section as they apply to the obligations of a water undertaker under that section.

(6) In this section—

"factory" has the same meaning as in the M23Factories Act 1961; and

"specially requested fire-hydrant" means a fire-hydrant which—

(a) is fixed on a water main or other pipe of a water undertaker; and

(b) was fixed on that main or pipe (whether before or after it became such a main or pipe under the M24Water Act 1989) in pursuance of a request made by the owner or occupier of a factory or place of business.

Textual Amendments

F183 S. 58(4A) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 84(2)**, 105(3); S.I. 2004/641, **art. 3(v)** (art. 6, Sch. 3)

Marginal Citations

M23 1961 c. 34.

M24 1989 c. 15.

59 Supplies 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.

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(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 18 above by the Director.

Disconnections

60 Disconnections for the carrying out of necessary works.

(1) Subject to the following provisions of this section, a water undertaker may—

(a) 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

(b) otherwise cut off a supply of water to any premises,

if 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.

(2) The power of a water undertaker under this section to cut off a supply of water shall include power to reduce a supply of water.

(3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this section 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.

(4) Where a water undertaker exercises its power under this section 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 works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.

(5) Any breach by a water undertaker of the duty owed by virtue of subsection (4) above which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

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.

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[[F184](1A) The power conferred by subsection (1) above is not exercisable in relation to any premises specified in Schedule 4A to this Act.**]**

(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 judgment 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.

Textual Amendments

F184 S. 61(1A) inserted (30.6.1999) by 1999 c. 9, **ss. 1(1)**, 17(2)

62 Disconnections at request of customer.

(1) Subject to the following provisions of this section, a water undertaker may—

(a) 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

(b) otherwise cut off a supply of water to any premises,

if 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.

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(2) 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 this section.

63 General duties of undertakers with respect to disconnections.

(1) Where a water undertaker—

(a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and

(b) does so without restoring the supply to that house 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.

(2) A water undertaker which fails, without reasonable excuse, to serve a notice on a local authority as required by subsection (1) above shall be guilty of an offence under this section.

(3) A water undertaker shall be guilty of an offence under this section if—

(a) it 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 sections 60 to 62 above, section 75 below or any other enactment; or

(b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.

(4) A water undertaker which is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

[F185 Supply by licensed water supplier etc

Textual Amendments

F185 Ss. 63AA-63AC and preceding cross-heading inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 17**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

63AA Supply by licensed water supplier: domestic supply

(1) The owner or occupier of any premises may serve a notice on a water undertaker—

(a) informing the undertaker that the premises are to be supplied by a licensed water supplier; and

(b) specifying the time after which a supply of water to the premises by the undertaker will no longer be required.

(2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

(3) In this section and section 63AB below, 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

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(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.

63AB Supply by licensed water supplier: non-domestic supply

(1) The duty of a water undertaker under section 55 above to provide a supply of water to any premises shall cease to apply if—

(a) a notice specifying the time after which a supply of water to the premises by the undertaker will no longer be required in consequence of the premises being supplied by a licensed water supplier has been served on the undertaker by the owner or occupier of the premises; and

(b) that time has passed.

(2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

63AC Interim duty of water undertaker: domestic and non-domestic supply

(1) This section applies where—

(a) a licensed water supplier ceases to supply any premises with water; and

(b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—

(i) he has made arrangements for the continuation of the supply of water to the premises; or

(ii) he intends any supply of water to the premises to cease.

(2) Where this section applies, it shall be the duty of the water undertaker to continue the supply of water to the premises which was made by the licensed water supplier.

(3) Where a supply is made under subsection (2)—

(a) the charges payable in respect of the supply shall be fixed from time to time by a charges scheme under section 143 below; and

(b) subject to subsection (8) below, the supply shall be made until—

(i) a supply is made under section 52 or 55 above; or

(ii) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (4) below),

whichever is earlier.

(4) A notice under subsection (3)(b)(ii) above may not be served before the end of the period of three months beginning with the day on which the supply by the supplier ceased.

(5) A water undertaker shall not be required by virtue of this section to provide a supply of water to any premises if the provision of the supply would—

(a) 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

(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

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(6) The supply of water to any premises by a water undertaker under this section shall not prevent a proposed supply to those premises by that undertaker under section 55 above from being regarded as a new supply for the purposes of that section.

(7) Where a duty is imposed by this section in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage shall be actionable at the suit of that owner or occupier; but, in any proceedings brought against a water undertaker in pursuance of this subsection, 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) Sections 60 to 63 above apply as they apply where a supply of water is made under section 52 or 55 above.**]**

[*Use of limiting devices*

[F186]63A Prohibition of use of limiting devices.

(1) A water undertaker shall be guilty of an offence under this section if it uses a limiting device in relation to any premises specified in Schedule 4A to this Act, with the intention of enforcing payment of charges which are or may become due to the undertaker in respect of the supply of water to the premises.

(2) For the purposes of this section "a limiting device", in relation to any premises, means any device or apparatus which—

(a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and

(b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.

(3) An undertaker does not commit an offence under this section by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.

(4) An undertaker guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

Textual Amendments

F186 S. 63A inserted (30.6.1999) by 1999 c. 9, **ss. 2**, 17(2)

Means of supply

64 Supply by means of 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 [F187]. . . 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.

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(2) Where the supply of water to two or more houses **[**F188is provided wholly or partly by the same service pipe**]**, 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.

[F189(2A) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

(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 45 to 51 above shall apply as if that consumer had by a connection notice 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 52 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

(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—

(a) itself carry out the works which that person was required to carry out; and

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(b) recover the expenses reasonably incurred by the undertaker in doing so from that person.

(5) Without prejudice—

(a) to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 47 above; or

(b) 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 this Chapter.

Textual Amendments

F187 Words in s. 64(1) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), Sch. 1, para. 21(a), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F188 Words in s. 64(2) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 21(b)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F189 S. 64(2A) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(6)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

65 Duties of undertakers as respects constancy 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.

(3) 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.

(4) 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.

(5) The Secretary of State may by order modify the application of the preceding provisions of this section in relation to any water undertaker.

(6) The Secretary of State shall not make an order under subsection (5) above except—

(a) in accordance with Schedule 5 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.

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(7) Subject to subsection (6) above, the power of the Secretary of State to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament

(8) An order under subsection (5) above 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.

(9) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the **[**F190Director**]**.

(10) 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.

(11) In any proceedings against any water undertaker for an offence under subsection (10) 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.

Textual Amendments

F190 Word in s. 65(9) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para.22**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

66 Requirements by undertaker for maintaining pressure.

(1) A water undertaker may require that any premises consisting in—

(a) 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

(b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service 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.

(2) A water undertaker may, in the case of such a house as is mentioned in paragraph (b) of subsection (1) above, require that a cistern the provision of which is required under that subsection shall be capable of holding sufficient water to provide an adequate supply to the house for a period of twenty-four hours.

(3) 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—

(a) to provide a cistern in accordance with a requirement under this section; or

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(b) to put any such cistern and its float-operated valve into good repair,

the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.

(4) The period specified for the purposes of subsection (3) above in a notice under this section shall be a period of not less than twenty-eight days beginning with the day after the service of the notice.

(5) Where a water undertaker provides a cistern or carries out any repairs under subsection (3) above, it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.

(6) In this section—

"pre-transfer supplier", in relation to a house, means the person who was supplying water to that house immediately before 1st September 1989; and

"relevant house" means any house other than a house in relation to which the following two conditions are satisfied, that is to say—

(i) the erection of the house was commenced before 1st September 1989; and

(ii) no such requirement as is mentioned in subsection (1) or (2) above could have been imposed in relation to the house under any enactment having effect immediately before that date in relation to the pre-transfer supplier.

[F191CHAPTER 2A

SUPPLY DUTIES ETC: LICENSED WATER SUPPLIERS

Textual Amendments

F191 Pt. 3 Ch. 2A inserted (1.4.2004 for specified provisions and purposes and 1.12.2005 otherwise) by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 3**; S.I. 2004/641, **art. 3(l)**, Sch. 1 (with art. 6, Sch. 3); S.I. 2005/2714, **art. 3(a)** (with Sch. 2 para. 8)

Duty of undertaker to supply licensed water supplier etc

66A Wholesale water supply by primary water undertaker

(1) This section applies where—

(a) a licensed water supplier requests its primary water undertaker to provide it with a supply of water for the purpose of supplying water to the premises of its customers in accordance with the retail authorisation; and

(b) the premises are in the area of the undertaker.

(2) Where this section applies, it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(a) to take any such steps—

(i) for the purpose of connecting the premises in question with the undertaker's supply system; or

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(ii) in respect of that system,

as may be so provided for in order to enable the undertaker to provide the requested supply; and

(b) having taken any such steps, to provide that supply.

(3) A primary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier, or to take any steps to enable it to provide such a supply, if—

(a) both of the first and second conditions are satisfied; or

(b) the third condition is satisfied.

(4) The first condition is that—

(a) the premises to be supplied by the supplier do not consist in the whole or any part of a building; or

(b) the supply to be made by it to those premises is for purposes other than domestic purposes.

(5) The second condition is that the provision of the supply by the undertaker would—

(a) 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

(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) The third condition is that there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to the premises to be supplied by the supplier; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.

(7) Where—

(a) a request has been made by a licensed water supplier to its primary water undertaker for the purposes of subsection (1) 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 it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

(8) A water undertaker is the primary water undertaker of a licensed water supplier for the purposes of this section and section 66C below if the undertaker's supply system is to be used for the purpose of making the supply to premises mentioned in those sections.

(9) In this section and sections 66B and 66C below—

(a) any reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above; and

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(b) any reference to the retail authorisation shall be construed in accordance with section 17A(2) above.

66B Introduction of water into water undertaker's supply system

(1) This section applies where—

(a) a qualifying licensed water supplier requests a water undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and

(b) the premises are in the area of the undertaker.

(2) This section also applies where—

(a) a water undertaker agrees to permit a qualifying licensed water supplier to introduce water into the undertaker's treatment works;

(b) in connection with that introduction, the supplier requests the undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and

(c) the premises are in the area of the undertaker.

(3) Where this section applies, it shall be the duty of the water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(a) to take any such steps—

(i) for the purpose of connecting the premises in question with the undertaker's supply system;

(ii) for the purpose of connecting the treatment works of the qualifying licensed water supplier with that system (in a case falling within subsection (1) above);

(iii) for the purpose of connecting with that system any source used by the qualifying licensed water supplier for the purpose of supplying water other than for domestic or food production purposes (in a case falling within subsection (1) above); or

(iv) in respect of that system,

as may be so provided for in order to enable the supplier to make the requested introduction of the water into that system; and

(b) having taken any such steps, to permit the requested introduction of the water into that system.

(4) A water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable a qualifying water supplier to make such an introduction, if the first or second condition is satisfied.

(5) The first condition is that permitting the introduction of the water into the water undertaker's supply system would—

(a) 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

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(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) The second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to the premises to be supplied by the supplier; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.

(7) Where—

(a) a request has been made by a qualifying licensed water supplier to a water undertaker for the purposes of subsection (1) or (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 it of any of its powers or the carrying out by it of any works,

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

(8) In this section "treatment works"—

(a) in relation to a water undertaker, means the works designated as treatment works by the Secretary of State for the purposes of section 17B(6) above;

(b) in relation to a qualifying licensed water supplier, means the works designated from time to time by the Secretary of State as treatment works for the purposes of this paragraph.

(9) Before designating any works for the purposes of subsection (8)(b) above, the Secretary of State shall consult the Assembly.

(10) A list of any works designated for the purposes of subsection (8)(b) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

(11) Any pipe laid in pursuance of subsection (3)(a)(ii) or (iii) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

(12) In this section and section 66C below, references to a qualifying licensed water supplier are references to a licensed water supplier which is the holder of a combined licence (within the meaning of Chapter 1A of Part 2 of this Act).

66C Wholesale water supply by secondary water undertaker

(1) This section applies where—

(a) a qualifying licensed water supplier—

(i) requests a water undertaker other than its primary water undertaker (the "secondary water undertaker") to provide a supply of water for the purpose of the supplier supplying water, using the primary water undertaker's supply system, to the premises of the supplier's customers in accordance with the retail authorisation; and

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(ii) requests its primary water undertaker to permit it to introduce that water into its supply system; and

(b) the premises are in the area of the primary water undertaker.

(2) Where this section applies—

(a) it shall be the duty of the secondary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(i) to take any such steps in respect of its supply system as may be so provided for in order to enable it to provide the requested supply; and

(ii) having taken any such steps, to provide that supply; and

(b) it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(i) to take any such steps specified in subsection (3) below as may be so provided for in order to enable the licensed water supplier to make the introduction of the requested supply of water into the primary water undertaker's supply system; and

(ii) having taken any such steps, to permit the introduction of that supply of water into that supply system.

(3) The steps mentioned in subsection (2)(b)(i) above are steps—

(a) for the purpose of connecting the premises in question with the primary water undertaker's supply system;

(b) for the purpose of connecting that system with the secondary water undertaker's supply system; or

(c) in respect of the primary water undertaker's supply system.

(4) If the first or second condition is satisfied—

(a) a secondary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier; and

(b) a primary water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable the licensed water supplier to make such an introduction.

(5) The first condition is that the provision of the supply or permitting the introduction would—

(a) require the undertaker in question, 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

(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) This second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to the premises to be supplied by the supplier; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.

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(7) Where—

(a) requests have been made by a licensed water supplier to its primary water undertaker and secondary water undertaker for the purposes of subsection (1) above; and

(b) the steps which either of those undertakers is required to take by virtue of the request made to it include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the undertaker's failure to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

(8) Any pipe laid in pursuance of subsection (2)(b)(i) above by virtue of subsection (3)(b) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

66D Sections 66A to 66C: determinations and agreements

(1) The Authority may determine, in a case referred to it by a licensed water supplier, whether any condition specified in section 66A(4) to (6), 66B(5) or (6) or 66C(5) or (6) above is satisfied (subject to section 66F below).

(2) The period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are—

(a) those which are—

(i) in a case falling within section 66A(2) or 66B(3) above, agreed between the water undertaker and the licensed water supplier in question; and

(ii) in a case falling within section 66C(2) above, agreed between the water undertakers and the licensed water supplier in question; or

(b) in default of such agreement, those which are determined by the Authority, in a case referred to it by the licensed water supplier in question, if they are acceptable to the supplier,

(subject to the following provisions of this section and sections 66E and 66F below).

(3) The charges payable by a licensed water supplier to a water undertaker under an agreement under paragraph (a)(i) or (ii) of subsection (2) above or a determination under paragraph (b) of that subsection shall be fixed in accordance with the costs principle set out in section 66E below.

(4) The Authority shall issue guidance in accordance with which the terms and conditions of an agreement under paragraph (a)(i) or (ii) of subsection (2) above shall be made.

(5) Before issuing guidance under subsection (4) above, the Authority shall consult such persons as it considers appropriate.

(6) The guidance issued under subsection (4) above shall include guidance with respect to the fixing of charges in accordance with subsection (3) above.

(7) Subsection (8) below applies if it appears to the Authority that an agreement under paragraph (a)(i) or (ii) of subsection (2) above has not been made in accordance with—

(a) subsection (3) above; or

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(b) the guidance issued under subsection (4) above.

(8) The Authority may require the parties to the agreement to—

(a) modify the agreement; or

(b) terminate the agreement,

and that requirement shall be enforceable under section 18 above by the Authority.

(9) Neither the OFT nor the Authority may exercise, in respect of an agreement under paragraph (a)(i) or (ii) of subsection (2) above, the powers conferred by—

(a) section 32 of the Competition Act 1998 (directions in relation to agreements); and

(b) subsection (2) of section 35 of that Act (interim directions).

(10) Subsection (9)(b) above does not apply to the exercise of powers in respect of conduct—

(a) which is connected with an agreement under paragraph (a)(i) or (ii) of subsection (2) above; and

(b) in respect of which subsection (1)(b) of section 35 of that Act applies.

66E Section 66D: costs principle

(1) The costs principle referred to in subsection (3) of section 66D above is that the charges payable by a licensed water supplier to a water undertaker, under the agreement or determination mentioned in that subsection, shall enable the undertaker to recover from the supplier—

(a) any expenses reasonably incurred in performing any duty under sections 66A to 66C above in accordance with that agreement or determination, and

(b) the appropriate amount in respect of qualifying expenses and a reasonable return on that amount,

to the extent that those sums exceed any financial benefits which the undertaker receives as a result of the supplier supplying water to the premises of relevant customers.

(2) In subsection (1) above "qualifying expenses" means expenses (whether of a capital nature or otherwise) that the water undertaker has reasonably incurred or will reasonably incur in carrying out its functions.

(3) For the purposes of subsection (1)(b) above, the appropriate amount is the amount which the water undertaker—

(a) reasonably expected to recover from relevant customers; but

(b) is unable to recover from those customers as a result of their premises being supplied with water by the licensed water supplier.

(4) Nothing in subsection (3) above shall enable a water undertaker to recover any amount—

(a) to the extent that any expenses can be reduced or avoided; or

(b) to the extent that any amount is recoverable in some other way (other than from other customers of the undertaker).

(5) In this section "relevant customers" means customers to whose premises the licensed water supplier is to make any supply of water in connection with which the agreement or determination mentioned in subsection (1) above is made.

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66F Section 66D: supplementary

(1) Before the Authority makes—

(a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66B(5) or (6) above is satisfied; or

(b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which a water undertaker is to perform any duty under section 66B above,

it shall consult the Secretary of State (subject to subsection (3) below).

(2) Before the Authority makes—

(a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66C(5) or (6) is satisfied; or

(b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which the water undertakers are to perform any duty under section 66C above,

it shall consult the Secretary of State (subject to subsections (3) and (4) below) and the Environment Agency.

(3) If—

(a) a determination mentioned in subsection (1) or (2) above is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; and

(b) in the case of a determination mentioned in subsection (2) above, the area of the secondary water undertaker in question is wholly or mainly in Wales,

the Authority shall consult the Assembly (and not the Secretary of State).

(4) If a determination mentioned in subsection (2) above—

(a) is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in—

(i) England; or

(ii) Wales;

(b) but the area of the secondary water undertaker in question is (respectively) wholly or mainly in—

(i) Wales; or

(ii) England,

the Authority shall consult the Assembly (as well as the Secretary of State).

(5) The Authority shall publish guidance issued under section 66D(4) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) The Authority may from time to time revise the guidance so issued.

(7) Before revising any guidance under subsection (6) above, the Authority shall consult such persons as it considers appropriate.

(8) Subsection (5) above applies to guidance revised under subsection (6) above as it applies to guidance issued under section 66D(4) above.

(9) In this section, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.

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(10) Where the period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are determined in accordance with subsection (2)(b) of section 66D above, they shall have effect as if they had been agreed between the parties in question (and references in the following provisions of this Act to an agreement under that section shall be construed accordingly).

66G Designation of strategic supply

(1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with an agreement under section 66D above constitutes a strategic supply of water.

(2) The Authority shall designate the introduction as a strategic supply.

(3) Subsection (4) below applies if—

(a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or

(b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.

(4) The Authority shall give notice of the request or proposed determination to—

(a) the Secretary of State;

(b) the Assembly;

(c) the Environment Agency;

(d) the other party or parties, or the parties, to the agreement under section 66D above; and

(e) such other persons (if any) as the Authority thinks it appropriate to notify.

(5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.

(6) The Authority shall consider any representations or objections which are duly made and not withdrawn.

(7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.

(8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.

(9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).

(10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers as well as supplying customers of the licensed water supplier in question with water for domestic purposes.

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66H Designation of collective strategic supply

(1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—

(a) which are made by a licensed water supplier; and

(b) which a water undertaker is required to permit under section 66B or 66C above in accordance with agreements under section 66D above,

constitute a collective strategic supply of water.

(2) The Authority shall designate the introductions as a collective strategic supply.

(3) Subsection (4) below applies if—

(a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or

(b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.

(4) The Authority shall give notice of the request or proposed determination to—

(a) the Secretary of State;

(b) the Assembly;

(c) the Environment Agency;

(d) the other party or parties, or the parties, to the agreements under section 66D above; and

(e) such other persons (if any) as the Authority thinks it appropriate to notify.

(5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.

(6) The Authority shall consider any representations or objections which are duly made and not withdrawn.

(7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.

(8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.

(9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).

(10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers as well as supplying the customers of the licensed water supplier in question with water for domestic purposes.

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Offences

66I Prohibition on unauthorised use of supply system

(1) Subject to subsections (2) and (3) and section 66K below, no person shall use a water undertaker's supply system for the purpose of supplying water to any premises of a customer.

(2) Subsection (1) above shall not apply where the supply is made—

(a) by the water undertaker, or

(b) by a licensed water supplier in pursuance of its licence.

(3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.

(4) A person who contravenes subsection (1) above shall be guilty of an offence.

(5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.

(6) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

(7) No proceedings for an offence under this section shall be instituted except by—

(a) the Secretary of State, or

(b) the Authority.

(8) The functions of—

(a) making regulations under subsection (3) above; and

(b) instituting proceedings under subsection (7)(a) above,

are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

(9) In this section and sections 66J and 66L below, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.

Modifications etc. (not altering text)

C26 S. 66I(1) restricted (1.12.2005) by The Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005 (S.I. 2005/3075), **reg. 3**

66J Prohibition on unauthorised introduction of water

(1) Subject to subsections (2) and (3) and section 66K below, no person shall introduce water into a water undertaker's supply system (other than the undertaker itself).

(2) Subsection (1) above shall not apply where the water is introduced—

(a) by a licensed water supplier in pursuance of its licence, or

(b) by another water undertaker under an agreement for a supply of water in bulk.

(3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.

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(4) A person who contravenes subsection (1) above shall be guilty of an offence.

(5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.

(6) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £20,000, and

(b) on conviction on indictment, to a fine.

(7) For the purposes of section 210 below, 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.

(8) No proceedings for an offence under this section shall be instituted except by—

(a) the Secretary of State; or

(b) the Authority.

(9) The functions of—

(a) making regulations under subsection (3) above; and

(b) instituting proceedings under subsection (8)(a) above,

are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

Modifications etc. (not altering text)

C27 S. 66J(1) restricted (1.12.2005) by The Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005 (S.I. 2005/3075), **reg. 4**

66K Sections 66I and 66J: exemptions

(1) The Secretary of State may by order made by statutory instrument grant exemption from section 66I(1) or 66J(1) above to—

(a) a person or persons of a class;

(b) generally or to such extent as may be specified in the order; and

(c) unconditionally or subject to such conditions as may be so specified.

(2) Before making an order under subsection (1) above the Secretary of State shall give notice—

(a) stating that he proposes to make such an order and setting out the terms of the proposed order;

(b) stating the reasons why he proposes to make the order in the terms proposed; and

(c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) The notice required by subsection (2) above shall be given—

(a) by serving a copy of it on the Authority; and

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(b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.

(4) Notice of an exemption granted to a person shall be given—

(a) by serving a copy of the exemption on him; and

(b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

(5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—

(a) persons of that class; and

(b) other persons who may be affected by it.

(6) An exemption may be granted—

(a) indefinitely; or

(b) for a period specified in, or determined by or under, the exemption.

(7) Conditions included in an exemption by virtue of subsection (1)(c) above may, in particular, require any person carrying on any activity in pursuance of the exemption—

(a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;

(b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and

(c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

66L Section 66K: supplementary

(1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a person under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a class under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) in accordance with any provision of the order by which the exemption was granted; or

(b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

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(3) The Secretary of State may by direction withdraw an exemption granted to persons of a class under section 66K(1) above from any person of that class—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.

(4) Before making an order under subsection (1)(b) or (c) or (2) above or giving a direction under subsection (3)(b) or (c) above, the Secretary of State shall—

(a) consult the Authority; and

(b) give notice—

(i) stating that he proposes to make such an order or give such a direction;

(ii) stating the reasons why he proposes to make such an order or give such a direction; and

(iii) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under subsection (4) above shall be given—

(a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c) above, by serving a copy of it on the person to whom the exemption was granted;

(b) where he is proposing to make an order under subsection (2) above, by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and

(c) where he is proposing to give a direction under subsection (3)(b) or (c) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption.

(6) A statutory instrument containing an order under subsection (1) or (2) above or subsection (1) of section 66K above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) The power to—

(a) make an order under subsection (1) or (2) above or subsection (1) of section 66K above; or

(b) give a direction under subsection (3) above,

is exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

(8) Accordingly, subsections (1) to (5) above and section 66K above apply in relation to an order made or a direction given by the Assembly by virtue of subsection (7) above as they apply in relation to an order made or direction given by the Secretary of State.**]**

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CHAPTER III

QUALITY AND SUFFICIENCY OF SUPPLIES

Standards of wholesomeness

67 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.

Subordinate Legislation Made

P1 S. 67: ss. 67 and 77(3) (with ss. 77(4) and 213(2)) power exercised by S.I.1991/2790

Modifications etc. (not altering text)

C28 S. 67 applied by S.I. 2000/2531, reg. 2(2)(c) (as inserted (1.10.2009) by The Building and Approved Inspectors (Amendment) Regulations 2009 (S.I. 2009/1219), **reg. 2(2)(b)**)

General obligations of undertakers ***[****F192****and licensed water suppliers****]***

Textual Amendments

F192 Words in s. 68 cross-heading inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(8)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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68 Duties of water undertakers [F193and licensed water suppliers] with respect to water quality.

(1) It shall be the duty of a water undertaker **[**F194where its supply system is used for the purpose of supplying water to any premises for domestic or food production purposes**]**—

(a) **[**F195to ensure that any water so supplied**]** 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 **[**F196water is so supplied**]** , 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.

[F197and this section and section 69 below apply, in relation to the duty of an undertaker, whether or not the water supplied using the undertaker's supply system is supplied by the undertaker.**]**

[F198(1A) It shall be the duty of a licensed water supplier—

(a) when supplying water to any premises for domestic or food production purposes, in accordance with its retail authorisation, to ensure that the water 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 supplier supplies water to premises for domestic or food production purposes, in accordance with its retail authorisation, 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,

and references in this subsection to the retail authorisation shall be construed in accordance with section 17A(2) above.**]**

(2) For the purposes of this section and section 69 below and subject to subsection (3) below, **[**F199where a water undertaker's supply system is used for the purpose of supplying water to any premises, any water so supplied**]** 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 **[**F200subsection (1) above where a water undertaker's supply system is used for the purpose of supplying water to any premises, and the water so supplied**]** 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 **[**F201the water is supplied, to ensure that such steps are taken**]** 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.

[F202(3A) For the purposes of subsection (1A) above where water supplied by a licensed water supplier 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—

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(a) it has ceased to be wholesome after leaving the relevant 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 supplier, before supplying the water, to ensure that such steps are taken 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 relevant pipes.

(3B) In subsection (3A) above "relevant pipes" means the pipes of the water undertaker whose supply system is used for the purpose of the supply made by the licensed water supplier.**]**

(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 **[**[F203]and licensed water supplier**]** under this section shall be enforceable under section 18 above by the Secretary of State.

Textual Amendments

F193 S. 68: words in sidenote inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(8)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F194 Words in s. 68(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F195 Words in s. 68(1)(a) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F196 Words in s. 68(1)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(c)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F197 Words in s. 68(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(d)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F198 S. 68(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F199 Words in s. 68(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F200 Words in s. 68(3) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(5)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F201 Words in s. 68(3)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(5)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F202 S. 68(3A)(3B) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F203 Words in s. 68(5) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

69 Regulations for preserving water quality.

(1) The Secretary of State may by regulations require a water undertaker **[**[F204]or a licensed water supplier to ensure that such steps are taken**]** as may be prescribed for the purpose of securing compliance with section 68 above.

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(2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may impose an obligation on a water undertaker **[**F205or licensed water supplier**]**—

(a) to **[**F206ensure that all such steps are taken**]** as may be prescribed for monitoring and recording whether the water **[**F207used for relevant supplies**]** to premises for domestic or food production purposes is wholesome at the time of supply;

(b) to **[**F208ensure that all such steps are taken**]** as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which **[**F209is used or is proposed to be used for making relevant supplies**]** to any premises for domestic or food production purposes;

(c) to ensure that a source which **[**F210is used or proposed to be used for making relevant supplies**]** for domestic or food production 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 **[**F211ensure that records are kept**]** of the localities within which all the premises **[**F212receiving relevant supplies**]** for domestic or food production purposes F213. . . are normally supplied from the same source or combination of sources;

(e) to **[**F214ensure that prescribed requirements are complied with**]** with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.

(3) Without prejudice to subsections (1) and (2) above, the Secretary of State may by regulations make provision **[**F215imposing obligations on water undertakers or licensed water suppliers with respect to the use for the purposes of or in connection with making relevant supplies**]**—

(a) of such processes and substances; and

(b) of products that contain or are made with such substances or materials,

as he considers might affect the quality of any water.

(4) Without prejudice to the generality of the power conferrred by subsection (3) above, regulations under that subsection may—

(a) **[**F216require water undertakers or licensed water suppliers to ensure that**]** processes, substances and products which have not been approved under the regulations or which contravene the regulations **[**F217are not used for the purposes of or in connection with relevant supplies**]**;

(b) for the purposes of provision made by virtue of paragraph (a) above, require **[**F218water undertakers and licensed water suppliers to ensure that**]** processes, substances and products used **[**F219for the purposes of or in connection with relevant supplies**]** 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 **[**F220for the purposes of or in connection with relevant supplies**]** 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;

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(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.

(5) The Secretary of State may by regulations [F221]. . . —

(a) **[**[F222]require a water undertaker**]**to publish information about the quality of water supplied for domestic or food production purposes to any premises **[**[F223]using that undertaker's supply system**]**; [F224]. . .

[[F225](aa) require a licensed water supplier to publish information about the quality of water supplied for domestic or food production purposes to any premises by that supplier**]**

(b) **[**[F226]require any such undertaker or supplier**]**to provide information to prescribed persons about the quality of water **[**[F227]supplied as referred to in paragraph (a) or (aa) above (as the case may be)**]**.

(6) Regulations under subsection (5) 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 **[**[F228]or licensed water supplier**]** to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker **[**[F229]or supplier**]** of a prescribed charge; and

(c) may impose such other conditions on the provision of information by a water undertaker **[**[F230]or licensed water supplier**]** to any person as may be prescribed.

[[F231](7) In this section, "relevant supplies" means—

(a) in the case of an obligation imposed on a water undertaker, supplies of water—

(i) made by the undertaker in carrying out its functions; or

(ii) made by a licensed water supplier using the undertaker's supply system; and

(b) in the case of an obligation imposed on a licensed water supplier, supplies of water made by that supplier using a water undertaker's supply system.**]**

Textual Amendments

F204 Words in s. 69(1) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(2)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F205 Words in s. 69(2) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F206 Words in s. 69(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(b)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F207 Words in s. 69(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

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F208 Words in s. 69(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(c)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F209 Words in s. 69(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(c)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F210 Words in s. 69(2)(c) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(d)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F211 Words in s. 69(2)(d) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(e)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F212 Words in s. 69(2)(d) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(e)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F213 Words in s. 69(2)(d) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(3)(e)(iii)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F214 Words in s. 69(2)(e) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(f)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F215 Words in s. 69(3) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(4)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F216 Words in s. 69(4)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(a)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F217 Words in s. 69(4)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F218 Words in s. 69(4)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(b)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F219 Words in s. 69(4)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F220 Words in s. 69(4)(c) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(c)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F221 Words in s. 69(5) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(6)(a)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F222 Words in s. 69(5)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), {Sch. 8 para. 19(6)(b)(i))}; S.I. 2004/641, **art. 3(y)**, Sch. 2

F223 Words in s. 69(5)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F224 Words in s. 69(5)(a) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(6)(c)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F225 S. 69(5)(aa) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(d)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F226 Words in s. 69(5)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(e)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F227 Words in s. 69(5)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(e)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F228 Words in s. 69(6)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(7)(a)(i)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F229 Words in s. 69(6)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(7)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F230 Words in s. 69(6)(c) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(7)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F231 S. 69(7) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(8)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

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70 Offence of supplying water unfit for human consumption.

(1) Subject to subsection (3) below, where a **[**F232water undertaker's supply system is used for the purposes of supplying water**]** to any premises and that water is unfit for human consumption, **[**F233the relevant persons**]** shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding **[**F234£20,000**]** ;

(b) on conviction on indictment, to a fine.

[F235(1A) For the purposes of subsection (1) above, the relevant persons are—

(a) the water undertaker whose supply system is used for the purposes of supplying the water (in this section referred to as the "primary water undertaker"); and

(b) any employer of persons, or any self-employed person, who is concerned in the supply of the water.**]**

(2) For the purposes of section 210 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 **[**F236relevant person**]** for an offence under this section it shall be a defence for **[**F237that person**]** 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 **[**F238the primary water undertaker's**]** pipes or was not used for human consumption.

[F239(3A) For the purposes of paragraph (b) of subsection (3) above—

(a) in the case of proceedings against a primary water undertaker, showing that the undertaker took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that the relevant arrangements were reasonable in all the circumstances; and

(b) in the case of proceedings against any other relevant person, showing that the person took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that it took all reasonable steps and exercised all due diligence for securing that all aspects of the relevant arrangements for which it was responsible were properly carried out.

(3B) In subsection (3A) above, "relevant arrangements" means arrangements made by the primary water undertaker to ensure that all other relevant persons were required to take all reasonable steps and exercise all due diligence for securing that the water was fit for human consumption on leaving the undertaker's 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.

Textual Amendments

F232 Words in s. 70(1) substituted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(2)(a)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4, Sch.)

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F233 Words in s. 70(1) substituted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(2)(b)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4, Sch.)
F234 Words in s. 70(1)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 61**, 105(3); S.I. 2004/641, **art. 3(n)**
F235 S. 70(1A) inserted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(3)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4, Sch.)
F236 Words in s. 70(3) substituted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(4)(a)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4, Sch.)
F237 Words in s. 70(3) substituted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(4)(b)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4, Sch.)
F238 Word in s. 70(3)(b) substituted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(4)(c)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4)
F239 S. 70(3A)(3B) inserted (1.10.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 20(5)**; S.I. 2004/2528, **art. 2(t)(iv)** (with art. 4, Sch.)

Waste, contamination, misuse etc.

71 Waste from water sources.

(1) Subject to subsections (2) and (3) below, a person shall be guilty of an offence under this section if—

(a) he causes or allows any underground water to run to waste from any well, borehole or other work; or

(b) he abstracts from any well, borehole or other work water in excess of his reasonable requirements.

(2) A person shall not be guilty of an offence by virtue of subsection (1)(a) above in respect of anything done for the purpose—

(a) of testing the extent or quality of the supply; or

(b) of cleaning, sterilising, examining or repairing the well, borehole or other work in question.

(3) Where underground water interferes or threatens to interfere with the carrying out or operation of any underground works (whether waterworks or not), it shall not be an offence under this section, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.

(4) A person who is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(5) On the conviction of a person under this section, the court may—

(a) order that the well, borehole or other work to which the offence relates shall be effectively sealed; or

(b) make such other order as appears to the court to be necessary to prevent waste of water.

(6) If any person fails to comply with an order under subsection (5) above, then, without prejudice to any penalty for contempt of court, the court may, on the application of **[**F240the Environment Agency**]**, authorise **[**F241the Agency**]** to take such steps as may be necessary to execute the order; and any expenses incurred in taking any such steps shall be recoverable summarily as a civil debt from the person convicted.

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(7) Any person designated for the purpose by **[**F242the Environment Agency**]** shall, on producing some duly authenticated document showing his authority, have a right at all reasonable times—

(a) to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this section on or in connection with the premises;

(b) to enter any premises for the purpose of executing any order of the court under this section which **[**F242the Environment Agency**]** has been authorised to execute in those premises.

(8) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsection (7) above.

Textual Amendments

F240 Words in s. 71(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 101(1)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F241 Words in s. 71(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 101(1)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F242 Words in s. 71(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 101(2)** (with ss. 7(6), 115, 117): S.I. 1996/186, **art. 3**

72 Contamination of water sources.

(1) Subject to subsections (2) and (3) below, a person is guilty of an offence under this section if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—

(a) for human consumption or domestic purposes; or

(b) for manufacturing food or drink for human consumption,

is polluted or likely to be polluted.

(2) Nothing in this section shall be construed as restricting or prohibiting any method of cultivation of land which is in accordance with the principles of good husbandry.

(3) Nothing in this section shall be construed as restricting or prohibiting the reasonable use of oil or tar on any highway maintainable at public expense so long as the highway authority take all reasonable steps for preventing—

(a) the oil or tar; and

(b) any liquid or matter resulting from the use of the oil or tar,

from polluting the water in any waterworks.

(4) A person who is guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) In this section "waterworks" includes—

(a) any spring, well, adit, borehole, service reservoir or tank; and

(b) any main or other pipe or conduit of a water undertaker**[**F243; and

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(c) any pipe or conduit of a licensed water supplier.**]**

Textual Amendments

F243 S. 72(5)(c) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 21**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

C29 S. 72 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 8** (with ss. 42, 46).

73 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 **[**F244or licensed water supplier**]** 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 **[**F245or supplier**]** 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.

[F246(1A) In any proceedings under subsection (1) above it shall be a defence to prove–

(a) that the contamination or likely contamination, or the wastage, misuse or undue consumption, was caused (wholly or mainly) by the installation, alteration, repair or connection of the water fitting on or after 1st July 1999;

(b) that the works were carried out by or under the direction of an approved contractor within the meaning of the Water Supply (Water Fittings) Regulations 1999; and

(c) that the contractor certified to the person who commissioned those works that the water fitting complied with the requirements of those regulations.**]**

(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.

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Textual Amendments

F244 Words in s. 73(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 22(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F245 Words in s. 73(1)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 22(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F246 S. 73(1A) inserted (1.7.1999) by S.I. 1999/1148, **reg. 8**

74 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—

(i) that water in a water main or other pipe of a water undertaker is not contaminated; and

(ii) 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 **[**F247or licensed water supplier**]** 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 **[**F248or a licensed water supplier**]** 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 **[**F249or licensed water supplier**]** 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.

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(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 73 above or section 75 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 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) Without prejudice to sections 84 and 170 below, any person designated in writing for the purposes of this subsection in such 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) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.

(6) The power of the Secretary of State under this section to make regulations with respect to the matters specified in the preceding provisions of this section shall include power, by regulations under this section—

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(a) to modify the operation of Schedule 2 to the [M25]Water Consolidation (Consequential Provisions) Act 1991 in relation to any byelaws made under section 17 of the [M26]Water Act 1945 which have effect by virtue of paragraph 19 of Schedule 26 to the [M27]Water Act 1989 and that Schedule 2; and

(b) to revoke or amend any such byelaws;

but, so long as any such byelaws so have effect, the references in sections 47(2)(g), 53(2)(c) and 55(4) above to such regulations under this section as are prescribed shall have effect as including references to those byelaws.

(7) 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.

(8) In this section "safe" has the same meaning as in Part II of the [M28]Consumer Protection Act 1987.

Textual Amendments

F247 Words in s. 74(1)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F248 Words in s. 74(1)(c) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F249 Words in s. 74(1)(d) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(c)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

Marginal Citations

M25 1991 c. 60.

M26 1945 c. 42.

M27 1989 c. 15.

M28 1987 c. 43.

75 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 74 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

(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.

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[F250(1A) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker whose supply system is used for the purpose of a licensed water supplier making 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 water 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 pipe or main;

(c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the supplier to those premises is being or is likely to be contaminated before it is used; or

(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.

(5) A water undertaker which fails, without reasonable excuse, to serve a notice in accordance with subsection (3) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) 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 (7) to (9) below.

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(7) 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.

(8) Subsections (3) to (5) above shall apply where a water undertaker exercises its power under subsection (7) above as they apply where such an undertaker exercises its power by virtue of subsection (2)(a) above.

(9) Where, in a case not falling within subsection (7)(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

(b) subject to subsection (10) 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 Chapter II of this Part.

(10) 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.

[[F251](11) Where the power conferred by subsection (2) above on a water undertaker is exercisable by virtue of subsection (1A) above—

(a) the references to the consumer in subsections (2) and (3), in relation to a supply of water to any premises, shall be taken to be references to the person in respect of whom the supply is made; and

(b) the undertaker shall serve on the licensed water supplier providing the supply a copy of any notice under this section which is served on the person mentioned in paragraph (a) above.

(12) In subsection (1A) above, the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.**]**

Textual Amendments

F250 S. 75(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 24(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F251 S. 75(11)(12) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 24(3)**; S.I 2005/2714, {art. 3(c)} (with Sch. para. 8)

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76 Temporary hosepipe bans.

(1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution by that undertaker exists or is threatened, that undertaker may, for such period as it thinks necessary, prohibit or restrict, as respects the whole or any part of its area, the use for the purpose of—

(a) watering private gardens; or

(b) washing private motor cars,

of any water supplied by that undertaker **[**F252or a licensed water supplier**]** and drawn through a hosepipe or similar apparatus.

(2) A water undertaker imposing a prohibition or restriction under this section shall, before it comes into force, give public notice of it, and of the date on which it will come into force, in two or more newspapers circulating in the locality affected by the prohibition or restriction.

(3) Any person who, at a time when a prohibition or restriction under this section is in force, contravenes its provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Where a prohibition or restriction is imposed by a water undertaker under this section, charges made by the undertaker for the use of a hosepipe or similar apparatus shall be subject to a reasonable reduction and, in the case of a charge paid in advance, the undertaker shall make any necessary repayment or adjustment.

(5) In this section "private motor car" means any mechanically propelled vehicle intended or adapted for use on roads other than—

(a) a public service vehicle, within the meaning of the M29Public Passenger Vehicles Act 1981; or

(b) a goods vehicle within the meaning of the M30Road Traffic Act 1988,

and includes any vehicle drawn by a private motor car.

Textual Amendments

F252 Words in s. 76(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 25**; S.I 2005/2714, {art. 3(c)} (with Sch. para. 8)

Marginal Citations

M29 1981 c. 14.

M30 1988 c. 52.

Local authority functions

77 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.

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(2) 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.

(3) The Secretary of State may by regulations make such provision, supplementing the provisions of this section and of sections 78 and 79(2) below, 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 any of those provisions.

(4) Without prejudice to the generality of subsection (3) 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;

(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 any of the provisions mentioned in subsection (3) above, 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.

Subordinate Legislation Made

P2 S. 77(3)(4): ss. 67 and 77(3) (with ss. 77(4) and 213(2)) power exercised by S.I.1991/2790

78 Local authority functions in relation to undertakers' supplies.

(1) 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 **[**F253, or by a licensed water supplier using that undertaker's supply system,**]** of water for domestic or food production 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 domestic 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 68(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.

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(2) Where a local authority have notified a water undertaker of any such matter as is mentioned in subsection (1) 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.

[F254(3) In subsection (1)(a) above, the reference to the water undertaker's supply system shall be construed in accordance with section 17B(5) above.**]**

Textual Amendments

F253 Words in s. 78(1)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(2)**; S.I 2005/2714, {art. 3(c)} (with Sch. para. 8)

F254 S. 78(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(3)**; S.I 2005/2714, {art. 3(c)} (with Sch. para. 8)

79 Local authority functions where piped supplies insufficient or unwholesome.

(1) This section applies to a case in which 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.

(2) In any case to which this section applies, it shall be the duty of the local authority in whose area the premises in question are situated, if they are satisfied—

(a) that 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

(b) that it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as is sufficient for those purposes,

to require the undertaker, under subsection (3) below, to provide a supply of water to those premises otherwise than in pipes.

(3) Where, in a case to which this section applies—

(a) the insufficiency or unwholesomeness of the supply of water for domestic purposes to the premises in question is such as to cause a danger to life or health;

(b) it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as (so far as those premises are concerned) is sufficient for domestic purposes; and

(c) the local authority in whose area those premises are situated notify the undertaker of the danger to life or health 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.

(4) Where under this section a local authority require the provision by a water undertaker of a supply of water to any premises, that authority—

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(a) shall be liable to the undertaker for any charges payable by virtue of Chapter I of Part V of this Act 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.

(5) 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.

(6) The duty of a water undertaker under subsection (3) above shall be enforceable under section 18 above by the **[**[F255]Director**]**.

Textual Amendments

F255 Word in s. 79(6) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para.23**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

80 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 or food production 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 81(2) and (3) below.

(3) Subject to sections 81 and 82 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—

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(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 so to 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;

(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 sections 81 and 82 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 of the steps for ensuring that the supply is wholesome which are specified in a 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 sections 81 to 83 below the relevant persons, in relation to a private supply of water to any premises in the area of a local authority, are—

(a) the owners and occupiers of those premises; and

(b) 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;

and in sections 81 to 83 below a notice under this section is referred to as a private supply notice.

81 Confirmation of private supply notices.

(1) Subject to subsection (2) below, a private supply notice served by a local authority shall not take effect until the end of the period specified in the notice as the period

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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 private supply notice served by a local authority 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 private supply notice 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;

(b) may, with respect to the matters specified in the notice or any proposed modification of it, direct the local authority to serve a private supply notice, in such terms as may be specified in the direction, on any relevant person who has not previously been served with such a notice;

(c) may, for the purposes of paragraph (a) or (b) above cause a local inquiry to be held or afford—

(i) to the local authority; and

(ii) to every person who has made representations or objections with respect to the notice or any 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 80(2)(c) and (d) above.

(4) Where the Secretary of State confirms a private supply notice (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 section 80 above; 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.

82 Enforcement and variation of private supply notice.

(1) Where any relevant person who is required by virtue of a private supply notice 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 83 or 84 below, take that step themselves.

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(2) Where any step is taken by a local authority in relation to any premises by virtue of subsection (1) 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.

(3) 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 private supply notice.

(4) Any sum required to be paid to any person by virtue of any requirement or undertaking contained in a private supply notice shall be recoverable by that person from the person who is required to pay it.

(5) Any requirement which—

(a) is imposed by virtue of a private supply notice on the owner or occupier of any premises; and

(b) is expressed to bind those premises in relation 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.

(6) Subject to subsection (7) below, a local authority may by notice served on any person modify or revoke the effect in relation to that person of any private supply notice or notice under this subsection (including a notice which has been confirmed, with or without modifications, by the Secretary of State).

(7) Sections 80(2)(c) and (d) and 81 above shall apply, as they apply in relation to a private supply notice, in relation to any notice served by a local authority on any person under subsection (6) 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.

83 Application of certain powers to local authorities in relation to private supplies.

(1) For the purposes of the taking of any steps falling to be taken by a local authority by virtue of a designation under subsection (3)(a) of section 80 above the provisions of Part VI of this Act shall have effect—

(a) as if the relevant works powers, so far as conferred on a water undertaker for the purpose of carrying out its functions, were also conferred on a local authority for the purpose of ensuring that a supply of water provided by means of a private supply to any premises in the authority's area is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;

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(b) as if any such power, so far as it is conferred on a water undertaker in relation to things belonging to or operated or used by the undertaker for the purposes of its functions, were conferred by virtue of paragraph (a) above on a local authority in relation to things belonging to or operated or used by that authority, or a relevant person, in connection with the provision of water by means of a private supply;

(c) as if references to a water undertaker in any provision of Part VI of this Act relating to a relevant works power, except the references in sections 181 and 182 below, included references to a local authority; and

(d) as if the making by any person in pursuance of a private supply notice of any payment in respect of sums incurred in the laying of any pipe entitled that person, for the purposes of section 179(1) below, to an interest in the pipe.

(2) Where by virtue of this Act a local authority have power under Part VII of the [M31]Local Government Act 1972 (miscellaneous powers of a local authority) to acquire (whether compulsorily or otherwise) any land or right over land for the purpose of ensuring that private supplies of water to premises in their area are both wholesome and (so far as houses on those premises are concerned) sufficient for domestic purposes, that power shall include power to acquire land or any interest or right in or over land in order, for that purpose, to dispose of the land or the interest or right to a person who is a relevant person in relation to such a private supply.

(3) In this section "relevant works powers" means the powers conferred on water undertakers by sections 158, 159, 161, 163 and 165 below.

Marginal Citations
M31 1972 c. 70.

84 Local authority rights of entry etc.

(1) Any person designated for the purpose by a local authority within whose area any waterworks are situated shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is or has been any contravention of section 72 above in relation to those waterworks.

(2) Any person designated in writing for the purpose by a local authority 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 section 74 above 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

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and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.

(3) 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 77 to 82 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—

(i) determining whether, and if so in what manner, any such power should be exercised or any such duty performed; or

(ii) exercising any such power or performing any such 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.

(4) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above; but nothing in that subsection or in that Part of that Schedule shall entitle any person designated for the purposes of that subsection by a local authority to have access to any waterworks belonging to a water undertaker.

(5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsections (2) and (3) above.

(6) In subsection (1) above the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under that subsection shall be defrayed as part of their general expenses.

(7) In this section "waterworks" has the same meaning as in section 72 above.

85 Local authority power to obtain information for the purposes of functions under Chapter III.

(1) Subject to subsection (2) 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 77 to 82 above.

(2) 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.

(3) 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.

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Assessors for the enforcement of water quality

86 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 [F256]. . . in relation to some or all of—

(a) the powers and duties conferred or imposed on him by or under sections 67 to 70 and 77 to 82 above; and

(b) such other powers and duties in relation to the quality and sufficiency of water supplied **[**[F257]using a water undertaker's supply system**]** as are conferred or imposed on him by or under any other enactments.

[[F258](1A) Subject to subsection (1B) below, the Secretary of State shall designate one such person as the Chief Inspector of Drinking Water.

(1B) If the function of the Secretary of State under subsection (1) above is transferred to any extent to the Assembly—

(a) subject to paragraph (b) below, the Assembly may designate one such person appointed by it as the Chief Inspector of Drinking Water for Wales; but

(b) if the person designated by the Assembly is the same as the person designated by the Secretary of State as the Chief Inspector of Drinking Water, he shall be known as such in both capacities.**]**

(2) **[**[F259]An inspector**]** 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 **[**[F260]or a licensed water supplier by or under any of sections 68, 69 and 79 above or imposed on a relevant person (as defined in subsection (1A) of section 70 above) by or under that section**]** 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 any of sections 67 to 70 and 77 to 82 above 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 **[**[F261], licensed water supplier or other relevant person (as defined in section 70(1A) above)**]**—

(a) to give **[**[F262]an inspector**]** appointed under this section all such assistance; and

(b) to provide **[**[F262]an inspector**]** 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 **[**[F263]inspector**]** 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;

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(b) carry out such inspections, measurements and tests on premises entered by that **[**F263inspector**]** 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 **[**F263inspector**]** considers appropriate for the purpose of enabling him to carry out any such investigation; or

[F264(c) at any reasonable time require—

(i) any water undertaker or licensed water supplier to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker or supplier by or under any of sections 68, 69 and 79 above; or

(ii) any relevant person (as defined in subsection (1A) of section 70 above) to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that person by or under that section.**]**

(5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.

(6) Any water undertaker **[**F265, licensed water supplier or other relevant person**]** which fails to comply with the duty imposed on it by virtue of subsection (3) above shall be guilty of an offence and liable,

[F266(a) on summary conviction, to a fine not exceeding £20,000;

(b) on conviction on indictment, to a fine.**]**

[F267(7) Proceedings by the Secretary of State for an offence under this section or in relation to the quality and sufficiency of water supplied using a water undertaker's supply system may be instituted and carried on in the name of the Chief Inspector of Drinking Water.

(8) Any such proceedings by the Assembly may be instituted and carried on in the name of the Chief Inspector of Drinking Water for Wales, if there is one (or, if subsection (1B) (b) above applies, in the name of the Chief Inspector of Drinking Water).

(9) In this section "inspector" means the Chief Inspector of Drinking Water or any other person appointed under subsection (1) above.**]**

Textual Amendments

F256 Words in s. 86(1) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 57(2), 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(z)(i)** (with art. 6, Sch. 3)

F257 Words in s. 86(1)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F258 S. 86(1A)(1B) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(3)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)

F259 Words in s. 86(2) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(4)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)

F260 Words in s. 86(2)(a)(i) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F261 Words in s. 86(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F262 Words in s. 86(3)(a)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(5)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)

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F263 Word in s. 86(4) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(6)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)
F264 S. 86(4)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F265 Words in s. 86(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 26(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
F266 S. 86(6): paras. (a)(b) substituted (1.4.2004) for words by Water Act 2003 (c. 37), **ss. 57(7)(10)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)
F267 S. 86(7)-(9) added (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(8)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)

[F268 Complaints

Textual Amendments
F268 S. 86A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 29**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

86A F269 Procedure for dealing with complaints.

(1) Each water undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the supply of water.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
(a) the water undertaker has consulted the **[**F270regional committee**]** to which it has been allocated; and
(b) the proposed procedure or modification has been approved by the Director.

(3) The water undertaker shall—
(a) publicise the procedure in such manner as may be approved by the Director; and
(b) send a description of the procedure, free of charge, to any person who asks for one.

(4) The Director may give a direction to a water undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.

(5) A direction under subsection (4) above—
(a) may specify the manner in which the review is to be conducted; and
(b) shall require a written report of the review to be made to the Director.

(6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the water undertaker, direct the undertaker to make such modifications of—
(a) the procedure; or
(b) the manner in which the procedure operates,
as may be specified in the direction.

(7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.

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(8) The duty of a water undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by the Director under section 18 above.

(9) Where the Director is considering whether to exercise his powers under subsection (4) or (6) above in relation to a water undertaker, it shall be the duty of that undertaker to give him such information as he may reasonably require for the purpose of assisting him in coming to a decision.

(10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.**]**

Textual Amendments

F269 S. 86A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 29**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F270 Words in s. 86A(2)(a) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(3)**; S.I. 2005/2714, **art. 2(l)(v)(aa)** (with Sch. para. 8)

CHAPTER IV

FLUORIDATION

87 Fluoridation of water supplies at request of health authorities.

(1) Where a **[**F271Strategic Health Authority or**][**F272Health Authority**]** have applied in writing to a water undertaker for the water supplied within an area specified in the application to be fluoridated, that undertaker may, while the application remains in force, increase the fluoride content of the water supplied by the undertaker within that area.

(2) For the purposes of subsection (1) above an application under this section shall remain in force until the **[**F271Strategic Health Authority or**]** Health Authority, after giving reasonable notice to the water undertaker, withdraw it.

(3) The area specified in an application under this section may be the whole, or any part of, the **[**F273area of the **[**F271Strategic Health Authority or**]** Health Authority**]** making the application.

(4) Where in exercise of the power conferred by this section, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine, that is to say—

hexafluorosilicic acid (H2SiF6);

disodium hexafluorosilicate (Na2SiF6).

(5) Any **[**F271Strategic Health Authority or**][**F274Health Authority**]** making arrangements with a water undertaker in pursuance of an application under this section shall ensure that those arrangements include provisions designed to secure that the concentration of fluoride in the water supplied to consumers in the area in question is, so far as reasonably practicable, maintained at one milligram per litre.

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(6) Water to which fluoride has been added by a water undertaker in exercise of the power conferred by this section (with a view to its supply in any area) may be supplied by that or any other undertaker to consumers in any other area if the undertaker or undertakers concerned consider that it is necessary to do so—

(a) for the purpose of dealing with any serious deficiency in supply; or

(b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by any of the undertakers concerned.

(7) In subsection (6) above—

(a) the reference to water to which fluoride has been added by a water undertaker in exercise of the power conferred by this section includes a reference to water to which fluoride has been added by a water authority (within the meaning of the [M32]Water (Scotland) Act 1980) in exercise of the power conferred by section 1 of the [M33]Water (Fluoridation) Act 1985; and

(b) in relation to a supply of such water by a water undertaker, the reference to the water undertakers concerned shall have effect as references to the water undertaker and the water authority concerned.

(8) In this section "serious deficiency in supply" means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.

(9) In this section and the following provisions of this Chapter references to a **[**[F271]Strategic Health Authority or**][**[F275]Health Authority are references to any **[**[F276]Strategic Health Authority or**]** Health Authority established under section 8 of the National Health Service Act 1977.**]**.

Textual Amendments

F271 Words in s. 87 inserted (1.10.2002) by The National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), reg. 4, **Sch. 1 Pt. I para. 18(2)**

F272 Words in s. 87(1) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(a)** (with Sch. 2 para. 6)

F273 Words in s. 87(3) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(b)** (with Sch. 2 para. 6)

F274 Words in s. 87(5) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(c)** (with Sch. 2 para. 6)

F275 Words in s. 87(9) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(d)** (with Sch. 2 para. 6)

F276 Words in s. 87 inserted (1.10.2002) by The National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), reg. 4, **Sch. 1 Pt. I para. 18(2)**

Modifications etc. (not altering text)

C30 S. 87: functions not to be exercised by a primary care trust (1.4.2000) by virtue of S.I. 2000/695, art. 4(1), **Sch. 4**

Marginal Citations

M32 1980 c. 45.

M33 1985 c. 63.

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VALID FROM 25/02/2009

[F277 87A Target concentration of fluoride

(1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.

(2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).

(3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

(4) If, in relation to any area ("area A"), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).

(5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A ("area B") it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.

(6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).

(7) In this section, "specified area" means the area specified in arrangements under section 87(1) above.**]**

Textual Amendments

F277 Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by Water Act 2003 (c. 37), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)

VALID FROM 25/02/2009

[F278 87B Fluoridation arrangements: determination of terms

(1) This section applies if a relevant authority and a water undertaker fail to agree—

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(a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or

(b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.

(2) In relation to areas in England (except where subsection (4) below applies)—

(a) the relevant authority may refer the matter to the Secretary of State for determination;

(b) following such a reference, the Secretary of State may—

(i) determine the terms of the arrangements as he sees fit; or

(ii) refer the matter for determination by such other person as he considers appropriate; and

(c) the determination of the Secretary of State or, as the case may be, the other person shall be final.

(3) In relation to areas in Wales (except where subsection (4) below applies)—

(a) the Assembly may—

(i) determine the terms of the arrangements itself as it sees fit; or

(ii) refer the matter for determination by such other person as it considers appropriate; and

(b) the determination of the Assembly or, as the case may be, the other person shall be final.

(4) Where the Assembly is one of the relevant authorities which has made a combined reference under section 87(8)(b) or (10) above—

(a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and

(b) the determination of that person shall be final.

(5) Following determination under this section of the terms to be included in any arrangements—

(a) the relevant authority shall give notice of the determination to the water undertaker in question; and

(b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.

(6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.**]**

Textual Amendments

F278 Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by Water Act 2003 (c. 37), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)

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VALID FROM 25/02/2009

[F279 87C Fluoridation arrangements: compliance

(1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.

(2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—

hexafluorosilicic acid (H_2SiF_6)

disodium hexafluorosilicate (Na_2SiF_6).

(3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).

(4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—

(a) for the purpose of dealing with any serious deficiency in supply; or

(b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a licensed water supplier supplying water using its or their supply system.

(5) In this section—

(a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and

(b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.

(6) In subsection (4) above, "serious deficiency in supply" means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.

(7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.

(8) But (except where it is reasonably practicable to terminate the arrangements separately), arrangements to which section 87(8)(a) or (b) applied may only be terminated by the relevant authorities acting jointly.**]**

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Textual Amendments

F279 Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by Water Act 2003 (c. 37), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)

88 Power to vary permitted fluoridation agents.

(1) The Secretary of State may by order amend section 87(4) above by—

(a) adding a reference to another compound of fluorine; or

(b) removing any reference to a compound of fluorine.

(2) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

PROSPECTIVE

[F280 88A Power to vary target concentration of fluoride

(1) The appropriate authority may by order made by statutory instrument provide that section 87A(1) above is to have effect as if for "one milligram per litre" there were substituted a lower concentration specified in the order.

(2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.

(3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) In subsection (1) above "appropriate authority"—

(a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;

(b) in relation to an area which is wholly in England, means the Secretary of State; and

(c) in relation to an area which is wholly in Wales, means the Assembly.

(5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.]

Textual Amendments

F280 S. 88A inserted (25.2.2009 for E.) by Water Act 2003 (c. 37), **ss. 58(4)**, 105(3); S.I. 2009/359, **art. 2(b)** (with saving in art. 3, Sch.)

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[F281 89 Consultation

(1) Before taking any step mentioned in subsection (2) below, a relevant authority shall—

(a) consult and ascertain opinion in accordance with regulations made by the appropriate authority; and

(b) comply with the requirements set out in regulations made by the appropriate authority.

(2) The steps are—

(a) requesting a water undertaker to enter into arrangements under section 87(1) above;

(b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;

(c) giving notice to a water undertaker under section 87C(7) above to terminate any such arrangements;

(d) maintaining any such arrangements in prescribed circumstances.

(3) Regulations—

(a) under paragraph (a) of subsection (1) above shall include provision about the process which relevant authorities are to follow for the purposes of that paragraph;

(b) under paragraph (b) of that subsection shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in subsection (2) above may be taken.

(4) Subsection (1) above shall not apply in relation to a proposal by a relevant authority to take the step mentioned in subsection (2)(c) above if the appropriate authority so directs by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

(5) In this section "appropriate authority"—

(a) in a case where two or more relevant authorities (one of which is the Assembly) propose to request a particular water undertaker to take a step mentioned in subsection (2)(a), (b) or (c) in respect of arrangements in adjoining areas, means the Secretary of State and the Assembly acting jointly;

(b) in relation to England (except in a case to which paragraph (a) applies), means the Secretary of State; and

(c) in relation to Wales (except in a case to which paragraph (a) applies), means the Assembly.**]**

Textual Amendments

F281 S. 89 substituted (18.2.2005 for E. for specified purposes, 1.8.2008 for E. for further specified purposes and 25.2.2009 for E. insofar as not already in force) by Water Act 2003 (c. 37), **ss. 58(5)**, 105(3); S.I. 2005/344, **art. 2**; S.I. 2008/1922, **art. 2(b)(c)**; S.I. 2009/359, **arts. 2(c)** (with saving in art. 3, Sch.)

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[F282 90 Indemnities in respect of fluoridation.

(1) The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to section 87(1) above.

(2) The Secretary of State may also, with the consent of the Treasury, agree to indemnify any licensed water supplier in respect of liabilities which it may incur—

(a) in supplying water to which fluoride has been added by a water undertaker by virtue of any such arrangements;

(b) (if the licensee is introducing water into the water undertaker's supply system) in complying with any obligation imposed on it by the undertaker in consequence of the arrangements.

(3) The Secretary of State may by regulations make provision with respect to—

(a) the matters in respect of which an indemnity may be given under subsection (1) or (2) above;

(b) the form and terms of any such indemnity; and

(c) such ancillary matters as he sees fit.**]**

Textual Amendments

F282 Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by Water Act 2003 (c. 37), **ss. 58(6)**, 105(3); S.I. 2005/344, **art. 2**; S.I. 2009/359, **art. 2(c)** (subject to art. 3, Sch.)

[F283 90A Review of fluoridation

(1) A relevant authority which has entered into arrangements under section 87(1) above shall—

(a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and

(b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.

(2) The relevant authority shall make available—

(a) any information collected by it for the purposes of subsection (1) above; or

(b) summaries of that information.

(3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).

(4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.

(5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.

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(6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.**]**

Textual Amendments

F283 Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by Water Act 2003 (c. 37), **ss. 58(6)**, 105(3); S.I. 2005/344, **art. 2**; S.I. 2009/359, **art. 2(c)** (subject to art. 3, Sch.)

91 Pre-1985 fluoridation schemes.

Schedule 7 to this Act shall have effect with respect to fluoridation schemes made before the coming into force of the [M34]Water (Fluoridation) Act 1985.

Marginal Citations

M34 1985 c. 63.

CHAPTER V

SUPPLEMENTAL PROVISIONS OF PART III

92 Power to give effect to international obligations.

(1) Subject to subsection (2) below, the Secretary of State may by regulations provide that the provisions of Chapters I to III of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

(a) to any Community obligations; or

(b) to any international agreement to which the United Kingdom is for the time being a party.

(2) This section shall not authorise any modification of any of sections 71, 72 and 76 above or of any other provisions of this Part so far as they have effect for the purposes of or in relation to those sections.

93 Interpretation of Part III.

(1) In this Part—

"connection notice" shall be construed in accordance with section 45(8) above;

"consumer", in relation to a supply of water provided by a water undertaker to any premises, means (except in Chapter IV) 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;

"food production purposes" means the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used, and for the purposes of this

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definition "food production premises" means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises;

"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 **[**[F284]or by a licensed water supplier in accordance with Chapter 1A of Part 2 of this Act**]**(including a supply provided for the purposes of the bottling of water), and cognate expressions shall be construed accordingly;

"private supply notice" shall be construed in accordance with section 80(7) above;

"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 67 above.

(2) For the purposes of any reference in this Part 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 Part 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 Part 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.

Textual Amendments

F284 S. 93(1): words in definition of "private supply" inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 28**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

[[F285]**PART IIIA**

PROMOTION OF THE EFFICIENT USE OF WATER

Textual Amendments

F285 Part IIIA (ss. 93A-93D) inserted (1.2.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 102** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

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93A Duty to promote the efficient use of water.

(1) It shall be the duty of every water undertaker **[**F286or licensed water supplier**]** to promote the efficient use of water by its customers.

(2) The duty of a water undertaker **[**F286or licensed water supplier**]** under this section 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.

(3) Nothing in this Part shall have effect to authorise or require a water undertaker **[**F286or licensed water supplier**]** to impose any requirement on any of its customers or potential customers.

Textual Amendments

F286 Words in s. 93A(1)(2)(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 29**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

93B Power of Director to impose requirements on water undertakers.

(1) The Director may require a water undertaker **[**F287or licensed water supplier**]** , in its performance of its duty under section 93A above, to—

(a) take any such action; or

(b) achieve any such overall standards of performance,

as he may specify in the document imposing the requirement.

(2) Where the Director, in the document imposing a requirement on a water undertaker **[**F288or licensed water supplier**]** under subsection (1) above, stipulates that any contravention of the requirement by the undertaker **[**F289or supplier**]** will be a breach of its duty under section 93A above, any contravention of that requirement by the undertaker shall be a breach of that duty.

(3) Without prejudice to the generality of subsection (1) above, a requirement under that subsection may—

(a) require a water undertaker **[**F290or licensed water supplier**]** to make available to its customers or potential customers such facilities as may be specified in the document imposing the requirement;

(b) require a water undertaker **[**F290or licensed water supplier**]** to provide or make available to its customers or potential customers such information as may be specified in the document imposing the requirement, and may specify the form in which, the times at which or the frequency with which any such information is to be provided or made available.

(4) In exercising his powers under this section in relation to any water undertaker **[**F291or licensed water supplier**]** the Director shall have regard to the extent to which water resources are available to that undertaker **[**F292or supplier**]** .

(5) Before imposing any requirement on a water undertaker **[**F293or licensed water supplier**]** under subsection (1) above the Director shall consult that undertaker **[**F294or supplier**]** .

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(6) Nothing in this section authorises the Director to impose any requirement on a water undertaker **[**F295or licensed water supplier**]** which has or may have the effect of authorising or requiring that undertaker **[**F296or supplier**]** to impose any requirement on any of its customers or potential customers.

Textual Amendments

F287 Words in s. 93B(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F288 Words in s. 93B(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(3)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F289 Words in s. 93B(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(3)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F290 Words in s. 93B(3)(a)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F291 Words in s. 93B(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(5)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F292 Words in s. 93B(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(5)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F293 Words in s. 93B(5) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(6)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F294 Words in s. 93B(5) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(6)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F295 Words in s. 93B(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(7)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F296 Words in s. 93B(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 30(7)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

93C Publicity of requirements imposed under section 93B.

(1) Where, under section 93B(1) above, the Director imposes any requirement on a water undertaker **[**F297or licensed water supplier**]** , the Director may arrange for that requirement to be publicised in any such manner as he may consider appropriate for the purpose of bringing it to the attention of that undertaker's **[**F298or supplier's**]** customers.

(2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such publicising of the requirement as is mentioned in that subsection by—

(a) himself publicising the requirement or causing it to be publicised; or

(b) directing the undertaker **[**F299or supplier**]** to inform or arrange to inform its customers of the requirement.

Textual Amendments

F297 Words in s. 93C(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 31(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F298 Words in s. 93C(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 31(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F299 Words in s. 93C(2)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 31(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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93D Information as to compliance with requirements under section 93B.

(1) Where a water undertaker **[**[F300]or licensed water supplier**]** is subject to any requirement imposed under section 93B(1) above, the Director may arrange for there to be given to the customers of that undertaker **[**[F301]or supplier**]** at any such times or with such frequency, and in any such manner, as he may consider appropriate, such information about the level of performance achieved by the undertaker **[**[F302]or supplier**]** in relation to that requirement as appears to the Director to be expedient to be given to those customers.

(2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such giving of information as is mentioned in that subsection by—

(a) himself disseminating the information or causing it to be disseminated; or

(b) directing the undertaker **[**[F303]or supplier**]** to give or arrange to give the information to its customers.

(3) At such times and in such form or manner as the Director may direct, a water undertaker **[**[F304]or licensed water supplier**]** shall provide the Director with such information as may be specified in the direction in connection with the undertaker's **[**[F305]or supplier's**]** performance in relation to any requirement imposed upon the undertaker **[**[F306]or supplier**]** under section 93B(1) above.

(4) A water undertaker **[**[F307]or licensed water supplier**]** who fails without reasonable excuse to do anything required of him 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.**]**

Textual Amendments

F300 Words in s. 93D(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F301 Words in s. 93D(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F302 Words in s. 93D(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(2)(c)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F303 Words in s. 93D(2)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F304 Words in s. 93D(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(4)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F305 Words in s. 93D(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(4)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F306 Words in s. 93D(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(4)(c)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F307 Words in s. 93D(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 32(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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PART IV

SEWERAGE SERVICES

Modifications etc. (not altering text)

C31 Pt. IV: power to apply conferred (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 78(2)(b)**, 225(2).

C32 Pt. IV saved (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 1(4)**, 17(2).

CHAPTER I

GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS

Principal duties and standards of performance

94 General duty to provide sewerage system.

(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 **[**[F308]and any lateral drains which belong to or vest in the undertaker**]** 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) The duty of a sewerage undertaker under subsection (1) above 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) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, 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 95 below and shall not be in any way qualified by any such provision.

(5) In this section "trade effluent" has the same meaning as in Chapter III of this Part.

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Textual Amendments

F308 Words in s. 94(1)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

95 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 Part are to amount to breaches of the duty imposed by section 94 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, in accordance with section 96 below, 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, in accordance with section 96 below, 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.

(3) Regulations under subsection (2) above 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.

(4) 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.

[[F309](5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.**]**

Textual Amendments

F309 S. 95(5) added (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para.24**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

[95A [F310]Information with respect to levels of performance.

(1) The Director shall from time to time collect information with respect to—

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(a) the compensation paid by sewerage undertakers under regulations under section 95(2) above; and

(b) the levels of overall performance achieved by sewerage undertakers in connection with the provision of sewerage services.

(2) At such times as the Director may direct, each sewerage undertaker shall give the following information to the Director—

(a) as respects each standard prescribed by regulations under section 95(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and

(b) as respects each standard established by regulations under section 95(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

(3) A sewerage undertaker who without reasonable excuse fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of sewerage undertakers.

(5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—

(a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion 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 Director, seriously and prejudicially affect the interests of that body.**]**

Textual Amendments

F310 S. 95A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s.31**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

[F311 95B Publication of statistical information about complaints

(1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of sewerage undertakers and the handling of such complaints.

(2) In subsection (1) above, "complaints" includes complaints made directly to sewerage undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.**]**

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Textual Amendments

F311 S. 95B inserted (1.10.2005) by Water Act 2003 (c. 37), **ss. 45(2)**, 105(3); S.I. 2005/2714, **art. 2(e)** (with Sch. para. 8)

96 Procedure for regulations under section 95.

[F312(A1) The Secretary of State may make regulations under section 95 above—

(a) on an application by the Authority, in accordance with subsections (1) to (3) below; or

(b) otherwise than on such an application, in accordance with subsections (4) to (8) below.**]**

(1) **[**F313Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 95 above if—**]**

[F314(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—

(i) on every sewerage undertaker specified in the application; F315. . .

(ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;

(iii) **[**F316on the Council; and

(iv) on such other persons or bodies as the Secretary of State may consider appropriate;**]]**

(c) such period as the Secretary of State considers appropriate has been allowed for the making—

(i) by the Director; and

(ii) by any affected sewerage undertaker **[**F317or person or body on whom a copy of the application has been served under paragraph **[**F318(b)**]** above**]**,

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

(d) the Secretary of State has considered **[**F319the summary mentioned in subsection (2)(bb) below,**]** 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.

[F320(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.**]**

(2) An application made by the Director to the Secretary of State complies with this subsection if it—

(a) sets out **[**F321the Authority's proposals for the making of**]** regulations under section 95 above;

(b) specifies the sewerage undertaker or undertakers in relation to which it is proposed **[**F322the regulations**]** should apply

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[F323(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;**]**; and

(c) summarises the Director's reasons for his proposals.

(3) The Secretary of State shall not make any regulations **[**F324on an application by the Authority under this section**]** except where—

(a) the only provisions of the regulations are **[**F325those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority's application or to those proposals**]** with such modifications as the Secretary of State considers appropriate; and

(b) each of the modifications (if any) of the Director's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—

(i) to the Director; F326. . .

(ii) to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications**[**F327 and

(iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above.**]**

[F328(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 95 above only if he considers—

(a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or

(b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.

(5) Before making regulations under section 95 above by virtue of subsection (4) above, the Secretary of State shall—

(a) give notice of his proposals;

(b) consider the results of the research carried out in accordance with subsection (7) below; and

(c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.

(6) A notice under subsection (5)(a) above must—

(a) summarise the Secretary of State's reasons for his proposals;

(b) specify the sewerage undertaker or undertakers in relation to which it is proposed the regulations should apply; and

(c) specify the period within which objections or representations with respect to the proposals may be made.

(7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.

(8) A notice under subsection (5)(a) above shall be given by serving a copy on—

(a) the Authority;

(b) the Council;

(c) every sewerage undertaker to which the regulations will apply;

(d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and

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(e) such other persons or bodies as the Secretary of State may consider appropriate.**]**

Textual Amendments

F312 S. 96(A1) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F313 Words in s. 96(1) substituted (1.4.2005) for "words preceding paragraph (a), and paragraph (a)" by virtue of Water Act 2003 (c. 37), **ss. 42(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F314 S. 96(1)(b) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 25(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F315 Word in s. 96(1)(b)(i) repealed (1.4.2005) by Water Act 2003 (c. 37), ss. 42(3)(b), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in art. 4, Schs. 1, 2)

F316 S. 96(1)(b)(iii)(iv) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F317 Words in s. 96(1)(c)(ii) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 25(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F318 Words in s. 96(1)(c)(ii) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(3)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F319 Words in s. 96(1)(d) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 30(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F320 S. 96(1A) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 30(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F321 Words in s. 96(2)(a) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(4)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F322 Words in s. 96(2)(b) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(4)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F323 S. 96(2)(bb) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 30(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F324 Words in s. 96(3) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(5)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F325 Words in s. 96(3)(a) substituted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(5)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F326 Word in s. 96(3)(b)(i) repealed (1.4.2005) by Water Act 2003 (c. 37), ss. 42(5)(c), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in art. 4, Schs. 1, 2)

F327 S. 96(3)(b)(iii) and preceding word inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(5)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

F328 S. 96(4)-(8) added (1.4.2005) by Water Act 2003 (c. 37), **ss. 42(6)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Schs. 1, 2)

[96A [F329]**Information to be given to customers about overall performance.**

(1) Each sewerage undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers of—

(a) the standards of overall performance established under section 95(1)(b) above which are applicable to that undertaker; and

(b) that undertaker's level of performance as respects each of those standards.

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(2) In giving any such direction, the Director shall not specify a frequency of less than once in every period of twelve months.

(3) The duty of a sewerage undertaker to comply with this section shall be enforceable by the Director under section 18 above.**]**

Textual Amendments

F329 S. 96A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s.32**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

Performance of sewerage undertaker's functions by local authorities etc.

97 Performance of sewerage undertaker's 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 [M35]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.

[[F330](4A) Where arrangements entered into for the purposes of this section provide for a local authority which are operating executive arrangements to carry out the sewerage functions of a sewerage undertaker on that undertaker's behalf—

(a) those sewerage functions shall be treated as functions of the authority for the purposes of section 13 of the Local Government Act 2000; and

(b) if or to the extent that those sewerage functions are the responsibility of the executive of that authority—

(i) subsection (4) above shall not apply; and

(ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply in

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relation to those sewerage functions only in so far as the arrangements do not provide otherwise.**]**

(5) In this section—

[F331"executive" and "executive arrangements" have the same meaning as in Part II of the Local Government Act 2000;**]**

"new town" has the same meaning as in the M36New 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; **[**F332and**]**

(d) F333. . . . . .

(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, **[**F334or a development corporation for a new town**]**;

(c) the urban development corporation for any urban development area;

"sewerage functions", in relation to a sewerage undertaker, means any of the functions of the undertaker by virtue of its appointment under Chapter I of Part II of this Act as a sewerage undertaker, other than its functions relating to sewage disposal and its functions by virtue of Chapter III of this Part;

"urban development area" means any area so designated under Part XVI of the M37Local Government, Planning and Land Act 1980.

F335(6) . . . . . .

Textual Amendments

F330 S. 97(4A) inserted (11.7.2001 for E. and 1.4 2002 for W.) by S.I. 2001/2237, **arts. 2**, 27;S.I 2002/808, {art. 26(a)}

F331 S. 97(5): definitions of "executive and executive arrangements" inserted (11.7.2001 for E. and 1. 4. 2002 for W.) by S.I. 2001/2237, arts. 2, 27: S.I. 2002/808, **art. 26(b)**

F332 S. 97(5): word in para. (c) in definition of "relevant area" inserted (1.10.1998) by 1998 c. 38, s. 129(2), **Sch. 15 para. 17(a)** (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, **art. 4**

F333 S. 97(5): para. (d) in definition of "relevant area" repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, **art. 4**

F334 S. 97(5): words in para. (b) in definition of "relevant authority" substituted (1.10.1998) by 1998 c. 38, s. 129(2), **Sch. 15 para. 17(b)** (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, **art. 4**

F335 S. 97(6) repealed (19.11.1998) by 1998 c. 43, s. 1(1), **Sch. 1 Pt. X**, Group 3

Marginal Citations

M35 1972 c. 70.

M36 1981 c. 64.

M37 1980 c. 65.

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CHAPTER II

PROVISION OF SEWERAGE SERVICES

Requisition of public sewer

98 Duty to comply with sewer requisition.

(1) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) 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 (2) 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 99 below are satisfied in relation to that requirement.

[F336(1A) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

(a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by one or more of the persons who under subsection (2A) below are entitled to require the provision of the lateral drain;

(b) the premises the drainage of which would be by means of that lateral drain 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 99 below are satisfied in relation to that requirement.**]**

(2) 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 M38New Towns Act 1981—

(i) the Commission for the New Towns; and

(ii) F337. . . the development corporation for the new town F337. . .;

and

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(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 [M39]Local Government, Planning and Land Act 1980, the urban development corporation.

[[F338](2A) Each of the following persons shall be entitled to require the provision of a lateral drain, that is to say—

(a) the owner of the premises the drainage of which would be by means of that lateral drain;

(b) the occupier of those premises;

(c) any local authority within whose area those premises are situated;

(d) where those premises are 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 corporation for the new town; and

(e) where those premises are situated within an area designated as an urban development area under Part 16 of the Local Government, Planning and Land Act 1980, the urban development corporation.**]**

(3) The duty of a sewerage undertaker under this section to provide a public sewer **[**[F339]or, as the case may be, a lateral drain**]** shall be owed to the person who requires the provision of the sewer **[**[F340]or lateral drain**]** or , as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a **[**[F341]sewerage**]** undertaker in pursuance of this subsection, 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) In this section the reference to domestic purposes, in relation to the drainage of premises [F342]. . . to which a requirement under this section relates, is a reference—

(a) where there are buildings on **[**[F343]those premises**]** , to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and

(b) where any person is proposing to erect buildings on **[**[F344]those premises**]** , to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings.

Textual Amendments

F336 S. 98(1A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(2)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F337 Words in s. 98(2)(d)(ii) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, **art. 4**

F338 S. 98(2A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F339 Words in s. 98(3) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F340 Words in s. 98(3) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(4)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

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F341 Word in s. 98(4) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 26**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F342 Words in s. 98(5) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 95(5)(a), 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(i)** (with Sch. 3 para. 7)

F343 Words in s. 98(5)(a) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(5)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F344 Words in s. 98(5)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(5)(c)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Marginal Citations

M38 1981 c. 64.

M39 1980 c. 65.

99 Financial conditions of compliance.

(1) The conditions mentioned in section 98(1)(c) **[**F345or 98(1A)(c)**]** above are satisfied in relation to a requirement for the provision of a public sewer **[**F346or (as the case may be) lateral drain**]** by a sewerage undertaker if—

(a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) **[**F347or, as the case may be, subsection (2A)**]** below have been given by the person or persons who have required the provision of the sewer **[**F346or (as the case may be) lateral drain**]** ; 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, under subsection (3) below, may be required to secure his undertakings.

(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—

[F348(a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—

(i) 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; or

(ii) following provision of the sewer, a single amount not exceeding the discounted aggregate deficit on that sewer; and**]**

(b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

[F349(2A) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any lateral drain are undertakings which—

(a) bind the person or persons mentioned in that subsection to pay to the undertaker, following provision of the lateral drain, on such terms as may be specified in the undertaking, an amount not exceeding the costs reasonably incurred in or in connection with the provision of the lateral drain; and

(b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability apportioned in such manner as they may agree.**]**

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[F350(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, a lateral drain if—

(a) it was by virtue of section 98(2)(a) or (b) or (as the case may be) section 98(2A)(a) or (b) above that he required, or joined in requiring, the provision of the sewer or drain; and

(b) he is not a public authority.**]**

(4) 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.

(5) An approval or determination given or made by the Director for the purposes of subsection (4) above—

[F351(a) may be given or made in relation to the provision of a particular public sewer or (as the case may be) lateral drain, in relation to the provision of sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally; and**]**

(b) may be revoked at any time.

(6) 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,

[F352may be referred to the Authority for determination under section 30A above by either party to the dispute.**]**

[F353(7) In this section "relevant deficit" and "discounted aggregate deficit" have the meanings given by sections 100 and 100A below, respectively.**]**

Textual Amendments

F345 Words in s. 99(1) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(6)(a)(i)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F346 Words in s. 99(1) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(6)(a)(ii)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F347 Words in s. 99(1)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(6)(a)(iii)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F348 S. 99(2)(a) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 93(1)(a)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F349 S. 99(2A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(6)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F350 S. 99(3) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(6)(c)**, 105(3); S.I. 2004/641, **art. 4(c)** (with Sch. 3 para. 7)

F351 S. 99(5)(a) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(6)(d)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

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F352 Words in s. 99(6) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 93(1)(b)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F353 S. 99(7) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 93(1)(c)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

100 Calculation of "relevant deficit" for the purposes of section 99.

(1) For the purposes of section 99 above 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.

(2) 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 for the purposes of this subsection.

(3) A determination for the purposes of subsection (2) above shall be made either—

(a) by the undertaker with the approval of the Director; or

(b) in default of such a determination, by the Director.

(4) For the purposes of this section the costs reasonably incurred in 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

(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.

(5) In subsection (4) above the reference to an earlier public sewer, in relation to the new sewer, is a reference to any public sewer which—

(a) has been provided in the period of twelve years immediately before the provision of the new sewer; and

(b) was so provided in pursuance of a public sewer requisition.

(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) Any reference in this section to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker is a reference to so much of the

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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 sewerage purposes of those premises or to the disposal of effluent drained for any such purpose from those premises.

(8) An approval or determination given or made by the Director for the purposes of subsection (2) 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 public sewers generally; and

(b) may be revoked at any time except in relation to a public sewer **[**[F354]in respect of which the conditions referred to in section 99(1) above have already been satisfied.**]**

(9) In this section "public sewer requisition" means—

(a) a requirement under section 98 above (including, by virtue of paragraph 1 of Schedule 2 to the [M40]Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 71 of the [M41]Water Act 1989);

(b) a requirement under the provisions of section 16 of the [M42]Water Act 1973 (sewer requisitions); or

(c) a requirement under any local statutory provision corresponding to section 98 above or to any of the provisions of that section 16.

Textual Amendments

F354 Words in s. 100(8)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 93(2)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Marginal Citations

M40 1991 c. 60.
M41 1989 c. 15.
M42 1973 c. 37.

[[F355]100A Calculation of "discounted aggregate deficit" for the purposes of section 99

(1) For the purposes of section 99 above the discounted aggregate deficit on a public sewer is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the sewer, in each case discounted in accordance with subsection (6) below.

(2) The estimated relevant deficit for any year is the amount (if any) by which the estimated drainage charges payable for the use during that year of that sewer would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.

(3) Subsections (2) to (6), (8) and (9) of section 100 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a public sewer) shall apply for the purposes of this section as they apply for the purposes of that section.

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(4) Any reference in this section to the estimated drainage charges payable for the use during any year of any sewer is a reference to so much of the aggregate of any charges expected to be payable to the sewerage undertaker for the provision of services in the course of that year as would represent charges—

(a) imposed by the undertaker in relation to such of the premises with which the sewer is expected to be connected as are premises where there are buildings; and

(b) reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purposes from those premises.

(5) For the purposes of subsection (4) above, a thing is expected to be the case if, at the time the relevant calculation is made, it is reasonably likely to occur.

(6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.

(7) A determination made by the Authority for the purposes of subsection (6) above—

(a) may be made in relation to the provision of a particular public sewer or in relation to the provision of public sewers generally; and

(b) may be revoked at any time except in relation to a public sewer in respect of which the conditions referred to in section 99(1) above have already been satisfied.**]**

Textual Amendments

F355 S. 100A inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 93(3)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

[F356101 Determination of completion date and route for requisitioned sewer or lateral drain.

(1) A sewerage undertaker shall not be in breach of a duty imposed by section 98 above in relation to any locality or (in the case of a lateral drain) in relation to any premises 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 (as the case may be)—

(i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or

(ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,

at the place or places determined under subsection (3) below.

(2) The period mentioned in subsection (1)(a) above may be extended—

(a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or

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(b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under subsection (4) below.

(3) The places mentioned in subsection (1)(b) above shall be—

(a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or

(b) in default of agreement, such place or places as are determined by the Authority on a reference under subsection (4) below to be the place or places at which it is reasonable, in all the circumstances—

(i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or

(ii) in relation to the provision of a lateral drain—

(a) for the lateral drain to communicate with a public sewer vested in the undertaker; and

(b) for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.

(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.

(5) In this section "relevant day", in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—

(a) the day on which the conditions specified in section 99 above are satisfied in relation to the requirement; and

(b) the day on which the place or places where (as the case may be)—

(i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or

(ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,

are determined under subsection (3) above.**]**

Textual Amendments

F356 S. 101 substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(7)(8)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

I[F357]Provision of public sewers otherwise than by requisition

Textual Amendments

F357 Cross heading and s. 101A inserted (1.2.1996 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 103** (with ss. 7(6), 115, 117); S.I. 1996/186, **arts. 2**, 3

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[F358]101A Further duty to provide sewers.

(1) Without prejudice to section 98 above, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in subsection (2) below are satisfied.

(2) The conditions mentioned in subsection (1) above are—

(a) that the premises in question, or any of those premises, are premises on which there are buildings [F359]. . . ;

(b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and

(c) that the drainage of any of the premises in question [F360]. . . is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this section by the Secretary of State and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question.

(3) Without prejudice to the generality of subsection (2)(c) above, regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this section—

(a) the geology of the locality in question or of any other locality;

(b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;

(c) the costs of providing that sewer;

(d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer; and

(e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this section or otherwise) of public sewers, and the costs of so overcoming those effects.

(4) Guidance issued by the Secretary of State under this section may—

(a) relate to how regard is to be had to the considerations mentioned in paragraphs (a) to (e) of subsection (3) above;

(b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter;

(c) set out considerations, other than those mentioned in paragraphs (a) to (e) of subsection (3) above, to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this section;

(d) relate to how regard is to be had to any such consideration as is mentioned in paragraph (c) above;

(e) without prejudice to paragraphs (a) to (d) above, relate to how a sewerage undertaker is to discharge its functions under this section.

(5) Before issuing guidance under this section the Secretary of State shall consult—

(a) the Environment Agency;

(b) the Director; and

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(c) such other bodies or persons as he considers appropriate;

and the Secretary of State shall arrange for any guidance issued by him under this section to be published in such manner as he considers appropriate.

(6) Subject to the following provisions of this section, the duty of a sewerage undertaker by virtue of subsection (1) above 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.

(7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to—

(a) whether the undertaker is under a duty by virtue of subsection (1) above to provide a public sewer to be used for any such drainage of those premises as is mentioned in that subsection;

(b) the domestic sewerage purposes for which any such sewer should be provided; or

(c) the time by which any such duty of the undertaker should be performed,

shall be determined by the Environment Agency, and may be referred to the Environment Agency for determination by either of the parties to the dispute.

(8) The Environment Agency—

(a) shall notify the parties of the reasons for its decision on any dispute referred to it under subsection (7) above; and

(b) may make any such recommendations, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.

(9) The decision of the Environment Agency on any dispute referred to it under subsection (7) above shall be final.

(10) A sewerage undertaker shall only be taken to be in breach of its duty under subsection (1) above where, and to the extent that, it has accepted, or the Environment Agency has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the Environment Agency under this section, as the time by which the duty is to that extent to be performed has passed.**]**

Textual Amendments

F358 S. 101A inserted (1.2.1996 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 103** (with ss. 7(6), 115, 117); S.I. 1996/186, **arts. 2**, 3

F359 Words in s. 101A(2)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 94(a), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

F360 Words in s. 101A(2)(c) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 94(b), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

[F361101B[F361Power to construct lateral drains following provision of public sewer]

(1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by section 98 or section 101A above, the undertaker may, at the request of the person mentioned in subsection (2) below, also provide at the same time one or

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more lateral drains to be used for the drainage for domestic purposes of premises in its area and to communicate with that sewer.

(2) A request under subsection (1) above may be made—

(a) in the case of a public sewer to be provided under section 98 above, by the person who requires the provision of the sewer under that section; and

(b) in the case of a public sewer to be provided under section 101A above, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that section (but any request may only be for the provision of a lateral drain to his premises).

(3) The person making a request under this section shall pay to the water undertaker, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain.

(4) Any dispute between the sewerage undertaker and the person making a request under this section as to—

(a) whether a lateral drain should be provided pursuant to the request; or

(b) the costs reasonably incurred in the provision of a lateral drain,

may be referred to the Authority for determination under section 30A above by either party to the dispute.

(5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this section shall belong to the undertaker.**]**

Textual Amendments

F361 S. 101B inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 95(9)(10)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Adoption etc. of sewers and disposal works

102 Adoption of sewers and disposal works.

(1) Subject to the following provisions of this section and to sections 103, 105 and 146(3) below, a sewerage undertaker may at any time declare that—

(a) any sewer which is situated within its area or which serves the whole or any part of that area;[F362]. . .

[[F363](aa) any lateral drain which communicates or is to communicate with a public sewer which—

(i) is so situated or serves the whole or any part of that area; and

(ii) is vested in that undertaker; or**]**

(b) any sewage disposal works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

(2) The owner, or any of the owners, of any sewer **[**[F364], lateral drain**]** or sewage disposal works with respect to which a sewerage undertaker might make a declaration under this section may make an application to that undertaker requesting it to make a declaration under this section with respect to the sewer **[**[F364], lateral drain**]** or works.

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(3) A declaration or application under this section may be made with respect to a part only of a sewer.

(4) A sewerage undertaker which proposes to make a declaration under this section—

(a) shall give notice of its proposal to the owner or owners of the sewer **[**F365, lateral drain**]** or works in question; and

(b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under section 105 below or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

(a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;

(b) whether the sewer **[**F366or lateral drain**]** is constructed under a highway or under land reserved by a planning scheme for a street;

(c) the number of buildings which the sewer **[**F367or lateral drain**]** is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;

(d) the method of construction and state of repair of the sewer **[**F368, lateral drain**]** or works; and

(e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

(6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer **[**F369or lateral drain**]** in question shall be entitled to use it, or any sewer **[**F369or lateral drain**]** substituted for it, to the same extent as if the declaration had not been made.

(7) No declaration may be made under this section in respect of any sewer or works the construction of which was completed before 1st October 1937.

Textual Amendments

F362 Word in s. 102(1)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(i)** (with Sch. 3 para. 7)

F363 S. 102(1)(aa) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(a)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F364 Words in s. 102(2) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(b)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F365 Words in s. 102(4)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(c)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F366 Words in s. 102(5)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(d)(i)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F367 Words in s. 102(5)(c) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(d)(ii)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F368 Words in s. 102(5)(d) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(d)(iii)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

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F369 Words in s. 102(6) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(1)(e)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

103 Adoption of cross-border sewers etc.

(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under section 102 above with respect to—

(a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker; [F370]. . .

[[F371](aa) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or**]**

(b) any sewage disposal works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under subsection (1) above to another undertaker, no declaration under section 102 above shall be made by the former undertaker until either—

(a) the other undertaker has consented to the declaration; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

[[F372](3) Where—

(a) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and

(b) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking,

a sewerage undertaker shall not make a declaration under section 102 above with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.**]**

(4) Where a sewerage undertaker makes a declaration under section 102 above with respect to—

(a) a sewer **[**[F373]or lateral drain**]** which is situated within the area of another sewerage undertaker; or

(b) any sewage disposal works which are so situated,

it shall forthwith give notice of the fact to that other undertaker.

(5) In this section "relevant body" means any sewerage undertaker, any local authority or county council or any railway undertakers or dock undertakers.

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Textual Amendments

F370 Word in s. 103(1)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(2)(a)(3), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(i)** (with Sch. 3 para. 7)

F371 S. 103(1)(aa) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(2)(a)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F372 S. 103(3) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(2)(b)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F373 Words in s. 103(4)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(2)(c)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

104 Agreements to adopt sewer, drain or sewage disposal works, at future date

[F374(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—

(a) any person constructing or proposing to construct—

(i) any sewer;

(ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or

(iii) any sewage disposal works; or

(b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.**]**

(2) A person **[**F375mentioned in paragraph (a) or (b) of subsection (1) above**]** may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.

(3) An application under subsection (2) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(4) Where—

(a) a person who has made an application to a sewerage undertaker under subsection (2) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 105 below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

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(5) Any agreement made under this section by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer **[**[F376], lateral drain**]** or works to which it relates.

(6) [F377] . . . . . .

[[F378](6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—

(a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;

(b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;

(c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and

(d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.**]**

[[F379](7) A sewerage undertaker shall not make an agreement under this section with respect to—

(a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or

(b) a drain which is intended to communicate with a sewer which—

(i) is so situated; or

(ii) is vested in another sewerage undertaker,

until one of the conditions mentioned in subsection (8) below is satisfied.

(8) The conditions are—

(a) that other undertaker has consented to the making of the agreement; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.**]**

Textual Amendments

F374 S. 104(1) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(4)(a)**, 105(3); S.I. 2004/641,{art. 4(b)} (with Sch. 3 para. 7)

F375 Words in s. 104(2) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(4)(b)**, 105(3); S.I. 2004/641,{art. 4(b)} (with Sch. 3 para. 7)

F376 Words in s. 104(5) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(4)(c)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)

F377 S. 104(6) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(4)(d), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(ii)** (with Sch. 3 para. 7)

F378 S. 104(6A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(4)(e)**, 105(3); S.I. 2004/641,{art. 4(b)} (with Sch. 3 para. 7)

F379 S. 104(7)(8) substituted (28.5.2004) for s. 104(7) by Water Act 2003 (c. 37), **ss. 96(4)(f)**, 105(3); S.I. 2004/641,{art. 4(b)} (with Sch. 3 para. 7)

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105 Appeals with respect to adoption.

(1) An owner of any sewer **[**F380, lateral drain**]** or sewage disposal works may appeal to the **[**F381Director**]** if—

(a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or

(b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.

(2) Subject to section 104(4) above, a person constructing or proposing to construct a drain or sewer or any sewage disposal works may appeal to the **[**F381Director**]** where a sewerage undertaker—

(a) has refused an application under section 104 above;

(b) has offered to grant such an application on terms to which that person objects; or

(c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.

(3) The time for the making of an appeal under subsection (1) above by the owner of any sewer **[**F382, lateral drain**]** or sewage disposal works shall be-

(a) in the case of an appeal by virtue of paragraph (a) of that subsection, any time within two months after notice of the proposal is served on that owner; and

(b) in the case of an appeal by virtue of paragraph (b) of that subsection, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.

(4) On the hearing of an appeal under this section, the **[**F381Director**]** may—

(a) in the case of an appeal under subsection (1) above, allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or

(b) in the case of an appeal under subsection (2) above—

(i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or

(ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;

and any declaration made under paragraph (a) above shall have the same effect as if it had been made by the undertaker in question.

(5) Where the **[**F381Director**]** makes a declaration under subsection (4)(a) above, he may, if he thinks fit—

(a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and

(b) direct that his declaration shall not take effect unless any conditions so specified are accepted.

(6) Where the **[**F381Director**]** makes an agreement under subsection (4)(b) above on behalf of a sewerage undertaker, he may do so on such terms as he considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as he considers appropriate for ensuring that the terms of the agreement are reasonable.

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(7) The **[**[F381]Director**]**, in deciding, on an appeal under this section, whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in section 102(5) above; and for the purposes of this subsection, in its application in relation to an appeal under subsection (2) above, paragraphs (a) to (e) of section 102(5) above shall have effect with the necessary modifications.

Textual Amendments

F380 Words in s. 105(1) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(5)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F381 Word in s. 105 substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(7)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F382 Words in s. 105(3) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 96(5)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

VALID FROM 01/04/2007

[[F383]105A Schemes for the adoption of sewers, lateral drains and sewage disposal works

(1) The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in paragraphs (a), (aa) and (b) of section 102(1) above.

(2) The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State.

(3) Each scheme shall relate to—

(a) the area of a sewerage undertaker, or part or parts of it; or

(b) the areas of more than one sewerage undertaker, or part or parts of them.

(4) It shall be the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under section 102 above with a view to making the declaration referred to in subsection (1) of that section in relation to sewers, lateral drains or sewage disposal works which—

(a) fall within the area to which a scheme relates; and

(b) satisfy specified criteria.

(5) The circumstances and the criteria shall each be—

(a) specified in the regulations; or

(b) determined in accordance with the regulations and specified in the scheme.

(6) In relation to the exercise of those powers pursuant to that duty—

(a) section 102 above shall have effect—

(i) with the omission of subsections (2), (5) and (7);

(ii) as if in subsection (1) the words "sections 103, 105 and 146(3) below" read "section 105B below";

(iii) with the omission of the words "or application" in subsection (3);

(iv) as if for subsection (4)(a) there were substituted—

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"(a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question unless, after diligent enquiry, he or they cannot be traced;

(aa) shall publish notice of its proposal in the prescribed manner; and";

(v) as if in subsection (4)(b) "two months" read "two months or, if longer, the period specified by virtue of section 105B(5) below" and "section 105 below" read "section 105B(4) or (5) below, or"; and

(vi) as if section 96(3) of the Water Act 2003 did not apply;

(b) sections 103 and 105 above shall not apply; and

(c) if the regulations so provide, section 146(3) below shall not apply in circumstances or cases specified in the regulations.

(7) A duty imposed on a sewerage undertaker under subsection (4) above shall be enforceable by the Secretary of State under section 18 above.

(8) A statutory instrument containing regulations under subsection (1) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.**]**

Textual Amendments

F383 Ss. 105A-105C inserted (1.4.2007) by Water Act 2003 (c. 37), **ss. 98**, 105(3); S.I. 2007/1021, **art. 2(b)**

VALID FROM 01/04/2007

[F384 105B Adoption schemes: appeals

(1) Any person falling within subsection (2) below may appeal to the Authority if he is aggrieved by—

(a) the proposal of a sewerage undertaker to make a declaration under section 102 above in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker's duty to do so under section 105A(4) above (the "relevant duty"); or

(b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty.

(2) The persons referred to are—

(a) an owner of a sewer, lateral drain or sewage disposal works;

(b) any other person affected by the proposal, or the failure, in question.

(3) The grounds upon which a person may appeal are—

(a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him;

(b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or

(c) any other prescribed ground.

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(4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—

(a) served on the owner of the sewer, lateral drain or sewage disposal works; or

(b) published in accordance with section 102(4) above as modified by section 105A(6) above,

(or, if both occur, within two months after whichever is the later).

(5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).

(6) On the hearing of an appeal under subsection (1) above, the Authority may—

(a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or

(b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,

or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.

(7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.

(8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.

(9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—

(a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and

(b) direct that its declaration shall not take effect unless any conditions so specified are accepted.

(10) A declaration made under subsection (6) above shall have the same effect as if it had been made by the undertaker.

(11) The Secretary of State may by regulations make further provision in connection with appeals under this section.

(12) The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under this section.**]**

Textual Amendments

F384 Ss. 105A-105C inserted (1.4.2007) by Water Act 2003 (c. 37), **ss. 98**, 105(3); S.I. 2007/1021, **art. 2(b)**

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VALID FROM 01/04/2007

[F385105CAdoption schemes: supplementary

(1) The Secretary of State may vary any scheme, or revoke it.

(2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—

(a) each sewerage undertaker which would be affected;
(b) the Authority;
(c) the Council;
(d) such other persons as the Secretary of State considers appropriate.

(3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.**]**

Textual Amendments

F385 Ss. 105A-105C inserted (1.4.2007) by Water Act 2003 (c. 37), **ss. 98**, 105(3); S.I. 2007/1021, **art. 2(b)**

Communication of drains and private sewers with public sewers

106 Right to communicate with public sewers.

[F386(1) Subject to the provisions of this section—

(a) the owner or occupier of any premises, or
(b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.**]**

[F387(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146 below—

(a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
(b) for the purposes of paragraph (a) above—
(i) a "public lateral drain" is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under section 102 above or under an agreement made under section 104 above; and
(ii) "sewer standards" means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.**]**

(2) Subject to the provisions of Chapter III of this Part, nothing in subsection (1) above shall entitle any person—

(a) to discharge directly or indirectly into any public sewer—

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(i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or

(ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment; or

(b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—

(i) foul water into a sewer provided for surface water; or

(ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or

(c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.

(4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3) above, the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer

[F388(a) does not satisfy the standards reasonably required by the undertaker; or

(b) is such that the making of the communication would be prejudicial to the undertaker's sewerage system.**]**

(5) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under subsection (3) above relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

[F389(5A) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under section 102 above.**]**

(6) Any question arising under subsections **[**F390(3) to (5A)**]** above between a sewerage undertaker and a person proposing to make a communication as to—

(a) the reasonableness of the undertaker's refusal to permit a communication to be made; or

(b) as to the reasonableness of any requirement under subsection (5) **[**F391or (5A)**]** above,

may, on the application of that person, be determined by **[**F392the Director under section 30A above**][**F393(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above).**]**

F394(7) . . . . . .

(8) Where a person proposes under this section to make a communication between a drain or sewer and such a public sewer in Greater London as is used for the general reception of sewage from other public sewers and is not substantially used for the reception of sewage from private sewers and drains—

(a) the grounds on which a sewerage undertaker may refuse to permit the communication shall be such grounds as the undertaker thinks fit; and

(b) no application to **[**F395the Director**]** may be made under subsection (6) above in respect of any refusal under this subsection.

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(9) In this section "factory" has the same meaning as in the [M43]Factories Act 1961.

Textual Amendments

F386 S. 106(1) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 43(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F387 S. 106(1A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(2)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F388 S. 106(4): paras. (a)(b) substituted (28.5.2004) for words by Water Act 2003 (c. 37), **ss. 99(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F389 S. 106(5A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F390 Words in s. 106(6) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F391 Words in s. 106(6)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(b)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

F392 Words in s. 106(6) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(8)(a)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F393 Words in s. 106(6) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(c)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

F394 S. 106(7) repealed (1.7.1992) and is expressed to cease to have effect (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 35(8)(b), 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, arts. 3, 4, Sch. Pts. I, II

F395 Words in s. 106(8)(b) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(8)(c)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

Modifications etc. (not altering text)

C33 S. 106 applied (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 15(2)** (with savings in arts. 3(6), 12(3))

C34 S. 106 applied (14.9.2006) by The Borough of Poole (Poole Harbour Opening Bridges) Order 2006 (S.I. 2006/2310), **art. 14(2)(4)**

C35 S. 106 applied (3.7.2006) by The Port of Blyth (Battleship Wharf Railway) Order 2006 (S.I. 2006/1518), **art. 10(2)**

C36 S. 106 applied (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 19(2)**

C37 S. 106(8) restricted (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 13**

C38 S. 106(8) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 40, **Sch. 14 para. 16**

Marginal Citations

M43 1961 c. 34.

107 Right of sewerage undertaker to undertake the making of communications with public sewers.

(1) Where a person gives to a sewerage undertaker notice under section 106 above of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may—

(a) within fourteen days after the receipt of the notice; or

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(b) if any question arising under the notice requires to be determined by **[**F396the Director**]**, within fourteen days after the determination of that question,

give notice to that person that the undertaker intends itself to make the communication.

(2) If, after a notice has been given to any person under subsection (1) above, that person proceeds himself to make the communication, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) Where a sewerage undertaker has given a notice under subsection (1) above—

(a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but

(b) it shall not be obligatory on the undertaker to make the communication until either—

(i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it; or

(ii) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required.

(4) If any payment made to a sewerage undertaker under subsection (3) above exceeds the expenses reasonably incurred by it in the carrying out of the work in question, the excess shall be repaid by the undertaker; and, if and so far as those expenses are not covered by such a payment, the undertaker may recover the expenses, or the balance of them, from the person for whom the work was done.

[F397(4A) Any dispute between a sewerage undertaker and any other person as to—

(a) whether the undertaker's estimate of the cost of works given under subsection (3)(b)(i) above is reasonable,

(b) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker, or

(c) whether any excess is repayable, or any expenses are recoverable, by the undertaker under subsection (4) above, or the amount of any such excess or expenses,

may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

(5) Sections 291, 293 and 294 of the M44Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

(6) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

Textual Amendments

F396 Words in s. 107(1)(b) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(9)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F397 S. 107(4A) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(9)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

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Marginal Citations
M44 1936 c. 49.

108 Communication works by person entitled to communication.

(1) Where a sewerage undertaker does not under section 107 above elect itself to make a communication to which a person is entitled under section 106 above, the person making it shall—

(a) before commencing the work, give reasonable notice to any person directed by the undertaker to superintend the carrying out of the work; and

(b) afford any such person all reasonable facilities for superintending the carrying out of the work.

(2) For the purpose—

(a) of exercising his rights under section 106 above; or

(b) of examining, repairing or renewing any drain or private sewer draining his premises into a public sewer,

the owner or occupier of any premises shall be entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker by sections 158 and 161(1) below.

(3) The provisions of Part VI of this Act shall apply, with the necessary modifications, in relation to the power conferred by subsection (2) above as they apply in relation to the power conferred by sections 158 and 161(1) below.

109 Unlawful communications.

(1) Any person who causes a drain or sewer to communicate with a public sewer—

(a) in contravention of any of the provisions of section 106 or 108 above; or

(b) before the end of the period mentioned in subsection (4) of that section 106,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this section, such an undertaker may—

(a) close any communication made in contravention of any of the provisions of section 106 or 108 above; and

(b) recover from the offender any expenses reasonably incurred by the undertaker in so doing.

(3) Sections 291, 293 and 294 of the [M45]Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

Marginal Citations
M45 1936 c. 49.

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Connections between public sewers

110 Determination of disputes with respect to cross boundary sewers.

(1) Where any part of a sewer is vested in a sewerage undertaker by virtue of section 70 of the [M46]Water Act 1989 (cross boundary sewers), 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 1st September 1989 were vested in the same water authority as that part of that sewer but, by virtue of that section, are vested in another sewerage undertaker shall be determined, in default of agreement, by the Director.

(2) 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.

(3) 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 its securing a reasonable return on its capital.

Marginal Citations

M46 1989 c. 15.

[110A [F398]New connections with public sewers.

(1) Where, on the application of any qualifying person—

(a) it appears to the Director that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application ("the established undertaker") should permit a main connection into his sewerage system, and

(b) the Director is satisfied that the making of such a connection cannot be secured by agreement,

the Director may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.

(2) In this section "qualifying person" means—

(a) a sewerage undertaker; or

(b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.

(3) In subsection (1) above a "main connection" means a connection—

(a) between a sewer or disposal main and a sewer or disposal main; or

(b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works.

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(4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.

(5) Subject to subsection (4) above, an order under this section shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Director on the application of either party to the agreement, as well as by agreement between the parties.

(6) The Director shall not make an order under this section unless he has first consulted **[**[F399]the Environment Agency**]**.

(7) In exercising his functions under this section, the Director shall have regard to the desirability of—

(a) facilitating effective competition within the sewerage services industry;

(b) the existing undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

(c) the existing undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;

(d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.

Textual Amendments

F398 S. 110A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 45**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F399 Words in s. 110A(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 104** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Provisions protecting sewerage system

111 Restrictions on use of public sewers.

(1) Subject to the provisions of Chapter III of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer—

(a) any matter likely to injure the sewer or drain, to interfere with the free flow of its contents or to affect prejudicially the treatment and disposal of its contents; or

(b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than one hundred and ten degrees Fahrenheit, as by virtue of subsection (2) below is a prohibited substance; or

(c) any petroleum spirit or carbide of calcium.

(2) For the purposes of subsection (1) above, chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that subsection is a prohibited substance

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if (either alone or in combination with the contents of the sewer or drain in question) it is or, in the case of the liquid, is when so heated—

(a) dangerous;

(b) the cause of a nuisance; or

(c) injurious, or likely to cause injury, to health.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) For the purposes of so much of subsection (3) above as makes provision for the imposition of a daily penalty—

(a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and

(b) where a court has fixed such a period, the daily penalty shall not be imposed in respect of any day before the end of that period.

(5) In this section the expression "petroleum spirit" means any such—

(a) crude petroleum;

(b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or

(c) product of petroleum or mixture containing petroleum,

as, when tested in the manner prescribed by or under the [M47]Petroleum (Consolidation) Act 1928, gives off an inflammable vapour at a temperature of less than seventy-three degrees Fahrenheit.

Modifications etc. (not altering text)

C39 S. 111 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 8** (with ss. 42, 46).

Marginal Citations

M47 1928 c. 32.

112 Requirement that proposed drain or sewer be constructed so as to form part of general system.

(1) Where—

(a) a person proposes to construct a drain or sewer; and

(b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,

the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.

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(2) If any person on whom requirements are imposed under this section by a sewerage undertaker is aggrieved by the requirements, he may within twenty-eight days appeal to the **[**[F400]Director**]**.

(3) On an appeal under subsection (2) above with respect to any requirements, the **[**[F400]Director**]** may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this section to comply with those requirements.

(5) The duty of any person by virtue of subsection (4) above to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this section shall—

(a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and

(b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.

(7) Nothing in this section shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertakers or dock undertakers in or on land which—

(a) belongs to them; and

(b) is held or used by them for the purposes of their undertaking.

Textual Amendments

F400 Word in s. 112(2)(3) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(10)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

113 Power to alter drainage system of premises in area.

(1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but that system of drainage, though sufficient for the effectual drainage of the premises—

(a) is not adapted to the general sewerage system of the area; or

(b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,

the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any, and do any work necessary for that purpose.

(2) The power conferred on a sewerage undertaker by subsection (1) above shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—

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(a) is equally effectual for the drainage of the premises; and

(b) communicates with a public sewer.

(3) A sewerage undertaker which proposes to carry out any work under this section shall give notice of its proposals to the owner of the premises in question.

(4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may **[**F401refer the matter to the Director for determination under section 30A above**]**.

F402(5) . . . . . .

(6) The Secretary of State may by regulations make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of this section.

(7) In this section—

"cesspool" includes a settlement tank or other tank for the reception or disposal of foul matter from buildings; and

"trade effluent" has the same meaning as in Chapter III of this Part.

Textual Amendments

F401 Words in s. 113(4) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(11)(a)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

F402 S. 113(5) repealed (1.7.1992) and is expressed to cease to have effect (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 35(11)(b), 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, arts. 3, 4, Sch. Pts. I, II

Modifications etc. (not altering text)

C40 S. 113(6) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 8** (with ss. 42, 46).

114 Power to investigate defective drain or sewer.

(1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—

(a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or

(b) that any such drain or private sewer is so defective as to admit subsoil water,

the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.

(2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

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Use of pipes for sewerage purposes

115 Use of highway drains as sewers and vice versa.

(1) Subject to the provisions of this section, a relevant authority and a sewerage undertaker may agree that—

(a) any drain or sewer which is vested in the authority in their capacity as a highway authority may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or streets;

(b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the authority for conveying surface water from roads repairable by the authority.

(2) Where a sewer or drain with respect to which a relevant authority and a sewerage undertaker propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage disposal works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.

(3) Subject to subsection (4) below, a consent given by a sewerage undertaker for the purposes of subsection (2) above may be given on such terms as that undertaker thinks fit.

(4) Neither a relevant authority nor a sewerage undertaker shall—

(a) unreasonably refuse to enter into an agreement for the purposes of this section; or

(b) insist unreasonably upon terms unacceptable to the other party;

and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.

(5) Any question arising under this section as to whether or not any authority or undertaker is acting unreasonably shall be referred to the Secretary of State, whose decision shall be final.

(6) The powers by virtue of paragraph (a) of subsection (1) above of a relevant authority and a sewerage undertaker to enter into an agreement shall be exercisable by two relevant authorities as they would be exercisable if one of them were a sewerage undertaker.

(7) Nothing in this section shall be construed as limiting the rights of a relevant authority under section 264 of the [M48]Highways Act 1980.

(8) Part XII of the [M49]Public Health Act 1936 shall apply for the purposes of the provisions of this section which confer functions on relevant authorities as they apply for the purposes of the provisions of that Act.

(9) In this section "relevant authority" means a county council or any local authority except a non-metropolitan district council.

(10) The provisions of this section are subject to the provisions of section 146(4) below.

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Marginal Citations

M48 1980 c. 66.

M49 1936 c. 49.

116 Power to close or restrict use of public sewer.

(1) Subject to subsection (3) below, a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.

(2) A discontinuance or prohibition under this section may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.

(3) Before any person who is lawfully using a sewer for any purpose is deprived under this section by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—

(a) provide a sewer which is equally effective for his use for that purpose; and

(b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this subsection.

[F403(4) Any dispute arising under subsection (3)(a) above between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to the Director for determination under section 30A above by either party to the dispute.**]**

Textual Amendments

F403 S. 116(4) inserted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(12)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

[F404 Complaints

Textual Amendments

F404 S. 116A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 c. 43, **s.33**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F405 116A Procedures for dealing with complaints.

(1) Each sewerage undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the provision of sewerage services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

(a) the sewerage undertaker has consulted the **[**F406regional committee**]** to which it has been allocated; and

(b) the proposed procedure or modification has been approved by the Director.

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(3) The sewerage undertaker shall—

(a) publicise the procedure in such manner as may be approved by the Director; and

(b) send a description of the procedure, free of charge, to any person who asks for one.

(4) The Director may give a direction to a sewerage undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.

(5) A direction under subsection (4) above—

(a) may specify the manner in which the review is to be conducted; and

(b) shall require a written report of the review to be made to the Director.

(6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the sewerage undertaker, direct the undertaker to make such modifications of—

(a) the procedure; or

(b) the manner in which the procedure operates,

as may be specified in the direction.

(7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.

(8) The duty of a sewerage undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by the Director under section 18 above.

(9) Where the Director is considering whether to exercise his powers under subsection (4) or (6) above in relation to a sewerage undertaker, it shall be the duty of that undertaker to give him such information as he may reasonably require for the purpose of assisting him in coming to a decision.

(10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.**]**

Textual Amendments

F405 S. 116A inserted (1.7.1992) by Competition ant Service (Utilities) Act 1992 (c. 43), **s.33**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F406 Words in s. 116A(2)(a) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(3)**; S.I. 2005/2714, **art. 2(l)(v)(aa)** (with Sch. para. 8)

Interpretation of Chapter II

117 Interpretation of Chapter II.

(1) In this Chapter, except in so far as the context otherwise requires—

"dock undertakers" means persons authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any dock, harbour, canal or inland navigation;

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"domestic sewerage purposes", in relation to any premises, means any one or more of the following purposes, that is to say—

(a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;

(b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and

(c) the removal, from such buildings and such land, of surface water;

but does not, by virtue of paragraph (b) of this definition, include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

(2) References in this Chapter to the construction of a sewer or of any sewage disposal works include references to the extension of any existing sewer or works.

(3) In this Chapter "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.

(4) Every application made or consent given under this Chapter shall be made or given in writing.

(5) Nothing in sections 102 to 109 above or in sections 111 to 116 above shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—

(a) in contravention of any applicable provision of the [M50]Water Resources Act 1991; or

(b) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.

(6) A sewerage undertaker shall so carry out its functions under sections 102 to 105, 112, 115 and 116 above as not to create a nuisance.

Marginal Citations

M50 1991 c. 57.

CHAPTER III

TRADE EFFLUENT

Modifications etc. (not altering text)

C41 Pt. IV Ch. III (ss. 118-141) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 8** (with ss. 42, 46).
Pt. IV Ch. III (ss. 118-141) modified (1.2.1996) by 1995 c. 25, **s. 5** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**
Pt. IV Ch. III (ss. 118-141): transfer of functions (1.4.1996) by 1995 c. 25, **s. 2(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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Consent for discharge of trade effluent into public sewer

118 Consent required for discharge of trade effluent into public sewer.

(1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent.

(2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

(3) The following, that is to say—

(a) the restrictions imposed by paragraphs (a) and (b) of section 106(2) above; and

(b) section 111 above so far as it relates to anything falling within paragraph (a) or (b) of subsection (1) of that section,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.

(4) Accordingly, subsections (3) to (8) of section 106 above and sections 108 and 109 above shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by subsection (1) of section 106 above.

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, the occupier of the premises shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

Consents on an application

119 Application for consent.

(1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of that undertaker shall be by notice served on the undertaker by the owner or occupier of the premises.

(2) An application under this section with respect to a proposed discharge of any such effluent shall state—

(a) the nature or composition of the trade effluent;

(b) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and

(c) the highest rate at which it is proposed to discharge the trade effluent.

120 Applications for the discharge of special category effluent.

(1) Subject to subsection (3) below, where a notice containing an application under section 119 above is served on a sewerage undertaker with respect to discharges of any special category effluent, it shall be the duty of the undertaker to refer to **[**F407the Environment Agency**]** the questions—

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(a) whether the discharges to which the notice relates should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to subsection (3) below, a reference which is required to be made by a sewerage undertaker by virtue of subsection (1) above shall be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker.

(3) There shall be no obligation on a sewerage undertaker to make a reference under this section in respect of any application if, before the end of the period mentioned in subsection (2) above, there is a refusal by the undertaker to give any consent on the application.

(4) It shall be the duty of a sewerage undertaker where it has made a reference under this section not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before **[**F408the Environment Agency**]** serves notice on the undertaker of his determination on the reference.

(5) Every reference under this section shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which it is made.

(6) It shall be the duty of a sewerage undertaker, on making a reference under this section, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier.

[F409(9) If a sewerage undertaker fails, within the period provided by subsection (2) above, to refer to the Environment Agency any question which he is required by subsection (1) above to refer to the Agency, 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.

(10) If the Environment Agency becomes aware of any such failure as is mentioned in subsection (9) above, the Agency may—

(a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under section 127 or 131 below, notwithstanding anything in subsection (2) of the section in question; or

(b) in any other case, proceed as if the reference required by this section had been made.**]**

Textual Amendments

F407 Words in s. 120(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 105(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F408 Words in s. 120(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 105(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F409 S. 120(9)(10) substituted (1.4.1996) for s. 120(7)(8) by 1995 c. 25, s. 120(1), **Sch. 22 para. 105(1)(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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121 Conditions of consent.

(1) The power of a sewerage undertaker, on an application under section 119 above, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to—

(a) the sewer or sewers into which the trade effluent may be discharged;

(b) the nature or composition of the trade effluent which may be discharged;

(c) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and

(d) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.

(2) Conditions with respect to all or any of the following matters may also be attached under this section to a consent to the discharge of trade effluent from any trade premises—

(a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;

(b) the exclusion from the trade effluent of all condensing water;

(c) the elimination or diminution, in cases falling within subsection (3) below, of any specified constituent of the trade effluent, before it enters the sewer;

(d) the temperature of the trade effluent at the time when it is discharged into the sewer, and its acidity or alkalinity at that time;

(e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;

(f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;

(g) the provision, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;

(h) the provision, testing and maintenance of apparatus for determining the nature and composition of any trade effluent being discharged from the premises into the sewer;

(i) the keeping of records of the volume, rate of discharge, nature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and

(j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature and composition of any trade effluent discharged from the trade premises into the sewer.

(3) A case falls within this subsection where the sewerage undertaker is satisfied that the constituent in question, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers-

(a) would injure or obstruct those sewers, or make the treatment or disposal of the sewage from those sewers specially difficult or expensive; or

(b) in the case of trade effluent which is to be or is discharged—

(i) into a sewer having an outfall in any harbour or tidal water; or

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(ii) into a sewer which connects directly or indirectly with a sewer or sewage disposal works having such an outfall,

would cause or tend to cause injury or obstruction to the navigation on, or the use of, the harbour or tidal water.

(4) In the exercise of the power conferred by virtue of subsection (2)(e) above, regard shall be had—

(a) to the nature and composition and to the volume and rate of discharge of the trade effluent discharged;

(b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and

(c) to any revenue likely to be derived by the undertaker from the trade effluent.

(5) If, in the case of any trade premises, a condition imposed under this section is contravened, the occupier of the premises shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

(6) In this section "harbour" and "tidal water" have the same meanings as in the **[**[F410]Merchant Shipping Act 1995**]**.

(7) This section has effect subject to the provisions of sections 133 and 135(3) below.

Textual Amendments

F410 Words in s. 121(6) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 89(a)** (with s. 312(1))

122 Appeals to the Director with respect to decisions on applications etc.

(1) Any person aggrieved by—

(a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under section 119 above;

(b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or

(c) any condition attached by a sewerage undertaker to such a consent,

may appeal to the Director.

(2) On an appeal under this section in respect of a refusal or failure to give a consent, the Director may give the necessary consent, either unconditionally or subject to such conditions as he thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under section 121 above.

(3) On an appeal under this section in respect of a condition attached to a consent, the Director may take into review all the conditions attached to the consent, whether appealed against or not, and may—

(a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or

(b) annul any of the conditions.

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(4) The Director may, under subsection (3) above, include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.

(5) On any appeal under this section, the Director may give a direction that the trade effluent in question shall not be discharged until a specified date.

(6) Any consent given or conditions imposed by the Director under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(7) The powers of the Director under this section shall be subject to the provisions of sections 123, 128, 133, 135 and 137 below.

123 Appeals with respect to the discharge of special category effluent.

(1) Where a reference is made to **[**F411the Environment Agency**]** under section 120 above, the period mentioned in paragraph (b) of subsection (1) of section 122 above shall not begin to run for the purposes of that subsection, in relation to the application to which the reference relates, until the beginning of the day after **[**F411the Environment Agency**]** serves notice on the sewerage undertaker in question of his determination on the reference.

(2) If, on an appeal under section 122 above, it appears to the Director—

(a) that the case is one in which the sewerage undertaker in question is required to make a reference under section 120 above before giving a consent; and

(b) that the undertaker has not made such a reference, whether because the case falls within subsection (3) of that section or otherwise,

the Director shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in subsection (3) below are satisfied.

(3) The conditions mentioned in subsection (2) above are satisfied if the Director—

(a) has himself referred the questions mentioned in section 120(1) above to **[**F411the Environment Agency**]**; and

(b) has been sent a copy of the notice of **[**F411the Environment Agency's**]** determination on the reference.

(4) Every reference under this section shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made.

(5) It shall be the duty of the Director, on making a reference under this section, to serve a copy of the reference—

(a) on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier; and

(b) on the sewerage undertaker in question.

Textual Amendments

F411 Words in s. 123(1)(3)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 106** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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124 Variation of consents.

(1) Subject to sections 128, 133 and 135(3) below, a sewerage undertaker may from time to time give a direction varying the conditions which have been attached to any of its consents under this Chapter to the discharge of trade effluent into a public sewer.

(2) Subject to subsections (3) and (4) and section 125 below, no direction shall be given under this section with respect to a consent under this Chapter—

(a) within two years from the date of the consent; or

(b) where a previous direction has been given under this section with respect to that consent, within two years from the date on which notice was given of that direction.

(3) Subsection (2) above shall not prevent a direction being given before the time specified in that subsection if it is given with the consent of the owner and occupier of the trade premises in question.

(4) A direction given with the consent mentioned in subsection (3) above shall not affect the time at which any subsequent direction may be given.

(5) The sewerage undertaker shall give to the owner and occupier of the trade premises to which a consent under this Chapter relates notice of any direction under this section with respect to that consent.

(6) A notice under subsection (5) above shall—

(a) include information as to the right of appeal conferred by subsection (1) of section 126 below; and

(b) state the date, being a date not less than two months after the giving of the notice, on which (subject to subsection (2) of that section) the direction is to take effect.

(7) For the purposes of this section references to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached.

125 Variations within time limit.

(1) A sewerage undertaker may give a direction under section 124 above before the time specified in subsection (2) of that section and without the consent required by subsection (3) of that section if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction.

(2) Subject to section 134(3) below, where a sewerage undertaker gives a direction by virtue of subsection (1) above, the undertaker shall be liable to pay compensation to the owner and occupier of the trade premises to which the direction relates, unless the undertaker is of the opinion that the direction is required—

(a) in consequence of a change of circumstances which—

(i) has occurred since the beginning of the period of two years in question; and

(ii) could not reasonably have been foreseen at the beginning of that period;

and

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(b) otherwise than in consequence of consents for discharges given after the beginning of that period.

(3) Where a sewerage undertaker gives a direction by virtue of subsection (1) above and is of the opinion mentioned in subsection (2) above, it shall be the duty of the undertaker to give notice of the reasons for its opinion to the owner and occupier of the premises in question.

(4) For the purposes of this section the circumstances referred to in subsection (2)(a) above may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter.

(5) The Secretary of State may by regulations make provision as to the manner of determining the amount of any compensation payable under this section, including the factors to be taken into account in determining that amount.

126 Appeals with respect to variations of consent.

(1) The owner or occupier of any trade premises may—

(a) within two months of the giving to him under subsection (5) of section 124 above of a notice of a direction under that section; or

(b) with the written permission of the Director, at any later time,

appeal to the Director against the direction.

(2) Subject to subsection (3) below, if an appeal against a direction is brought under subsection (1) above before the date specified under section 124(6)(b) above in the notice of the direction, the direction shall not take effect until the appeal is withdrawn or finally disposed of.

(3) In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice.

(4) On an appeal under subsection (1) above with respect to a direction, the Director shall have power—

(a) to annul the direction given by the sewerage undertaker; and

(b) to substitute for it any other direction, whether more or less favourable to the appellant;

and any direction given by the Director may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.

(5) A person to whom notice is given in pursuance of section 125(3) above may, in accordance with regulations made by the Secretary of State, appeal to the Director against the notice on the ground that compensation should be paid in consequence of the direction to which the notice relates.

(6) On an appeal under subsection (5) above the Director may direct that section 125 above shall have effect as if the sewerage undertaker in question were not of the opinion to which the notice relates.

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(7) Any consent given or conditions imposed by the Director under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(8) The powers of the Director under this section shall be subject to the provisions of sections 133, 135 and 137 below.

127 Review by the [the Environment Agency] of consents relating to special category effluent.

(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under section 132 below) for the time being authorised by virtue of a consent under this Chapter to make discharges of any special category effluent from those premises into a sewerage undertaker's public sewer, **[**[F412]the Environment Agency**]** may review the questions—

(a) whether the discharges authorised by the consent should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to subsection (3) below, **[**[F412]the Environment Agency**]** shall not review any question under this section unless—

(a) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made—

(i) before 1st September 1989; or

(ii) in contravention of section 133 below;

(b) a period of more than two years has elapsed since the time, or last time, when notice of **[**[F412]the Environment Agency's**]** determination on any reference or review relating to that consent or the consent to which that variation relates was served under section 132 below on the owner or occupier of the trade premises in question; or

(c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under section 132 below in the consent or variation by virtue of which the discharges in question are made.

(3) Subsection (2) above shall not apply if the review is carried out—

(a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party; or

(b) for the protection of public health or of flora and fauna dependent on an aquatic environment.

Textual Amendments

F412 Words in s. 127 substituted (1.4.1996) by 1995 c. 25, ss. 120(1), **Sch. 22 para. 107** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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Application for variation of time for discharge

128 Application for variation of time for discharge.

(1) If, after a direction has been given under any of the preceding provisions of this Chapter requiring that trade effluent shall not be discharged until a specified date, it appears to the sewerage undertaker in question that in consequence—

(a) of a failure to complete any works required in connection with the reception and disposal of the trade effluent; or

(b) of any other exceptional circumstances,

a later date ought to be substituted for the date so specified in the direction, the undertaker may apply to the Director for such a substitution.

(2) The Director shall have power, on an application under subsection (1) above, to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if he thinks fit, any earlier date.

(3) Not less than one month before making an application under subsection (1) above a sewerage undertaker shall give notice of its intention to the owner and occupier of the trade premises from which the trade effluent is to be discharged.

(4) The Director, before varying a direction on an application under subsection (1) above, shall take into account any representations made to him by the owner or occupier of the trade premises in question.

Agreements with respect the disposal etc. of trade effluent

129 Agreements with respect to the disposal etc of trade effluent.

(1) Subject to sections 130 and 133 below, a sewerage undertaker may enter into and carry into effect—

(a) an agreement with the owner or occupier of any trade premises within its area for the reception and disposal by the undertaker of any trade effluent produced on those premises;

(b) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises.

(2) Without prejudice to the generality of subsection (1) above, an agreement such as is mentioned in paragraph (a) of that subsection may, in particular, provide—

(a) for the construction or extension by the sewerage undertaker of such works as may be required for the reception or disposal of the trade effluent; and

(b) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement.

(3) It is hereby declared that the power of a sewerage undertaker to enter into an agreement under this section includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent under this Chapter.

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130 Reference to [F413the Environment Agency] of agreements relating to special category effluent.

(1) Where a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement under section 129 above with respect to, or to any matter connected with, the reception or disposal of any special category effluent, it shall be the duty of the undertaker to refer to **[**F413the Environment Agency**]** the questions—

(a) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) It shall be the duty of a sewerage undertaker where it has made a reference under this section not to give any consent or enter into any agreement with respect to any such operations as are mentioned in subsection (1)(a) above at any time before **[**F413the Environment Agency**]** serves notice on the undertaker of his determination on the reference.

(3) Every reference under this section shall be made in writing and shall be accompanied by a copy of the proposed agreement.

(4) It shall be the duty of a sewerage undertaker, on making a reference under this section, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement.

[F414(7) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above, to refer to the Environment Agency any question which he is required by that subsection to refer to the Agency, 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.

(8) If the Environment Agency becomes aware—

(a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in subsection (1) above, and

(b) that the sewerage undertaker has not referred to the Agency any question which it is required to refer to the Agency by that subsection,

the Agency may proceed as if the reference required by that subsection had been made.

(9) If the Environment Agency becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above without the sewerage undertaker in question having referred to the Environment Agency any question which he is required by that subsection to refer to the Agency, the Agency may exercise its powers of review under section 127 above or, as the case may be, section 131 below, notwithstanding anything in subsection (2) of the section in question.**]**

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Textual Amendments

F413 Words in s. 130(1)(2) and sidenote substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 108(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F414 S. 130(7)-(9) substituted (1.4.1996) for s. 130(5)(6) by 1995 c. 25, s. 120(1), **Sch. 22 para. 108(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

131 Review by [the Environment Agency] of agreements relating to special category effluent.

(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under section 132 below) for the time being a party to any agreement under section 129 above with respect to, or to any matter connected with, the reception or disposal of special category effluent, **[**[F415]the Environment Agency**]** may review the questions—

(a) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) Subject to subsection (3) below, **[**[F415]the Environment Agency**]** shall not review any question under this section unless—

(a) the agreement by virtue of which the operations in question are carried out has not previously been the subject-matter of a review and was entered into—

(i) before 1st September 1989; or

(ii) in contravention of section 133 below;

(b) a period of more than two years has elapsed since the time, or last time, when notice of **[**[F415]the Environment Agency's**]** determination on any reference or review relating to that agreement was served under section 132 below on the owner or occupier of the trade premises in question; or

(c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under section 132 below in the agreement by virtue of which the operations in question are carried out.

(3) Subsection (2) above shall not apply if the review is carried out—

(a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party; or

(b) for the protection of public health or of flora and fauna dependent on an aquatic environment.

(4) References in this section to an agreement include references to an agreement as varied from time to time by a notice under section 132 below.

Textual Amendments

F415 Words in s. 131 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 109** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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References and reviews relating to special category effluent

132 Powers and procedure on references and reviews.

(1) This section applies to—

(a) any reference to **[**F416the Environment Agency**]** under section 120, 123 or 130 above; and

(b) any review by **[**F416the Environment Agency**]** under section 127 or 131 above.

(2) On a reference or review to which this section applies, it shall be the duty of **[**F416the Environment Agency**]**, before determining the questions which are the subject-matter of the reference or review—

(a) to give an opportunity of making representations or objections to **[**F416the Environment Agency**]**—

(i) to the sewerage undertaker in question; and

(ii) to the following person, that is to say, the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier of those premises who is proposing to be, or is, the person making the discharges or, as the case may be, a party to the agreement;

and

(b) to consider any representations or objections which are duly made to **[**F417the Agency**]** with respect to those questions by a person to whom **[**F417the Agency**]** is required to give such an opportunity and which are not withdrawn.

(3) On determining any question on a reference or review to which this section applies, **[**F416the Environment Agency**]** shall serve notice on the sewerage undertaker in question and on the person specified in subsection (2)(a)(ii) above.

(4) A notice under this section shall state, according to what has been determined-

(a) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited; or

(b) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist in or include conditions so specified; or

(c) that **[**F416the Environment Agency**]** has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out.

(5) Without prejudice to section 133 below, a notice under this section, in addition to containing such provision as is specified in sub-paragraph (4) above, may do one or both of the following, that is to say—

(a) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question; and

(b) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent under this Chapter or any agreement under section 129 above.

(6) Nothing in subsection (1) or (2) of section 121 above shall be construed as restricting the power of **[**F416the Environment Agency**]**, by virtue of subsection (4)(b) above, to

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specify such conditions as **[**F418the Agency**]** considers appropriate in a notice under this section.

F419(7) . . . . . .

(8) **[**F416the Environment Agency**]** shall send a copy of every notice served under this section to the Director.

Textual Amendments

F416 Words in s. 132(1)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F417 Words in s. 132(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F418 Words in s. 132(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(4)** (with ss. 7(6), 115, 117); S.I 1996/186, art. 3

F419 S. 132(7) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 110(1)(5), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

133 Effect of determination on reference or review.

(1) Where a notice under section 132 above has been served on a sewerage undertaker, it shall be the duty—

(a) of the undertaker; and

(b) in relation to that undertaker, of the Director,

so to exercise the powers to which this section applies as to secure compliance with the provisions of the notice.

(2) This paragraph applies to the following powers, that is to say-

(a) in relation to a sewerage undertaker, its power to give a consent under this Chapter, any of its powers under section 121 or 124 above and any power to enter into or vary an agreement under section 129 above; and

(b) in relation to the Director, any of his powers under this Chapter.

(3) Nothing in subsection (1) or (2) of section 121 above shall be construed as restricting the power of a sewerage undertaker, for the purpose of complying with this section, to impose any condition specified in a notice under section 132 above.

[F420(5) A sewerage undertaker which fails to perform its duty under subsection (1) above 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) The Environment Agency may, for the purpose of securing compliance with the provisions of a notice under section 132 above, by serving notice on the sewerage undertaker in question and on the person specified in section 132(2)(a)(ii) above, vary or revoke—

(a) any consent given under this Chapter to make discharges of any special category effluent, or

(b) any agreement under section 129 above.**]**

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Textual Amendments

F420 S. 133(5)(6) substituted (1.4.1996) for s. 133(4) by 1995 c. 25, s. 120(1), **Sch. 22 para. 111** (with s. 7(6), 115, 117); S.I. 1996/186, **art. 3**

134 Compensation in respect of determinations made for the protection of public health etc.

(1) Subject to subsection (2) below, **[**[F421]the Environment Agency**]** shall be liable to pay compensation to the relevant person in respect of any loss or damage sustained by that person as a result of any notice under section 132 above containing **[**[F421]the Environment Agency's**]** determination on a review which—

(a) has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment; and

(b) but for being so carried out would have been prohibited by virtue of section 127(2) or 131(2) above.

(2) **[**[F421]the Environment Agency**]** shall not be required to pay any compensation under this section if the determination in question is shown to have been given in consequence of—

(a) a change of circumstances which could not reasonably have been foreseen at the time when the period of two years mentioned in section 127(2) or, as the case may be, section 131(2) above began to run; or

(b) consideration by **[**[F421]the Environment Agency**]** of material information which was not reasonably available to **[**[F422]the Agency**]** at that time.

(3) No person shall be entitled to any compensation under section 125 above in respect of anything done in pursuance of section 133 above.

(4) In this section "the relevant person", in relation to a review, means the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier who makes the discharges to which the review relates or, as the case may be, is a party to the agreement to which it relates.

Textual Amendments

F421 Words in s. 134(1)(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 112(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F422 Words in s. 134(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 112(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Supplemental provisions of Chapter III

135 Restrictions on power to fix charges under Chapter III.

(1) On any appeal under section 122 or 126(1) above conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by the Director except in so far as no provision is in force by virtue of a charges scheme under section 143 below in respect of any such receptions, discharges, removals or disposals

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of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject-matter of the appeal.

(2) In so far as any such conditions as are mentioned in subsection (1) above do fall to be determined by the Director, they shall be determined having regard to the desirability of that undertaker's—

(a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and

(b) securing a reasonable return on its capital.

(3) To the extent that subsection (1) above excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under section 143 below but not otherwise.

[135A F423Power of the Environment Agency to acquire information for the purpose of its functions in relation to special category effluent.

(1) For the purpose of the discharge of its functions under this Chapter, the Environment Agency may, by notice in writing served on any person, require that person to furnish such information specified in the notice as that Agency reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who—

(a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (1) above, or

(b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.**]**

Textual Amendments

F423 S. 135A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 113** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

136 Evidence from meters etc.

Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

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137 Statement of case on appeal.

(1) At any stage of the proceedings on an appeal under section 122 or 126(1) above, the Director may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.

(2) The decision of the High Court on a special case under this section shall be deemed to be a judgment of the Court within the meaning of section 16 of the [M51]Supreme Court Act 1981 (which relates to the jurisdiction of the Court of Appeal); but no appeal to the Court of Appeal shall be brought by virtue of this subsection except with the leave of the High Court or of the Court of Appeal.

Marginal Citations
M51 1981 c. 54.

138 Meaning of "special category effluent".

(1) Subject to **[**[F424]subsections (1A) and**]** (2) below, trade effluent shall be special category effluent for the purposes of this Chapter if—

(a) such substances as may be prescribed under this Act are present in the effluent or are present in the effluent in prescribed concentrations; or

(b) the effluent derives from any such process as may be so prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

[[F425](1A) If trade effluent is produced, or to be produced, by operating any installation or plant or otherwise carrying on any activity, the operation or carrying on of which requires a permit, that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(1B) In subsection (1A)—

(a) "determination date", in relation to an installation, plant or activity, means—

(i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;

(ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal,

and in this paragraph the references to an appeal are references to an appeal under regulations under section 2 of the Pollution Prevention and Control Act 1999;

(b) "permit" means a permit granted, under regulations under that section, by an authority exercising functions under the regulations that are exercisable for the purpose of preventing or reducing emissions into the air, water and land.**]**

(2) Trade effluent shall not be special category effluent for the purposes of this Chapter if it is produced, or to be produced, in any process which is a prescribed process designated for central control as from the date which is the determination date for that process.

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(3) In subsection (2) above "determination date", in relation to a prescribed process, means—

(a) in the case of a process for which authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;

(b) in the case of a process for which authorisation is refused, the date of refusal or, on appeal, of the affirmation of the refusal.

(4) **[**F426In subsection (2) and (3) above**]**—

(a) "authorisation", "enforcing authority" and "prescribed process" have the meanings given by section 1 of the M52Environmental Protection Act 1990; and

(b) the references to designation for central control and to an appeal are references, respectively, to designation under section 4 of that Act and to an appeal under section 15 of that Act.

(5) Without prejudice to the power in subsection (3) of section 139 below, nothing in this Chapter shall enable regulations under this section to prescribe as special category effluent any liquid or matter which is not trade effluent but falls to be treated as such for the purposes of this Chapter by virtue of an order under that section.

Textual Amendments

F424 Words in s. 138(1) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(a)**

F425 S. 138(1A)(1B) inserted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(b)**

F426 Words in s. 138(4) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(c)**

Marginal Citations

M52 1990 c. 43.

139 Power to apply Chapter III to other effluents.

(1) The Secretary of State may by order provide that, subject to section 138(5) above, this Chapter shall apply in relation to liquid or other matter of any description specified in the order which is discharged into public sewers as it applies in relation to trade effluent.

(2) An order applying the provisions of this Chapter in relation to liquid or other matter of any description may provide for it to so apply subject to such modifications (if any) as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression "trade premises" as may be so specified.

(3) The Secretary of State may include in an order under this section such provisions as appear to him expedient for modifying any enactment relating to sewage as that enactment applies in relation to the discharge into sewers of any liquid or other matter to which any provisions of this Chapter are applied by an order under this section.

(4) The Secretary of State may include in an order under this section such other supplemental, incidental and transitional provision as appears to him to be expedient.

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(5) The power to make an order under this section shall be exercisable by statutory instrument; and no order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

140 Pre-1989 Act authority for trade effluent discharges etc.

Schedule 8 to this Act shall have effect (without prejudice to the provisions of the [M53]Water Consolidation (Consequential Provisions) Act 1991 or to sections 16 and 17 of the [M54]Interpretation Act 1978) for the purpose of making provision in respect of certain cases where trade effluent was discharged in accordance with provision made before the coming into force of the [M55]Water Act 1989.

Marginal Citations

M53 1991 c. 60.
M54 1978 c. 30.
M55 1989 c. 15.

Interpretation of Chapter III

141 Interpretation of Chapter III.

(1) In this Chapter, except in so far as the context otherwise requires—

"special category effluent" has the meaning given by section 138 above;

"trade effluent"—

(a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and

(b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage;

"trade premises" means, subject to subsection (2) below, any premises used or intended to be used for carrying on any trade or industry.

(2) For the purposes of this Chapter any land or premises used or intended for use (in whole or in part and whether or not for profit)—

(a) for agricultural or horticultural purposes or for the purposes of fish farming; or

(b) for scientific research or experiment,

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of "trade effluent" in subsection (1) above shall include references to agriculture, horticulture, fish farming and scientific research or experiment.

(3) Every application or consent made or given under this Chapter shall be made or given in writing.

(4) Nothing in this Chapter shall affect any right with respect to water in a river stream or watercourse, or authorise any infringement of such a right, except in so far as any

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such right would dispense with the requirements of this Chapter so far as they have effect by virtue of any regulations under section 138 above.

PART V

FINANCIAL PROVISIONS

CHAPTER I

CHARGES

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) **[**F427Subject 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.

[F428(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.

F428(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.

[F429(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

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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.

Textual Amendments

F427 Words in s. 142(2) substituted (1.4.2000) by 1999 c. 9, **s. 3(1)**; S.I. 1999/3440, **art. 3**

F428 S. 142(2A)(2B) inserted (1.4.2000) by 1999 c. 9, **s. 3(1)**; S.I. 1999/3440, **art. 3**

F429 S. 142(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 114(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

143 Charges schemes.

(1) A relevant undertaker may make a scheme ("a charges scheme") which **[**[F430]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.

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[F431(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 **[**F432in a case not falling within section 142(2A) above**]**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.

[F433(6) A charges scheme shall not take effect unless it has been approved by the Director.

F433(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.

F433(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.

F433(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.**]**

Textual Amendments

F430 Words in s. 143(1) inserted (23.12.1999) by 1999 c. 9, **s. 4(2)**; S.I. 1999/3440, **art. 2**

F431 S. 143(3A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 114(1)(2)** (with ss. 6(6), 115, 117); S.I. 1996/186, **art. 3**

F432 Words in s. 143(5)(a) inserted (1.4.2000) by 1999 c. 9, **s. 3(2)**; S.I. 1999/3440, **art. 3**

F433 S. 143(6)(7)(8)(9) inserted (23.12.1999) by 1999 c. 9, **s. 4(3)**; S.I. 1999/3440, **art. 2**

Modifications etc. (not altering text)

C42 S. 143(7)(8): certain functions transferred to the National Assembly for Wales (15.11.1999) by S.I. 1999/2787, **art. 3**

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[F434 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.**]**

Textual Amendments

F434 S. 143A inserted (30.6.1999 for certain purposes and 23.12.1999 otherwise) by ss. 5, 17(2); S.I. 1999/3440, **art. 2**

Modifications etc. (not altering text)

C43 S. 143A: certain functions transferred to the National Assembly for Wales (15.11.1999) by S.I. 1999/2787, **art. 3**

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

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(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.

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(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 [M56]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 [M57]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.

Marginal Citations

M56 1971 c. 80.

M57 1945 c. 42.

[F435 Restrictions on charging

Textual Amendments

F435 S. 144A and crossheading preceding it inserted (1.4.2000) by 1999 c. 9, **s. 6**; S.I. 1999/3440, **art. 3**

[F436]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

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(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 notices 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 had 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 had 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.

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Textual Amendments

F436 S. 144A and crossheading preceding it inserted (1.4.2000) by 1999 c. 9, **s. 6**; S.I. 1999/3440, **art. 3**

Modifications etc. (not altering text)

C44 S. 144A: certain functions transferred to the National Assembly for Wales (15.11.1999) by S.I. 1999/2787, **art. 3**

[F437 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.**]]**

Textual Amendments

F437 S. 144B inserted (30.6.1999 for certain purposes and 1.4.2000 otherwise) by 1999 c. 9, **ss. 7**, 17(2)(f); S.I. 1999/3440, 3

Modifications etc. (not altering text)

C45 S. 144B: certain function transferred to the National Assembly for Wales (15.11.1999) by S.I. 1999/2787, **art. 3**

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Industry Act 1991 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

General restrictions on charging

F438145 .....

Textual Amendments

F438 S. 145 and the heading preceding it repealed (30.6.1999) by 1999 c. 9, ss. 8, 15(2), 17(2), **Sch. 4 Pt. I**

146 Connection charges etc. and charges for highway drainage.

(1) Subject to subsection (2) below, nothing in this Chapter or in any other enactment shall entitle any relevant 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 sewerage 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 relevant undertaker of—

(a) a charge for the connection to a water supply of premises which have never at any previous time (whether before or after the coming into force of the restriction contained in this section) 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 after the coming into force of the restriction contained in this section) been connected to a sewer used for the drainage for domestic sewerage 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 104 above 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 Chapter II of Part IV of this 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, shall be without prejudice—

(a) to enactments by virtue of which a relevant undertaker may recover expenses incurred by it in carrying out works; and

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(b) to the power of any such undertaker, by virtue of section 142(4) above, to fix the amount of any of its other charges by reference to such matters as it thinks appropriate.

(6) In this section "domestic sewerage purposes" has the same meaning as in Chapter II of Part IV of this Act.

147 Charging for emergency use of water.

(1) Notwithstanding anything **[**F439in section 38(2) of the Fire and Rescue Services Act 2004, or anything**]** in section 142 above or in any charges scheme under section 143 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 **[**F440fire and rescue 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) F441 . . . . . .

Textual Amendments

F439 Words in s. 147(1) inserted (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 53, 61,{Sch. 1 para. 77(a)}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

F440 Words in s. 147(1)(a) substituted (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 53, 61,{Sch. 1 para. 77(b)}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

F441 S. 147(4) repealed (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), ss. 54, 61,{Sch. 2}; S.I. 2004/2304, **art. 2(2)** (subject to savings in art. 3); S.I. 2004/2917, **art. 2**

Metering

148 Restriction on charging for metering works.

(1) Subject to subsections (2) to (4) below and section 177 below, where any meter **[**F442capable of being 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

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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.

[F443(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;

[F444(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;**]**

[F445(cc) any sums which it is entitled to recover under an agreement under section 66D 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;

[F444(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 referece to voume 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 has 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.

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[F446(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.

Textual Amendments

F442 Words in s. 148(1) substituted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3**, Pt. I para. 1; S.I. 1999/3440, **art. 3**

F443 S. 148(1A) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 53(2)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F444 S. 148(2)(c)(e) substituted (1.4.2000) by 1999 c. 9, **s. 9**; S.I. 1999/3440, **art. 3**

F445 S. 148(2)(cc) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 33**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F446 S. 148(4A) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 53(3)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

149 Further provision relating to charging by volume.

(1) The Secretary of State may by regulations make such provision, supplementing—

(a) the provisions of this Chapter; and

(b) so far as they relate to works for purposes connected with the fixing of charges in relation to any premises by reference to volume, the provisions of Part VI of this Act,

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.

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may—

(a) regulate the positioning, whether inside or outside the building or other premises **[**F447to which the meter relates**]**, of any meter or of any pipes or apparatus appearing to any relevant undertaker to be required for the purpose of facilitating the use of any meter;

[F448(aa) require a relevant undertaker who, for the purpose of meeting the needs of a disabled person—

(i) alters the position of any meter;

(ii) installs an additional meter; or

(iii) does any other work in connection with any meter,

to bear any expenses incurred by the undertaker in doing so;**]**

(b) make any other provision which appears to the Secretary of State to be appropriate with respect to any such pipes or apparatus;

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(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 relevant undertaker to pay the expenses incurred by such an 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 relevant undertaker under the regulations;

(g) require disputes arising under the regulations to be referred to arbitration;

(h) repeal or amend any local statutory provision.

Textual Amendments

F447 Words in s. 149(2)(a) substituted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. I para. 2**; S.I. 1999/3440, **art. 3**

F448 S. 149(2)(aa) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 53(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

Modifications etc. (not altering text)

C46 S. 149 applied (with modifications) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 11(2)**.

Charging for services provided with the help of an undertaker

150 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 relevant 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 relevant undertaker.

[[F449](1A) This section does not apply to water supplies provided by a licensed water supplier to premises of customers in accordance with Chapter 1A of Part 2 of this Act.**]**

(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 relevant 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.

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[F450(2A) An order under this section may require the person providing the supplies or services to furnish the person who is provided with them with such information as may be specified or described in the order.

(2B) An order containing such a requirement may also provide that, in the event of the failure of the person providing the supplies or services to furnish that information, the maximum charges he is entitled to recover from the person provided with them in respect of those supplies or services shall be such as may be fixed by the order.**]**

(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

[F451(a) the amount of the excess; and

(b) if the order so provides, interest on that amount at a rate specified or described in the order,

shall be recoverable by that person from the person to whom he paid the charge.**]**

Textual Amendments

F449 S. 150(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 34**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F450 S. 150(2A)(2B) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 59(2)**, 105(3); S.I. 2004/2528, **art. 2(i)**

F451 S. 150(5)(a)(b) substituted (1.10.2004) for words by Water Act 2003 (c. 37), **ss. 59(3)**, 105(3); S.I. 2004/2528, **art. 2(i)**

PROSPECTIVE

[150A F452**Billing disputes.**

(1) The Secretary of State may by regulations make provision for billing disputes to be referred to the Director for determination in accordance with the regulations.

(2) In this section "billing dispute" means a dispute between a relevant undertaker and a customer concerning the amount of the charge which the undertaker is entitled to recover from the customer in connection with—

(a) the supply of water for domestic purposes, in the case of a water undertaker; and

(b) the provision of sewerage services other than by the carrying out of trade effluent functions, in the case of a sewerage undertaker.

(3) Regulations under this section may only be made after consulting—

(a) the Director; and

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(b) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations.

(4) Regulations under this section may provide that, where a billing dispute is referred to the Director, he may either—

(a) determine the dispute, or

(b) appoint an arbitrator to determine it.

(5) Any person determining any billing dispute in accordance with regulations under this section shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.

(6) Regulations under this section may provide—

(a) that disputes may be referred to the Director under this section only by prescribed persons; and

(b) for any determination to be final and enforceable as if it were a judgment of **[**[F453]the county court**]** .

(7) Except in such circumstances (if any) as may be prescribed—

(a) the Director or an arbitrator appointed by him shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court; and

(b) neither party to any billing dispute which has been referred to the Director for determination in accordance with regulations under this section shall commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations.

(8) No relevant undertaker may commence proceedings before any court in respect of any charge in connection with the supply of water for domestic purposes or (as the case may be) the provision of sewerage services other than by the carrying out of trade effluent functions unless, not less than 28 days before doing so, the customer concerned was informed by it, in such form and manner as may be prescribed, of—

(a) its intention to commence proceedings;

(b) the customer's rights by virtue of this section; and

(c) such other matters (if any) as may be prescribed.

(9) Where a dispute is referred to the Director in accordance with regulations made under this section, it shall be the duty of the undertaker concerned to give him such information as he may reasonably require for the purpose of assisting him in determining the dispute.

(10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.

(11) For the purposes of this section—

"charge" means any charge fixed by a scheme made under section 143 above;

"customer" means any person to whom the relevant undertaker provides services;

and references to a sewerage undertaker's trade effluent functions are references to its functions under Chapter III of Part IV of this Act.**]**

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Textual Amendments

F452 S. 150A inserted (prosp.) by Competition and Service (Utilities) Act 1992 (c. 43), **ss.36**, 56(2)

F453 Words in s. 150A(6) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

[F454 Interpretation of Chapter I

Textual Amendments

F454 S. 150B and crossheading preceding it inserted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. I para. 3**; S.I. 1999/3440, **art. 3**

F455 150B Meaning of "consumer" in Chapter I.

In this Chapter "consumer"—

(a) in relation to the supply of water 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, and

(b) in relation to the provision of sewerage services in respect of 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 those services would fall.**]**

Textual Amendments

F455 S. 150B and crossheading preceding it inserted (1.4.2000) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. I para. 3**; S.I. 1999/3440, **art. 3**

CHAPTER II

FINANCIAL ASSISTANCE FOR UNDERTAKERS

F456 151 . . . . . .

Textual Amendments

F456 S. 151 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 116, **Sch. 24** (with ss. 7(6), 115, 117, Sch. 23 para. 19); S.I. 1996/186, **art. 3**

152 Grants for national security purposes.

(1) The Secretary of State may, out of money provided by Parliament, make grants to relevant undertakers **[**F457and licensed water suppliers**]** for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with directions given under section 208 below in the interests of national security.

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The approval of the Treasury shall be required for the making of grants under this section.

Textual Amendments

F457 Words in s. 152(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 35**; S.I. 2005/2714, **art. 3(d)** (with Sch. para. 8)

Modifications etc. (not altering text)

C47 S. 152: certain functions exercisable concurrently with the Secretary of State (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

153 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 3 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 a 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 on the loans 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.

154 Guarantees under section 153.

(1) This section applies in relation to any guarantee given by the Secretary of State under section 153 above.

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(2) Immediately after a guarantee to which this section applies is given, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is paid out for fulfilling a guarantee to which this section applies, the Secretary of State shall, as soon as possible after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is finally discharged), lay before each House of Parliament a statement relating to that sum.

(4) Any sums required by the Secretary of State for fulfilling a guarantee to which this section applies shall be paid out of money provided by Parliament.

(5) Without prejudice to any provision applied in relation to the relevant company by Schedule 3 to this Act, if any sums are paid out in fulfilment of a guarantee to which this section applies, the relevant company shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—

(a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and

(b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out;

and the consent of the Treasury shall be required for the giving of a direction under this subsection.

(6) Any sums received by the Secretary of State under subsection (5) above shall be paid into the Consolidated Fund.

(7) In subsection (5) above "the relevant company" in relation to a guarantee, means the company which borrowed the sums in respect of which the guarantee was given.

PART VI

UNDERTAKERS ' POWERS AND WORKS

Modifications etc. (not altering text)

C48 Part VI: power to apply conferred (01.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 78(2)(b)**, 225(2)

C49 Part VI: saved (01.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 1(4)(5)**, 17(2)

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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CHAPTER I

UNDERTAKERS' POWERS

Powers in relation to land

155 Compulsory purchase.

(1) A relevant undertaker may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales which is required by the undertaker for the purposes of, or in connection with, the carrying out of its functions.

(2) The power of the Secretary of State under subsection (1) above shall include power—

(a) to authorise the acquisition of interests in and rights over land by the creation of new interests and rights; and

(b) by authorising the acquisition by a relevant undertaker of any rights over land which is to be or has been acquired by that undertaker, to provide for the extinguishment of those rights.

(3) Without prejudice to the generality of subsection (1) above, the land which a relevant undertaker may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the [M58]Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.

(4) Subject to section 188 below, the [M59]Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by a relevant undertaker; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.

(5) Schedule 9 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the [M60]Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.

(6) The provisions of Part I of the [M61]Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred (whether by virtue of the memorandum and articles of the company for the time being carrying out the functions of the undertaker or any enactment or otherwise) on a relevant undertaker, as if—

(a) any reference in those provisions to the acquiring authority were a reference to that undertaker; and

(b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

Modifications etc. (not altering text)

C50 S. 155: functions for certain purposes exercisable concurrently with the Secretary of State (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

Marginal Citations

M58 1981 c. 67.

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Industry Act 1991 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M59 1981 c. 67.
M60 1965 c. 56.
M61 1965 c. 56.

156 Restriction on disposals of land.

(1) A company holding an appointment under Chapter I of Part II of this Act shall not dispose of any of its protected land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, the Secretary of State.

(2) A consent or authorisation for the purposes of this section—

(a) shall be set out in a notice served by the Secretary of State on the company which is or may be authorised, by virtue of the provision contained in the notice, to dispose of land or of interests or rights in or over land or, as the case may be, on every such company; and

(b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 157 of the [M62]Water Resources Act 1991.

(3) A consent or authorisation for the purposes of this section may be given on such conditions as the Secretary of State considers appropriate.

(4) Without prejudice to the generality of subsection (3) above and subject to subsection (5) below, the conditions of a consent or authorisation for the purposes of this section may include—

(a) a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available, in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation, to such person as may be so specified or determined;

(b) a requirement that the company making the disposal has complied with such of the conditions of its appointment under Chapter I of Part II of this Act as relate to the disposal of its protected land or of any interest or right in or over that land;

(c) a requirement that the company, before making a disposal in a case in which the land in question is situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, should do one or both of the following, that is to say—

(i) consult with the **[**[F458]Countryside Agency**]**(as respects land in England) or the Countryside Council for Wales (as respects land in Wales) and, in the case of an area of special scientific interest in England, with **[**[F459]English Nature**]** ; and

(ii) enter into such agreements under section 39 of the [M63]Wildlife and Countryside Act 1981 (management agreements) or such covenants under subsection (6) below as the Secretary of State may determine;

(d) provision requiring determinations under or for the purposes of the consent or authorisation to be made, in such cases as are mentioned in paragraph (c) above, either by the **[**[F458]Countryside Agency**]** or the Countryside Council for Wales or only after consultation with that Commission or Council.

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(5) A consent or authorisation shall not be given on any such condition as is mentioned in subsection (4)(a) above except where the Secretary of State is satisfied that the condition will have effect in relation only to—

(a) land which, or any interest in or right over which, was acquired by the relevant undertaker in question, or any predecessor of that undertaker, either compulsorily or at a time when the undertaker or that predecessor was authorised to acquire it compulsorily; or

(b) land situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest.

(6) Where a company holding an appointment under Chapter I of Part II of this Act is proposing, in such a case as is mentioned in subsection (4)(c) above, to dispose of, or of any interest or right in or over, any of its protected land, it may enter into a covenant with the Secretary of State by virtue of which it accepts obligations with respect to—

(a) the freedom of access to the land that is to be afforded to members of the public or to persons of any description; or

(b) the use or management of the land;

and a covenant under this subsection shall bind all persons deriving title from or under that company and shall be enforceable by the Secretary of State accordingly.

(7) Section 3 above shall have effect for the purposes of this section as if every proposal which—

(a) is made by a company holding an appointment as a relevant undertaker with respect to land in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, or with respect to any interest or right in or over any such land; and

(b) is a proposal for which the Secretary of State's consent or authorisation is required under this section,

were a proposal relating to the functions of such an undertaker.

(8) In this section—

"area of outstanding natural beauty or special scientific interest" means an area which—

(a) is for the time being designated as an area of outstanding natural beauty **[**[F460]under section 82 of the Countryside and Rights of Way Act 2000 of the [M64]Countryside and Rights of Way Act 2000**]**; or

[[F461](b) is a site of special scientific interest within the meaning of the [M65]Wildlife and Countryside Act 1981;**]**

and the reference in subsection (4)(c) above to an area of special scientific interest shall, accordingly, be construed as a reference to an area such as is mentioned in paragraph (b) of this definition; and

"the Broads" has the same meaning as in the [M66]Norfolk and Suffolk Broads Act 1988.

Textual Amendments

F458 Words in s. 156 substituted (20.2.1999) by S.I. 1999/416, art. 3, **Sch. 1 para. 15(3)**

F459 Words in s. 156(4)(i) substituted (30.1.2001) by 2000 c. 37 ss. 73(4), 103(2), Sch. 8 para. 1(p)(iii)

F460 S. 156(8): words in definition of "area of outstanding natural beauty or special scientific interest" in para. (a) substituted (1.4.2001 for E. and 1.5.2001 for W.) by 2000 c. 37, s. 93, **Sch. 15 Pt. I para. 12**; S.I. 2001/114, **art. 2(2)(e)**; S.I. 2001/1410, **art. 2(g)**

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F461 S. 156(8): para. (b) in definition of "area of outstanding natural beauty or special scientific interest" substituted (30.1.2001) by 2000 c. 37, ss. 76(1), 103(2), **Sch. 10 Pt. II para. 9**

Marginal Citations

M62 1991 c. 57.
M63 1981 c. 69.
M64 2000 c. 37.
M65 1981 c. 69.
M66 1988 c. 4.

157 Byelaws with respect to undertakers' waterways and land.

(1) Every relevant undertaker shall have power to make such byelaws as are mentioned in subsection (2) below with respect to any waterway owned or managed by that body and with respect to any land held or managed with the waterway.

(2) The byelaws referred to in subsection (1) above in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—

(a) the preservation of order on or in any such waterway or land;

(b) the prevention of damage to anything on or in any such waterway or land or to any such land;

(c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.

(3) Without prejudice to the generality of any of the paragraphs of subsection (2) above, the byelaws mentioned in that subsection include byelaws—

(a) regulating sailing, boating, bathing and fishing and other forms of recreation;

(b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the undertaker making the byelaws;

(c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution;

(d) providing for a contravention of the byelaws 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 specified in the byelaws; and

(e) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.

(4) Schedule 10 to this Act shall have effect with respect to byelaws under this section.

(5) Byelaws made under this section shall cease to have effect at the end of the period of ten years beginning with the day on which they were made; but the Secretary of State may by order made by statutory instrument make provision in relation to any particular byelaws for those byelaws to continue to have effect for such period after the time when they would otherwise cease to have effect as may be specified in the order.

(6) In this section—

"boat" includes a vessel of any description, and "boating" shall be construed accordingly;

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"waterway" has the same meaning as in the National Parks and Access to the [M67]Countryside Act 1949.

Marginal Citations
M67 1949 c. 97.

Pipe-laying

158 Powers to lay pipes in streets.

(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe in, under or over any street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials.

(2) Without prejudice to the generality of subsection (1)(c) above, every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.

(3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.

(4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the highway authority concerned before determining in accordance with this subsection where to fit a stopcock in a highway.

(5) Where a water undertaker exercises its powers under this section for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.

(6) Until the coming into force of its repeal by the [M68]New Roads and Street Works Act 1991 section 20 of the [M69]Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any relevant pipe which is conferred by this section.

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(7) Subject to section 161(7) below, in this section references to a relevant pipe shall be construed—

(a) in relation to a water undertaker, as references to a water main (including a trunk main **[**F462but not including a pipe laid in pursuance of section 66B(3)(a)(ii) above which is used for the purpose of supplying water other than for domestic or food production purposes or laid in pursuance of section 66B(3)(a)(iii) above**]**), resource main, discharge pipe or service pipe; and

[F463(b) in relation to a sewerage undertaker, as references to—

(i) any sewer or disposal main; or

(ii) in relation to the exercise of a power to lay a pipe under paragraph (a) of subsection (1) above or a power related to that power under paragraph (c) of that subsection, any lateral drain which the undertaker is to lay by virtue of section 98 or 101B above; or

(iii) in relation to the exercise of any other power under subsection (1) above, any lateral drain which belongs to or is vested for the time being in the undertaker.**]**

[F464F465(8) Subsections (9) and (11) below apply where—

(a) an appointment or variation has been made under section 7 above replacing a company as a relevant undertaker,

(b) the appointment or variation relates only to parts of the area to which the company's appointment as relevant undertaker related, and

(c) the conditions mentioned in subsection (5) of that section were required to be satisfied in relation to each of the premises in those parts served by that company.

[F464(9) Where the company which has replaced the relevant undertaker has done so as water undertaker, in the application of this section and section 159 below in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in subsection (8)(c) above with a supply of water which exceeds, or is likely to exceed, in any period of twelve months—

(a) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;

(b) in all other cases, **[**F466 50 megalitres**]** ,

shall, for the purposes of subsection (7) above, be deemed to be a water main.**]]**

(10) Where the Secretary of State makes regulations under section 7(6) above amending section 7(5)(a) above he shall by regulations make the corresponding amendment in subsection (9) above.

(11) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this section and section 159 below in relation to that company any pipe draining, or intended to drain, any of those premises shall, for the purposes of subsection (7) above, be deemed to be a sewer.

Textual Amendments

F462 Words in s. 158(7)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 36**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F463 S. 158(7)(b) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

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F464 S. 158(9) substituted (17.8.2000) by S.I. 2000/1842, **reg. 2**
F465 S. 158(8)-(11) added (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 40(6)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
F466 Words in s. 158(9)(b) substituted (1.4.2005) by The Water and Sewerage Undertakers (Inset Appointments) Regulations 2005 (S.I. 2005/268), **art. 2(3)**

Modifications etc. (not altering text)
C51 S. 158 applied (with modifications) (21.7.1994) by 1994 c. xi, **s. 11(2)**
S. 158 restricted (1.4.1996) by 1980 c. 66, **s. 100(6B)(b)** (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 9** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**)

Marginal Citations
M68 1991 c. 22.
M69 1980 c. 66.

159 Power to lay pipes in other land.

(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.

(2) Nothing in subsection (1) above shall authorise a water undertaker to lay a service pipe in, on or over any land except where—

(a) there is already a service pipe where that pipe is to be laid; or

(b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of subsections (3) to (5) of section 46 above.

(3) The power conferred by virtue of paragraph (b) of subsection (1) above, and the power conferred in relation to that paragraph by virtue of paragraph (c) of that subsection shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.

(4) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(5) Subject to subsection (6) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (4) above shall be deemed—

(a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and

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(b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.

(6) Subsection (5) above shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—

(a) laying or altering a service pipe; or

(b) complying with a duty imposed under section 41 or 98 above.

(7) Subject to subsection (2) above, in this section "relevant pipe" has the same meaning as in section 158 above **[**[F467](reading references there to subsection (1) as references to subsection (1) of this section).**]**

Textual Amendments

F467 Words in s. 159(7) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(5)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)

Modifications etc. (not altering text)

C52 S. 159 applied (with modifications) (21.7.1994) by 1994 c. xi, **s. 11(2)**
S. 159 restricted (1.4.1996) by 1980 c. 66, **s. 100(6B)(b)** (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 9** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**)

Other works powers

160 Power to carry out works for sewerage purposes.

(1) A sewerage undertaker may, by agreement with the owner or occupier of any premises, carry out at that person's expense—

(a) any work in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or

(b) any work which the undertaker has required that person to carry out under Part IV of this Act;

and for that purpose the undertaker shall have all such rights as that person would have.

(2) Sections 291, 293 and 294 of the [M70]Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

Marginal Citations

M70 1936 c. 49.

161 Power to deal with foul water and pollution.

(1) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and

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(b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials;

and the provisions of section 158 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(2) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and

(b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(3) Without prejudice to the powers conferred by subsections (1) and (2) above but subject to the provisions of Chapter III of this Part, every water undertaker shall have power, on any land which belongs to that undertaker or over or in which that undertaker has acquired the necessary easements or rights, to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose—

(a) of intercepting, treating or disposing of any foul water arising or flowing upon that land; or

(b) of otherwise preventing the pollution—

(i) of any waters, whether on the surface or underground, which belong to **[**F468the Environment Agency**]** or any water undertaker or from which **[**F468the Environment Agency**]** or any water undertaker is authorised to take water;

(ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by **[**the Environment Agency**]** or any water undertaker or which **[**F468the Environment Agency**]** or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or

(iii) of any underground strata from which **[**F468the Environment Agency**]** or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the M71Water Resources Act 1991.

(4) Where any water undertaker is proposing to carry out any such works as are mentioned in subsection (3) above and the proposed works will affect any watercourse, the undertaker shall consult **[**F468the Environment Agency**]** before carrying out the works.

(5) Without prejudice to the protective provisions of Chapter III of this Part, nothing in subsection (3) above shall authorise any water undertaker, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.

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(6) Any dispute as to whether any consent for the purposes of subsection (5) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) In section 158 above the references to the laying of a relevant pipe shall include references-

(a) to the laying of any drain or sewer for any of the purposes mentioned in subsection (3)(a) and (b) above; and

(b) to the construction of a watercourse for any of those purposes.

(8) In this section—

"the protective provisions of Chapter III of this Part" means the provisions of sections 183 to 191 below;

"relevant waterworks" means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and

"waterworks" includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

Textual Amendments

F468 Words in s. 161(3)(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 117** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M71 1991 c. 57.

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—

[F469(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.

[F470(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, **[**F471or**]**

(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

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(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.**[**F472 or

(d) a licensed water supplier supplies water to those premises using the undertaker's supply system.**]]**

[F473(1B) In subsection (1A)(d) above, the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.**]**

(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 (1)(a) 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.

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Industry Act 1991 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Textual Amendments

F469 S. 162(1)(a) substituted (1.4.2000) by 1999 c. 9, **s. 10(1)(2)**; S.I. 1999/3440, **art. 3**

F470 S. 162(1A) inserted (1.4.2000) by 1999 c. 9, **s.10(1)(3)**; S.I. 1999/3440, **art. 3**

F471 Word in s. 162(1A)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 37(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F472 S. 162(1A)(d) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 37(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F473 S. 162(1B) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 37(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

163 Power to fit stopcocks.

(1) Subject to subsection (2) below and without prejudice to section 159 above, a water undertaker shall have power, at its own expense, to fit a stopcock to any service pipe by which a supply of water is or is to be provided to any premises by the undertaker **[**[F474]or a licensed water supplier**]** , whether that pipe belongs to the undertaker or to any other person.

(2) A stopcock fitted in private premises by a water undertaker to any service pipe shall be situated as near as practicable to any street from which that pipe enters those premises.

Textual Amendments

F474 Words in s. 163(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 38**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

C53 S. 163 restricted (1.4.1996) by 1980 c. 66, **s. 100(6B)(b)** (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 9** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**)

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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164 Agreements for works with respect to water sources.

(1) A water undertaker may enter into agreements under this section with the owners and occupiers of any land, or with a local authority, with respect to the carrying out and maintenance by any party to the agreement of such works as the undertaker considers necessary—

(a) for the purpose of draining that land; or

(b) for more effectually collecting, conveying or preserving the purity of any water which the undertaker is for the time being authorised to take.

(2) Before entering into an agreement under this section with respect to the carrying out of works the carrying out of which would result in the discharge of any water into a watercourse otherwise than through public sewers, a water undertaker shall consult the NRA and, if the watercourse is subject to the jurisdiction of a navigation authority, that authority.

(3) An agreement under this section with the owner of any land which is expressed to be binding on and enforceable against the owner's successors in title to that land—

(a) may be registered under section 2 of the [M72]Land Charges Act 1972 as an obligation affecting land falling within Class D; and

(b) shall be so binding and enforceable unless it is void by reason of a failure so to register it.

(4) In this section the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under this section shall be defrayed as part of their general expenses.

Marginal Citations

M72 1972 c. 61.

Powers to discharge water

165 Discharges for works purposes.

(1) Subject to the following provisions of this section and to section 166 below, where any water undertaker—

(a) is exercising or about to exercise any power conferred by section 158, 159, 161 or 163 above (other than the power conferred by section 161(3) above); or

(b) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole, or other work belonging to or used by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions,

the undertaker may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.

(2) Nothing in this section shall authorise any discharge which—

(a) damages or injuriously affects the works or property of any railway undertakers or navigation authority; or

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(b) floods or damages any highway.

(3) If any water undertaker fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—

(a) mud and silt;

(b) solid, polluting, offensive or injurious substances; and

(c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,

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

(4) In this section "relevant pipe" means any water main (including a trunk main), resource main, discharge pipe or service pipe.

Modifications etc. (not altering text)

C54 S. 165 restricted (1.4.1996) by 1980 c. 66, **s. 100(6B)(b)** (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 9** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**)

166 Consents for certain discharges under section 165.

(1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 165 above except with the consent of **[**F475the Environment Agency**]** and of any navigation authority which carries out functions in relation to—

(a) the part of the watercourse where the discharge is made; or

(b) any part of that watercourse which is less than three miles downstream from the place of the discharge.

(2) Where a water undertaker makes an application to any authority for a consent for the purposes of this section—

(a) that application shall be accompanied or supplemented by all such information as that authority may reasonably require; and

(b) the undertaker shall serve a copy of the application, and of any consent given on that application, on every person who—

(i) is registered with the undertaker in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and

(ii) has not agreed in writing that he need not be served with such a copy;

but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—

(a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and

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(b) in any other case, before the end of the period of three months beginning with that day;

and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

(a) an undertaker which has made an application to any authority for a consent for the purposes of this section has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that authority; and

(b) that requirement was made by that authority at such a time before the end of the period within which that authority is required to determine the application as gave the undertaker a reasonable opportunity to provide the required information within that period,

that authority may delay his determination of the application until a reasonable time after the required information is provided.

(5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.

(6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) Where any discharge under section 165 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the undertaker which made the discharge shall, as soon as practicable after making the discharge, serve a notice which—

(a) states that the discharge has been made; and

(b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,

on every person on whom that undertaker would have been required to serve the application for that consent or any copy of that application.

(8) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the [M73]Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

Textual Amendments

F475 Words in s. 166(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 118** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M73 1945 c. 42.

Compulsory works orders

167 Compulsory works orders.

(1) Where a water undertaker is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—

(a) to carry out any engineering or building operations; or

(b) to discharge water into any inland waters or underground strata,

the undertaker may apply to the Secretary of State for an order under this section ("a compulsory works order").

(2) Subject to the following provisions of this section, the Secretary of State may, on an application under subsection (1) above, by order made by statutory instrument—

(a) confer such compulsory powers; and

(b) grant such authority,

as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.

(3) Schedule 11 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.

(4) Subject to the provisions of Schedule 11 to this Act, a compulsory works order may—

(a) without prejudice to section 155 above, confer power to acquire compulsorily any land, including—

(i) power to acquire interests in and rights over land by the creation of new rights and interests; and

(ii) power, by the compulsory acquisition by any water undertaker of any rights over land which is to be or has been acquired by that undertaker, to extinguish any such rights;

(b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part of this Act which do not apply for those purposes apart from by virtue of this paragraph;

(c) make any authority granted by the order subject to such conditions as may be specified in the order;

(d) amend or repeal any local statutory provision;

(e) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(5) Without prejudice to any duty imposed by virtue of section 191 below, where—

(a) the Secretary of State makes a compulsory works order authorising a water undertaker to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on such an undertaker; and

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(b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,

he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.

(6) Nothing in any compulsory works order shall exempt any water undertaker from any restriction imposed by Chapter II of Part II of the [M74]Water Resources Act 1991 (abstraction and impounding of water).

(7) It is hereby declared that a compulsory works order may grant authority for discharges of water by a water undertaker where the undertaker has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.

(8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 172 and 173, the provisions of Chapter II and any provision of this Part which is one of the relevant sewerage provisions.

Modifications etc. (not altering text)
C55 S. 167: functions for certain purposes exercised concurrently with the Secretary of State (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

Marginal Citations
M74 1991 c. 57.

Entry to land etc. by water undertakers

168 Entry for works purposes.

(1) Any person designated in writing for the purpose by a relevant 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 relevant works power; or

(ii) how any such power should be exercised;

or

(b) the exercise of any such power.

(3) The power, by virtue of subsection (1) above, of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and

(b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—

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(i) considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above; and

(ii) has authorised that person to take away and analyse.

(4) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.

(5) In this section "relevant works power" means any power conferred by any of the provisions of sections 158, 159, 161, 163 and 165 above, other than section 161(3).

Modifications etc. (not altering text)

C56 S. 168 restricted (1.4.1996) by 1980 c. 66, **s. 100(6B)(b)** (as inserted (1.4.1996) by 1994 c. 19, s. 22(1), **Sch. 7 Pt. I para. 9** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**)

169 Power to carry out surveys and to search for water.

(1) Without prejudice to the rights and powers conferred by section 168 above, any person designated in writing under this section 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 the carrying out of any survey or tests for the purpose of determining—

(a) whether it would be appropriate for the undertaker to acquire any land, or any interest or right in or over land, for purposes connected with the carrying out of its functions; or

(b) whether it would be appropriate for the undertaker to apply for a compulsory works order under section 167 above and what compulsory powers it would be appropriate to apply for under that section.

(3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;

(b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and

(c) to take away and analyse such samples of water or of any land or articles as the undertaker considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.

(4) The powers conferred by this section shall not be exercised in any case for purposes connected with the determination of—

(a) whether, where or how a reservoir should be constructed; or

(b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,

unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.

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(5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—

(a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and

(b) he has considered any representations or objections with respect to the proposed exercise of the powers under this section which—

(i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and

(ii) have not been withdrawn.

(6) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.

Modifications etc. (not altering text)

C57 S. 169(4)(5): functions for certain purposes exercisable concurrently with the Secretary of State (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

170 Entry etc. for other purposes.

(1) Any person designated in writing for the purpose by a water undertaker may enter any premises for any of the following purposes, that is to say—

(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 Part III of this Act 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 64(4), 66(3) or 75 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 or food production 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.

(2) Any person designated for the purpose—

(a) by any water undertaker within whose area any waterworks are situated; or

(b) by any water undertaker which takes water from any waterworks,

shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of section 72 above in relation to those waterworks.

(3) Any person designated in writing for the purpose by a water undertaker may—

(a) enter any premises for the purpose of—

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(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 section 74 above 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 that section.

(4) During any period when a prohibition or restriction under section 76 above is in force, any person designated for the purpose by the water undertaker which imposed the prohibition or restriction shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises to which the prohibition or restriction applies for the purpose of ascertaining whether there is, or has been, any contravention of the prohibition or restriction.

(5) 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 paragraph (a) or (c) of that subsection; and

(b) has authorised that person to carry out or take away.

(6) Expressions used in this section and in any provision of Part III of this Act in relation to which this section has effect shall have the same meaning in this section as in that provision; and, without prejudice to the generality of this provision, subsections (2) and (3) of section 68 above and the definitions of "food production purposes" and "wholesome" in section 93(1) above shall apply for the purposes of any power conferred by virtue of subsection (1)(c)(i) above as they apply for the purposes of that section.

(7) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsections (2) and (4) of this section; and Part II of that Schedule shall apply to the rights and powers conferred by the other provisions of this section.

(8) The provisions of this section shall be without prejudice to the other rights and powers conferred by this Part.

171 Entry for sewerage purposes.

(1) Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours-

(a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;

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(b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;

(c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker;

(d) generally for the purpose of carrying out the undertaker's functions under the relevant sewerage provisions.

(2) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above.

(3) Any person designated by a sewerage undertaker under subsection (1) above for the purpose of exercising any power under this section for the purposes of Chapter III of Part IV of this Act may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent which is passing (either directly or through **[**F476a drain or private sewer**]**) from those premises into any of the undertaker's public sewers.

F477(4) . . . . . .

F477(5) . . . . . .

(6) In this section "trade effluent" and "trade premises" have the same meanings as in Chapter III of Part IV of this Act; and, accordingly, section 139 above shall have effect for the purposes of this section as it has effect for the purposes of that Chapter.

Textual Amendments

F476 Words in s. 171(3) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(6)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F477 S. 171(4)(5) repealed (1.4.1996) by 1995 c. 25, s. 111(1)(c), 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

172 Entry for metering purposes.

(1) Where the conditions set out in section 162(1) above are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those 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 the carrying out of any works by virtue of paragraph (a) or (b) of subsection (3) of section 162 above is practicable;

(ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out; or

(iii) how any works specified in that subsection should be carried out;

(b) the carrying out of any works so specified;

(c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were

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carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;

(d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.

(3) Part II of Schedule 6 to this Act shall apply in relation to the rights and powers conferred by the preceding provisions of this section.

(4) Where any meter or other recording apparatus is provided in any premises in pursuance of Chapter III of Part IV of this Act for the purpose of assessing any charge, a sewerage undertaker may (instead of exercising its powers under this section) for the purpose of reading that meter or apparatus exercise the power conferred by section 171 above as if that purpose were included in the purposes mentioned in subsection (1) of that section.

173 Impersonation of persons entitled to entry.

(1) A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant undertaker.

CHAPTER II

PROTECTION OF UNDERTAKERS' WORKS, APPARATUS ETC.

Protection of apparatus in general

174 Offences of interference with works etc.

(1) Subject to subsection (2) below, if any person without the consent of the water undertaker—

(a) intentionally or recklessly interferes with any resource main, water main or other pipe vested in any water undertaker or with any structure, installation or apparatus belonging to any water undertaker; or

(b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

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

[F478(1A) Subject to subsection (2) below, if any person without the consent of the licensed water supplier—

(a) intentionally or recklessly interferes with any pipe or any structure, installation or apparatus which—

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(i) is vested in any licensed water supplier (in the case of a pipe) or belongs to any such supplier (in any other case); and

(ii) is used in connection with the carrying on by the supplier of the activities authorised by its licence; or

(b) by any act or omission negligently interferes with any such pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

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) A person shall not be guilty of an offence under subsection (1) **[**[F479]or (1A)**]** above—

(a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or

(b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker **[**[F480]or licensed water supplier**]** if—

(i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and

(ii) in the case of opening a stopcock, **[**[F481]subsection (2A) below applies**]** .

[[F482](2A) This subsection applies—

(a) in the case of a stopcock belonging to a water undertaker, if the stopcock was closed otherwise than by the undertaker;

(b) in the case of a stopcock belonging to a licensed water supplier—

(i) if the stopcock was closed otherwise than by the supplier; or

(ii) if the stopcock was closed by the supplier and the person in question for the purposes of subsection (2) above is the water undertaker whose supply system is used for the purpose of the supply made by the supplier,

and in this subsection the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.**]**

(3) Any person who, without the consent of the water undertaker—

(a) attaches any pipe or apparatus—

(i) to any resource main, water main or other pipe vested in a water undertaker; or

(ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;

(b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or

(c) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this **[**[F483]subsection**]** ,

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

[[F484](3A) Any person who, without the consent of the licensed water supplier—

(a) attaches any pipe or apparatus to any pipe which is—

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(i) vested in a licensed water supplier; and

(ii) used in connection with the carrying on by the supplier of the activities authorised by its licence;

(b) attaches any pipe or apparatus to any service pipe which does not belong to such a supplier or a water undertaker but which is a pipe by means of which water is supplied by such a supplier to any premises;

(c) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or

(d) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this subsection,

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

(4) In proceedings against any person for an offence by virtue of paragraph (c) of subsection (3) above **[**[F485]or paragraph (d) of subsection (3A) above**]** it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in **[**[F486]subsection (3) or (3A) above (as the case may require)**]** .

(5) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to a water undertaker, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

[[F487](5A) If any person wilfully or negligently injures or suffers to be injured any water fitting which—

(a) belongs to a licensed water supplier; and

(b) is used in connection with the carrying on by the supplier of the activities authorised by its licence,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.**]**

(6) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the water undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(7) The amount recoverable by virtue of subsection (6) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(8) A water undertaker may—

(a) do all such work as is necessary for repairing any injury done in contravention of subsection (5) above; and

(b) recover the expenses reasonably incurred by the undertaker in doing so from the offender summarily as a civil debt.

[[F488](8A) In this section "consumer"—

(a) 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;

(b) in relation to a supply of water provided by a licensed water supplier to any premises, means a person who is for the time being the person on whom

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liability to pay charges to the supplier in respect of that supply of water would fall.**]**

(9) In this section **[**[F489]"water fitting" has the same meaning**]** as in Part III of this Act; and in subsection (1) above the references to apparatus belonging to a water undertaker do not include references to any meter which belongs to such an undertaker and is used by it for the purpose of determining the amount of any charges which have been fixed by the undertaker by reference to volume.

Textual Amendments

F478 S. 174(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F479 Words in s. 174(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(3)(a)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F480 Words in s. 174(2)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(3)(b)(i)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F481 Words in s. 174(2)(b)(ii) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(3)(b)(ii)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F482 S. 174(2A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(4)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F483 Words in s. 174(3)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(5)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F484 S. 174(3A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(6)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F485 Words in s. 174(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(7)(a)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F486 Words in s. 174(4) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(7)(b)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F487 S. 174(5A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(8)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F488 S. 174(8A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(9)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F489 Words in s. 174(9) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 39(10)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

Protection of meters

175 Offence of tampering with meter.

(1) If any person—

(a) so interferes with a meter used by any relevant undertaker **[**[F490]or licensed water supplier**]** in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing, the volume of water supplied to, or of effluent discharged from, those premises; or

(b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,

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

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(2) A person shall not be guilty of an offence under this section in respect of anything done by him with the **[**F491appropriate consent**]** .

[F492(3) In subsection (2) above, the "appropriate consent" means—

(a) if the meter is used by one relevant undertaker, the consent of that undertaker;

(b) if the meter is used by one licensed water supplier, the consent of that supplier;

(c) if the meter is used by two or more of the following persons—

(i) a relevant undertaker;

(ii) a licensed water supplier,

the consent of each of those persons.

(4) In subsection (3) above, references to the consent of a relevant undertaker are references to consent under section 176 below.**]**

Textual Amendments

F490 Words in s. 175(1)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 40(2)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F491 Words in s. 175(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 40(3)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F492 S. 175(3)(4) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 40(4)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

176 Consent for the purposes of section 175.

(1) Where an application is made to any relevant undertaker for a consent for the purposes of section 175 above, the undertaker—

(a) shall give notice of its decision with respect to the application as soon as reasonably practicable after receiving it; and

(b) subject to subsection (2) below, may make it a condition of giving any consent that the undertaker itself should carry out so much of any works to which the application relates as is specified in the notice of its decision.

(2) On such an application a relevant undertaker shall not refuse its consent, or impose any such condition as is mentioned in subsection (1)(b) above, unless it is reasonable to do so.

(3) Where any relevant undertaker has given a notice to any person imposing any such condition as is mentioned in subsection (1)(b) above, the undertaker—

(a) shall carry out those works as soon as reasonably practicable after giving the notice; and

(b) may recover from that person any expenses reasonably incurred by it in doing so.

(4) 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 subsection (3) above; or

(b) as to the amount of any expenses to be borne by any person under that subsection,

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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 Director.

(5) Subsection (3) above shall not apply where the person who was given the notice notifies the undertaker that the carrying out of the works to which the condition relates is no longer required.

177 Financial obligations with respect to any interference with a meter.

(1) A relevant undertaker which carries out any works made necessary by the commission of an offence under section 175 above shall be entitled to recover any expenses reasonably incurred in carrying out those works from the person who committed the offence.

(2) Any person who sustains any loss or damage in consequence of any failure by any relevant undertaker—

(a) to comply with any obligation imposed on it by section 176 above; or

(b) to exercise reasonable care in the performance of the duty imposed by subsection (3)(a) of that section,

shall be entitled to recover compensation from the undertaker.

(3) 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;

(b) as to whether the undertaker should pay any compensation under this section; or

(c) as to the amount of any expenses to be borne by any person under this section or as to the amount of any such compensation,

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.

Obstruction of sewerage works etc.

178 Obstruction of sewerage works etc.

(1) A person who wilfully obstructs any person acting in the execution of any of the relevant sewerage provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(2) If on a complaint made by the owner of any premises, it appears to a magistrates' court that the occupier of those premises is preventing the owner of those premises from carrying out any work which he is required to carry out by or under any of the relevant sewerage provisions, the court may order the occupier to permit the carrying out of the work.

(3) Sections 300 to 302 of the Public Health Act 1936 (which relate to the determination of questions by courts of summary jurisdiction and to appeals against such determinations) shall apply for the purposes of and in relation to the determination under subsection (2) above of any matter by a magistrates' court—

(a) as they apply for the purposes of or in relation to a determination by such a court under that Act; and

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(b) in the case of section 302, as if the reference to a decision of a local authority included a reference to a decision of a sewerage undertaker.

CHAPTER III

SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS

Vesting of works in undertaker

179 Vesting of works in undertaker.

(1) Subject to **[**F493subsections (1A) and (3) below**]**—

(a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and

(b) every sewage disposal works constructed by a sewerage undertaker,

shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

[F494(1A) Subsection (1) above is subject to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested; but no agreement may be made between a relevant undertaker and any other person for the vesting in that person of any pipe laid in pursuance of section 66B(3)(a)(ii) above or of subsection (2)(b)(i) of section 66C above by virtue of subsection (3)(b) of that section.**]**

(2) In addition to the sewers and works which vest in a sewerage undertaker by virtue of subsection (1) above, the following shall also vest in such an undertaker, that is to say—

(a) every sewer **[**F495, lateral drain**]** or sewage disposal works with respect to which a declaration of vesting made by that undertaker under Chapter II of Part IV of this Act takes effect; and

(b) every sewer which is laid in the area of that undertaker under Part XI of the M75Highways Act 1980 (making up private streets) and is not a sewer belonging to a road maintained by a highway authority.

[F496(2A) In addition to the water mains and service pipes which vest in a water undertaker by virtue of subsection (1) above, every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter 2 of Part 3 of this Act takes effect shall also vest in that undertaker.**]**

(3) Subsection (1) above shall not apply to a service pipe laid in a street other than the street in which the water main with which it connects is situated and shall not apply to a service pipe laid otherwise than in a street where that pipe is laid—

(a) in pursuance of the duty imposed by virtue of section 46(4) above; or

(b) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.

(4) If any water fittings let for hire by a water undertaker are suitably marked, they—

(a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and

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(b) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;

but nothing in this subsection shall affect the valuation for rating of any rateable hereditament.

(5) It is hereby declared that anything which, in pursuance of any arrangements under section 97 above, is done on behalf of a sewerage undertaker by a relevant authority within the meaning of that section is, subject to any provision to the contrary contained in any such arrangements, to be treated for the purposes of this section as done by the undertaker.

(6) The preceding provisions of this section are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of any scheme under Schedule 2 to this Act or of the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.

(7) In this section—

"relevant pipe"—

(a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and

(b) in relation to a sewerage undertaker, means any sewer **[**[F497], lateral drain**]** or disposal main;

and

"water fittings" has the same meaning as in Part III of this Act;

and water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this section if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

Textual Amendments

F493 Words in s. 179(1) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 41(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F494 S. 179(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 41(3)**; S.I. 2005/2714, **art. 3(b)** (with Sch. para. 8)

F495 Words in s. 179(2)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(7)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F496 S. 179(2A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(4)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with Sch. 3 para. 7)

F497 S. 179(7)(b): words in definition inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(7)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Marginal Citations

M75 1980 c. 66.

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Damage etc. caused by works

180 Compensation for damage caused by works etc.

Schedule 12 to this Act shall have effect for making provision for imposing obligations for the purpose of minimising the damage caused in the exercise of certain powers conferred on undertakers and for imposing obligations as to the payment of compensation.

181 Complaints with respect to the exercise of works powers on private land.

(1) Subject to subsection (2) below, it shall be the duty of the Director to investigate any complaint made or referred to him with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or by virtue of section 159 or 161(2) above.

(2) The Director shall not be required to investigate any such complaint as is mentioned in subsection (1) above if—

(a) the complaint appears to the Director to be vexatious or frivolous;

(b) the Director is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it; or

(c) the complaint was first made to the Director or **[**F498the Council**]** more than twelve months, or such longer period as the Director may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant.

(3) Where the Director, in pursuance of his duty under this section, investigates a complaint with respect to the exercise of any powers by a relevant undertaker-

(a) it shall be the duty of that undertaker to provide the Director with all such information and assistance as he may reasonably require for the purposes of his investigation; and

(b) it shall be the duty of the Director, before giving any direction under subsection (4) below, to consider any representations made to him by the complainant or by that undertaker with respect to the subject-matter of the complaint.

(4) If on a complaint under subsection (1) above with respect to the exercise of any powers by a relevant undertaker, the Director is satisfied that that undertaker—

(a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or

(b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,

the Director may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

(5) The Director shall not under subsection (4) above direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment except in so far as it appears to him appropriate to do so by reason of any failure of the amount of any such

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compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.

(6) The duties of a relevant undertaker by virtue of subsection (3)(a) above shall be enforceable under section 18 above by the Director.

(7) A person to whom any amount is required, in pursuance of a direction under subsection (4) above, to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this section.

(8) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (4) above.

Textual Amendments

F498 Words in s. 181(2)(c) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(4)**; S.I. 2005/2714, **art. 2(l)(v)(aa)** (with Sch. para. 8)

182 Codes of practice with respect to work on private land.

(1) For the purposes of section 181 above it shall be the duty of every company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker—

(a) as soon as reasonably practicable after its appointment takes effect, to submit to the Secretary of State for his approval a code of practice with respect to its exercise of any powers conferred by or by virtue of section 159 or 161(2) above; and

(b) if required to do so by the Secretary of State at any subsequent time, to submit proposed modifications of that code to the Secretary of State for his approval.

(2) The Secretary of State, if he considers it appropriate to do so for the purpose of promoting what appear to him to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker, of any powers conferred by or by virtue of section 159 or 161(2) above, may at any time by order made by statutory instrument, in relation to that company—

(a) approve any code of practice with respect to the exercise of those powers which has been submitted to him (whether or not under subsection (1) above) by that company for his approval;

(b) approve any modifications of such a code which have been so submitted; or

(c) withdraw his approval for any such code or modification.

(3) A contravention of a code of practice as for the time being approved under this section in relation to a company shall not—

(a) affect the powers conferred on that company as a relevant undertaker by this Part;

(b) of itself entitle any person to be paid any amount under subsection (4) of section 181 above; or

(c) give rise to any criminal or civil liability;

but the Director shall take into account whether there has been any such contravention in determining whether to give a direction under that subsection to that company and in determining the amount to which any such direction relates.

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(4) The Secretary of State shall not make an order under subsection (2) above unless he has first consulted all such persons as he considers it appropriate to consult.

(5) The duties of a relevant undertaker under subsection (1) above shall be enforceable under section 18 above by the Secretary of State.

Protective provisions

183 Protection for particular undertakings.

Schedule 13 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

184 Power of certain undertakers to alter public sewers etc.

(1) The **[**F499Environment Agency**]** or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers **[**F500, airport operator or licence holder**]** may, after giving reasonable notice to the sewerage undertaker concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—

(a) are vested in the undertaker; and

(b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—

(i) any watercourse or other works vested in or under the control of the **[**F499Environment Agency**]** or that internal drainage board;

(ii) any property of the Civil Aviation Authority;

(iii) any river, canal towing path or works forming part of the undertaking of those dock undertakers;

(iv) the railway of the railway undertakers; F501. . .

(v) the airport in question. **[**F502; or

(vi) any property of a licence holder which is used by the licence holder for the purpose of carrying out activities authorised by the licence.**]**

(2) In subsection (1) above "an equivalent", in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question.

(3) Any difference of opinion which arises under this section between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted for sewers, drains, culverts or pipes of that undertaker—

(a) are or will be equally effectual; or

(b) entail or will entail additional expense for the sewerage undertaker,

may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(4) In this section—

"airport operator" means the person who is the airport operator for the purposes of Part V of the M76Airports Act 1986 in relation to an airport to which that Part of that Act applies; F503. . .

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"dock undertakers" has the same meaning as in Chapter II of Part IV of this Act. **[**F504; and

"licence holder" means a person who holds a licence under Chapter I of Part I of the Transport Act 2000 and "licence" shall be construed accordingly.**]**

Textual Amendments

F499 Words in s. 184(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 119** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F500 Words in s. 184(1) substituted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(a)**

F501 Word in s. 184(1)(b)(iv) omitted (21.12.2001) by virtue of S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(b)(i)**

F502 S. 184(1)(b)(vi) and word "or" immediately preceding inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(b)(ii)**

F503 Word in s. 184(4) omitted (21.12.2001) by virtue of S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(c)(i)**

F504 S. 184(4): definition of "licence holder" and word "and" immediately preceding inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. II para. 8(c)(ii)**

Marginal Citations

M76 1986 c. 31.

185 Duty to move pipes etc. in certain cases.

(1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.

(2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

(3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5) below.

(5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5) above, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of the Director; or

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(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.

(7) An approval or determination by the Director for the purposes of subsection (6) above may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.

(8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by the Director.

(9) In this section—

"improvement", in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

"relevant pipe" has the same meaning as in section 158 above.

186 Protective provisions in respect of flood defence works and watercourses etc.

(1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—

(a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or

(b) with any such works used by any person for irrigating any land.

(2) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.

(3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—

(a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or

(b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,

without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.

(4) Nothing in the relevant sewerage provisions, except sections 113 and 116 above, shall be taken to affect any right of drainage acquired by any person by prescription or otherwise before 1st October 1937.

(5) Where a relevant undertaker proposes, otherwise than in exercise of any compulsory powers, to construct or alter any relevant inland waters in any internal drainage district or to construct or alter any works on or in any such inland waters, the undertaker shall consult the drainage board for that district before doing so.

(6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.

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(7) Any dispute—

(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;

(b) as to whether any consent for the purposes of this section is being unreasonably withheld;

(c) as to whether any condition subject to which any such consent has been given was reasonable; or

(d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,

shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(8) In this section "relevant inland waters" means any inland waters other than any which form part of a main river for the purposes of Part IV of the [M77]Water Resources Act 1991.

(9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.

Marginal Citations

M77 1991 c. 57.

187 Works in tidal lands etc.

(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.

(2) An approval for the purposes of subsection (1) above shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.

(3) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of sections 158, 159, 161, 163 and 165 above, except the power conferred by section 161(3).

188 Mineral rights.

Schedule 14 to this Act (which makes provision with respect to the acquisition of mineral rights by relevant undertakers and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the [M78]Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

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Marginal Citations
M78 1981 c. 67.

189 Power to sell minerals deriving from sewerage works.

(1) A sewerage undertaker may sell any materials which—

(a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions; and

(b) are not before the end of three days from the date of their removal claimed by the owner and taken away by him.

(2) Where a sewerage undertaker sells any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him.

(3) This section is subject to any rights conferred by virtue of paragraph 1 of Schedule 14 to this Act, does not apply to refuse removed by a sewerage undertaker and is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this section do not apply.

190 Saving for planning controls.

Without prejudice to the operation of section 90 of the [M79]Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the [M80]Water Act 1989 relates to the functions of a relevant undertaker, nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.

Marginal Citations
M79 1990 c. 8.
M80 1989 c. 15.

191 Duties to make recreational facilities available when building reservoirs in Wales.

(1) Where a water undertaker carries out any works for or in connection with the construction or operation of a reservoir in Wales which—

(a) permanently affect one or more communities; and

(b) are not primarily intended by that undertaker to benefit the inhabitants of that or those communities,

it shall be the duty of that undertaker to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.

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(2) It shall be the duty of every water undertaker, in performing its duty under subsection (1) above, to consult—

(a) the community councils of the communities affected, in the case of communities having such councils; and

(b) in any case, the council of any **[**F505county or county borough**]** in which any community affected is situated.

(3) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

Textual Amendments

F505 Words in s. 191(2)(b) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 2(1)** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, art. 3, **Sch. 1**

Interpretation of Part VI

192 Interpretation of Part VI.

(1) In this Part "discharge pipe" means a pipe from which discharges are or are to be made under section 165 above.

(2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of section 158 above) as the pipe replaced.

(3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker's area.

[F506(3A) A relevant undertaker proposing to exercise any of its powers under section 158 or 159 above outside its own area shall, if subsection (3B) below applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that subsection applies, shall not carry out its proposal—

(a) without the consent of that other undertaker; or

(b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of the Director.

(3B) This subsection applies where the proposal is to lay—

(a) a water main which is not intended to be—

(i) a trunk main; or

(ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or

(b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.**]**

(4) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—

(a) to maintain a pipe or a connection with it; or

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(b) to alter a pipe only where certain conditions are satisfied,

as are imposed on the undertaker by or under any enactment.

(5) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.

Textual Amendments

F506 S. 192(3A)-(3B) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s.47**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

PART VII

INFORMATION PROVISIONS

Reports

[F507 192A Forward work programmes

(1) The Authority and the Council shall, before each financial year, each publish a document (the "forward work programme") containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.

(2) That description must include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority or the Council expects to incur during the year in the exercise of its functions.

(4) Before publishing the forward work programme for any year, the Authority or the Council shall give notice—

(a) containing a draft of the forward work programme; and

(b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under subsection (4) above must be published by the Authority or the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(6) The Authority must send a copy of any notice given by it under subsection (4) above to the Council, the Secretary of State and the Assembly.

(7) The Council must send a copy of any notice given by it under subsection (4) above to the Authority, the Secretary of State and the Assembly.

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Textual Amendments

F507 Ss. 192A, 192B inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 38(1)**, 105(3); S.I. 2004/2528, **art. 2(d)** (with savings in art. 4)

192B Annual and other reports

(1) The Authority shall, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the "annual report" for that year) on—

(a) its activities during that year; and

(b) the activities of the Competition Commission during that year in respect of any references made by it.

(2) The annual report for each year shall include—

(a) a general survey of developments in respect of matters falling within the scope of the Authority's functions;

(b) a report on the progress of the projects described in the forward work programme for that year;

(c) a summary of final and provisional orders made and penalties imposed by the Authority during the year;

(d) a report on such matters relating to any relevant undertaker whose area is wholly or mainly in Wales as the Assembly may from time to time require; and

(e) a report on such other matters as the Secretary of State may from time to time require.

(3) The annual report for each year shall set out any general directions given by the Secretary of State under section 27(3) above.

(4) The Secretary of State or (as the case may be) the Assembly shall consult the Authority before exercising the power under subsection (2)(d) or (e) above in relation to any matter.

(5) The Secretary of State shall—

(a) lay a copy of each annual report before each House of Parliament; and

(b) arrange for the report to be published in such manner as he considers appropriate.

(6) The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate.

(7) The Authority shall send a copy of each annual or other report under this section to the Assembly, the Council and the Chief Inspector of Drinking Water.

(8) In making or preparing any report under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.**]**

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Textual Amendments

F507 Ss. 192A, 192B inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 38(1)**, 105(3); S.I. 2004/2528, **art. 2(d)** (with savings in art. 4)

Modifications etc. (not altering text)

C58 S. 192B(8) applied (with modifications) (29.9.2005) by The Water Act 2003 (Commencement No. 5, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2714), art. 5, **Sch. para. 2(3)**

193 Reports by Director.

F508 . . . . . .

Textual Amendments

F508 S. 193 repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 38(2), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(u)(ii)** (with art. 4, Sch.)

194 Reports by customer service committees.

F509 . . . . . .

Textual Amendments

F509 S. 194 repealed (1.10.2005) by Water Act 2003 (c. 37), ss. 38(2), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/2714, **art. 2(m)(i)** (with Sch. paras. 1, 10)

Registers, maps etc.

195 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 Part II of this Act. **[**F510and of section 143 above**]**

(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 Chapter I of Part II of this Act, 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;

[F511(aa) every licence under Chapter 1A of Part 2 of this Act, every variation or revocation of any such licence and every modification of the conditions of any such licence;**]**

(b) every direction, consent or determination given or made under any such appointment by the Secretary of State, the **[**F512Competition Commission**]** or the Director himself;

[F513(bb) every direction, consent or determination given or made under any such licence by the Secretary of State, the Authority, the Assembly or the Environment Agency;

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(bc) every determination made by the Authority under section 17E or 66D(1) above;**]**

(c) every final enforcement order made under section 18 above, every provisional enforcement order made or confirmed under that section and every revocation of such a final or provisional enforcement order;

(d) every undertaking given to and accepted by the Secretary of State or the Director for the purposes of subsection (1)(b) of section 19 above and every notice under subsection (3) of that section;[F514]. . .

(e) every special administration order and every discharge of such an order.

[[F515](f) every penalty imposed under section 22A(1) or (2) above and every notice under section 22A(6) above;**][**[F516]and

(g) every designation made by the Authority under section 66G or 66H above.**]**

(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.

[[F517](3AA) Before giving a direction under subsection (3) above which relates to a licensed water supplier, the Secretary of State shall consult the Assembly.**]**

[[F518](3A) The Director shall also cause to be entered on the register the provisions of any guidance given to him by the Secretary of State under section 143(7) above.**]**

(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.

(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.

Textual Amendments

F510 Words in s. 195(1) inserted (23.12.1999) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. I para. 4(1)(2)**; S.I. 1999/3440, **art. 2**

F511 S. 195(2)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 42(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F512 Words in s. 195(2)(b) substituted (1.4.1999) by S.I. 1999/506, **art. 30(b)**

F513 S. 195(2)(bb)(bc) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 42(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F514 Word in s. 195(2)(d) repealed (1.4.2005) by Water Act 2003 (c. 37), ss. 48(2), 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(i)(n)(i)** (with art. 4, Schs. 1, 2)

F515 S. 195(2)(f) inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 48(2)**, 105(3); S.I. 2005/968, **art. 2(i)** (with art. 4, Schs. 1, 2)

F516 S. 195(2)(g) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 42(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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F517 S. 195(3AA) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 42(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F518 S. 195(3A) inserted (23.12.1999) by 1999 c. 9, s. 15(1), **Sch. 3 Pt. I para. 4(1)(3)**; S.I. 1999/3440, **art. 2**

Modifications etc. (not altering text)

C59 S. 195(2)(bc) modified (1.12.2005) by The Water Supply Licence (New Customer Exception) Regulations 2005 (S.I. 2005/3076), **reg. 5(2)**

[F519 195A Reasons for decisions

(1) This section applies to the following decisions of the Authority, the Secretary of State or the Assembly, namely—

(a) the modification of the conditions of an appointment under Chapter 1 of Part 2 of this Act or the variation of the area to which an appointment relates;

(b) the modification of the conditions of a licence under Chapter 1A of that Part;

(c) the termination of such an appointment or the revocation of such a licence;

(d) the giving of any directions or consent in pursuance of a condition included in such an appointment by virtue of section 12(1) above or in such a licence by virtue of section 17G(3)(a) or (b) above;

(e) the determination of a question referred in pursuance of a condition included in such an appointment by virtue of section 12(2) above or in such a licence by virtue of section 17G(3)(c) above;

(f) the making of a determination under section 17E or 66D(1) above; and

(g) the making of a final enforcement order, the making or confirmation of a provisional enforcement order or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority, the Secretary of State or the Assembly shall publish a notice stating the reasons for the decision in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) A person publishing a notice under subsection (2) above shall serve a copy on the company holding the appointment or licence to which the decision relates.

(4) A person preparing a notice under subsection (2) above shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This section does not apply in relation to a decision of the Authority resulting in any provision which the Authority was directed under section 195(3) above not to enter in the register required to be kept under that section.**]**

Textual Amendments

F519 S. 195A inserted (1.4.2005) by Water Act 2003 (c. 37), **ss. 51**, 105(3); S.I. 2005/968, **art. 2(j)** (with Sch. 2 para. 1)

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Modifications etc. (not altering text)

C60 S. 195A applied (1.12.2005) by The Water Supply Licence (New Customer Exception) Regulations 2005 (S.I. 2005/3076), **reg. 5(3)**

196 Trade effluent registers.

(1) It shall be the duty of every sewerage undertaker to secure that copies of—

(a) every consent given or having effect as if given by the undertaker under Chapter III of Part IV of this Act;

(b) every direction given or having effect as if given by the undertaker under that Chapter;

(c) every agreement entered into or having effect as if entered into by the undertaker under section 129 above; and

(e) every notice served on the undertaker under section 132 above,

are kept available, at all reasonable times, for inspection by the public free of charge at the offices of the undertaker.

(2) It shall be the duty of every sewerage undertaker, on the payment of such sum as may be reasonable, to furnish a person who requests it with a copy of, or of an extract from, anything kept available for inspection under this section.

(3) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Director.

197 Register for the purposes of works discharges.

(1) Every water undertaker shall keep a register of persons and premises for the purposes of section 166 above.

(2) A water undertaker shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—

(a) the owner or occupier of those premises; or

(b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.

(3) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

198 Maps of waterworks.

(1) Subject to subsections (4) and (5) below, it shall be the duty of every water undertaker to keep records of the location of—

(a) every resource main, water main or discharge pipe which is for the time being vested in that undertaker; and

(b) any other underground works, other than a service pipe, which are for the time being vested in that undertaker.

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[F520(1A) Subject to subsection (4) below, it shall also be the duty of every water undertaker to keep records of the location and (in the case of a water main) other relevant particulars of—

(a) every water main in relation to which a declaration of vesting has been made by the undertaker under Chapter 2 of Part 3 of this Act but has not taken effect; and

(b) every water main which is the subject of any agreement to make such a declaration which has been entered into by (or on behalf of) the undertaker.

(1B) For the purposes of this section the other relevant particulars of a water main are (in addition to its location) particulars of whether it is a water main in relation to which a declaration has been made under Chapter 2 of Part 3 of this Act or a water main which is the subject of an agreement to make such a declaration.**]**

(2) It shall be the duty of every water undertaker to secure that the contents of any records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(3) Any information which is required under this section to be made available by a water undertaker for inspection by the public shall be so made available in the form of a map.

(4) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) **[**F521or (1A)**]** above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.

(5) Nothing in this section shall require a water undertaker, at any time before 1st September 1999, to keep records of—

(a) any pipe which was laid before 1st September 1989; or

(b) any underground works which were completed before 1st September 1989,

unless those particulars were shown on 31st August 1989 on a map kept by a water authority or statutory water company under section 12 of Schedule 3 to the M81Water Act 1945 (maps of underground works).

(6) The reference in subsection (5) above to section 12 of Schedule 3 to the M82Water Act 1945 shall have effect, without prejudice to section 20(2) of the M83Interpretation Act 1978 (references to enactments to include references to enactments as amended, extended or applied), as including a reference to that section as applied, with or without modifications, by any local statutory provision.

(7) The duties of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

(8) In this section "discharge pipe" has the same meaning as in Part VI of this Act.

Textual Amendments

F520 S. 198(1A)(1B) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(5)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with Sch. 3 para. 7)

F521 Words in s. 198(4) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(5)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with Sch. 3 para. 7)

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Marginal Citations

M81 1945 c. 42.
M82 1945 c. 42.
M83 1978 c. 30.

199 Sewer maps.

(1) Subject to subsections (6) to (8) below, it shall be the duty of every sewerage undertaker to keep records of the location and other relevant particulars—

(a) of every public sewer **[**F522, lateral drain**]** or disposal main which is vested in the undertaker;

(b) of every sewer **[**F523or lateral drain**]** in relation to which a declaration of vesting has been made by the undertaker under Chapter II of Part IV of this Act but has not taken effect; and

(c) of every drain or sewer which is the subject of any agreement to make such a declaration which has been entered into by the undertaker under section 104 above.

(2) For the purposes of this section the relevant particulars of a drain, sewer or disposal main are (in addition to its location) particulars—

(a) of whether it is a drain, sewer or disposal main and of the descriptions of effluent for the conveyance of which it is or is to be used; and

(b) of whether it is vested in the undertaker or, if it is not, of whether it is a sewer in relation to which a declaration has been made under Chapter II of Part IV of this Act or a drain or sewer which is the subject of an agreement under section 104 above.

(3) The records kept by a sewerage undertaker under this section shall be kept separately in relation to the area of each local authority within whose area there is any drain, sewer or disposal main of which that undertaker is required to keep records and to whom the undertaker is required under section 200 below to provide copies of the contents of those records.

(4) It shall be the duty of every sewerage undertaker to secure that the contents of all the records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(5) Any information which is required under this section to be made available by a sewerage undertaker for inspection by the public shall be so made available in the form of a map.

(6) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.

(7) Nothing in this section shall require a sewerage undertaker to keep records of any particulars of a drain, sewer or disposal main laid before 1st September 1989 if—

(a) the undertaker does not know of, or have reasonable grounds for suspecting, the existence of the drain, sewer or disposal main; or

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(b) it is not reasonably practicable for the undertaker to discover the course of the drain, sewer or disposal main and it has not done so.

(8) Nothing in this section shall require a sewerage undertaker, at any time before 1st September 1999, to keep records of any particulars of any such drain, sewer or disposal main laid before 1st September 1989 as would not be excluded from its records by virtue of subsection (7) above unless—

(a) those particulars were shown on 31st August 1989 on a map kept by a local authority under section 32 of the [M84]Public Health Act 1936 (sewer maps); or

(b) it is a drain or sewer in relation to which a declaration of vesting, or an agreement to make such a declaration, has been made since 31st August 1989.

(9) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

Textual Amendments

F522 Words in s. 199(1)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(8)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

F523 Words in s. 199(1)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(8)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Marginal Citations

M84 1936 c. 49.

200 Provision of sewer maps to local authorities.

(1) It shall be the duty of every sewerage undertaker so to provide local authorities, free of charge, with—

(a) copies of the contents of records kept under section 199 above; and

(b) copies of any modifications of those records,

as to ensure that every local authority to whose area any of those records relate are at all times informed of the contents for the time being of the records relating to their area.

(2) A local authority shall secure that so much of any information provided to them by virtue of this section as consists in the contents for the time being of records kept by a sewerage undertaker under section 199 above is available, at all reasonable times, for inspection by the public free of charge at an office of the authority.

(3) Any information which is required under this section to be provided to a local authority or to be made available by a local authority for inspection by the public shall be so provided or made available in the form of a map.

(4) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

(5) In this section and, accordingly, in section 199(3) above "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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Publication of certain information and advice

201 Publication of certain 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

[[F524](a) relating to any matter which is connected with the carrying out by a company holding an appointment under Chapter 1 of Part 2 of this Act of the functions of a relevant undertaker; or

(b) relating to any matter which is connected with the carrying on by a company holding a licence under Chapter 1A of that Part of the activities authorised by the licence,

as it may**]** appear to him to be in the public interest to publish.

(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 Chapter I of Part II of this Act **[**[F525]or a licence under Chapter 1A of that Part**]** .

(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) 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) the Director, seriously and prejudicially affect the interests of that body.

[[F526](4) The OFT shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under subsection (2) of this section.**]**

Textual Amendments

F524 Words in s. 201(1) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 43(2)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F525 Words in s. 201(2) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 43(3)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F526 S. 201(4) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(9)**; S.I. 2003/1397, **art. 2(1)**, Sch.

Powers to acquire and duties to provide information

202 Duties of undertakers to furnish the Secretary of State with information.

(1) It shall be the duty of a company holding an appointment as a relevant undertaker to furnish the Secretary of State with all such information relating to any matter which—

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(a) is connected with, or with any proposals relating to, the carrying out by that company of the functions of a relevant undertaker; or

(b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the [M85]Water Act 1989,

as the Secretary of State may reasonably require.

[[F527](1A) It shall be the duty of a company holding a licence under Chapter 1A of Part 2 of this 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 on by that company of the activities authorised by the licence; or

(b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the Water Act 1989,

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 Chapter I of Part II of this Act **[**[F528]or licences under Chapter 1A of that Part**]** .

(5) The obligations of a relevant undertaker **[**[F529]or licensed water supplier**]** under this section shall be enforceable under section 18 above by the Secretary of State.

(6) In this section "the other consolidation Acts" means the [M86]Water Resources Act 1991, the [M87]Statutory Water Companies Act 1991, so much of the [M88]Land Drainage Act 1991 as confers functions on the Secretary of State with respect to **[**[F530]the Environment Agency**]** and the [M89]Water Consolidation (Consequential Provisions) Act 1991.

Textual Amendments

F527 S. 202(1A) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 44(2)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F528 Words in s. 202(4)(c) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 44(3)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F529 Words in s. 202(5) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 44(4)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F530 Words in s. 202(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 120** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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Marginal Citations

M85 1989 c. 15.
M86 1991 c. 57.
M87 1991 c. 58.
M88 1991 c. 59.
M89 1991 c. 60.

203 Power to acquire information for enforcement purposes.

(1) Where it appears to the Secretary of State or the Director —

[[F531](a) in the case of a company which holds an appointment as a relevant undertaker, that the company—

(i) may be contravening, or may have contravened, any condition of the appointment or any statutory or other requirement enforceable under section 18 above; or

(ii) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding a licence under Chapter 1A of Part 2 of this Act of any condition of the licence or any statutory or other requirement enforceable under section 18 above; or

(b) in the case of a company which holds a licence under that Chapter, that the company—

(i) may be contravening, or may have contravened, any condition of the licence or any statutory or other requirement enforceable under section 18 above; or

(ii) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of any condition of the appointment or any statutory or other requirement enforceable under section 18 above,**]**

he may, for any purpose connected with such of his powers under Chapter II of Part II of this Act 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—

(i) the Secretary of State or the Director; or

(ii) 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

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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 202 above or the conditions of an appointment under Chapter I of Part II of this Act **[**F532or of a licence under Chapter 1A of that Part**]** to require a company holding such an appointment **[**F533or licence**]** to produce any document to him or to furnish him with any information.

Textual Amendments

F531 Words in s. 203(1) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 45(2)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

F532 Words in s. 203(7) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 45(3)(a)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

F533 Words in s. 203(7) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 45(3)(b)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

204 Provision of information to sewerage undertakers with respect to trade effluent discharges.

(1) The owner or occupier of any land on or under which is situated any sewer, drain, pipe, channel or outlet used or intended to be used for discharging any trade effluent into a sewer of a sewerage undertaker shall, when requested to do so by the undertaker—

(a) produce to the undertaker all such plans of the sewer, drain, pipe, channel or outlet as the owner or, as the case may be, occupier possesses or is able without expense to obtain;

(b) allow copies of the plans so produced by him to be made by, or under the directions of, the undertaker; and

(c) furnish to the undertaker all such information as the owner or, as the case may be, occupier can reasonably be expected to supply with respect to the sewer, drain, pipe, channel or outlet.

(2) A request by a sewerage undertaker for the purposes of this section shall be made in writing.

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(3) Every person who fails to comply with this section shall be guilty of an offence and liable, on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Expressions used in this section and in Chapter III of Part IV of this Act have the same meanings in this section as in that Chapter; and, accordingly, section 139 above shall have effect for the purposes of this section as it has effect for the purposes of that Chapter.

205 Exchange of metering information between undertakers.

(1) Where—

(a) different services are provided in relation to the same premises by different **[**F534service providers**]** ;

(b) one of those **[**F535providers**]** has obtained a reading from a meter used in determining the amount of any charges fixed in relation to those premises;

(c) the charges in relation to those premises of another of those **[**F535providers**]** are fixed by reference to any matter to which the reading is relevant; and

(d) that other **[**F536provider**]** has agreed to bear a reasonable proportion of the expenses of obtaining the reading together with the reasonable expenses of the disclosure of the reading to it,

it shall be the duty of the **[**F537provider**]** who obtained the reading to disclose the reading to the other **[**F537provider**]** .

(2) Any dispute between a **[**F538service provider**]** and any other person (including another **[**F539such provider**]**)—

(a) as to the terms to be contained in any agreement for the purposes of subsection (1)(d) above; or

(b) as to the amount of any expenses to be borne by any person under any such agreement,

shall be referred to the arbitration of a single arbitrator appointed by agreement between **[**F540the provider**]** and that person or, in default of agreement, by the Director.

[F541(3) The duties of a service provider under this section shall be enforceable under section 18 above by the Authority.

(4) For the purposes of this section, the following are service providers—

(a) any relevant undertaker; and

(b) any licensed water supplier.**]**

Textual Amendments

F534 Words in s. 205(1)(a) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F535 Word in s. 205(1)(b)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

F536 Word in s. 205(1)(d) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(2)(c)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

F537 Words in s. 205(1) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(2)(d)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

F538 Words in s. 205(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(3)(a)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

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F539 Words in s. 205(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(3)(b)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

F540 Words in s. 205(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(3)(c)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

F541 S. 205(3)(4) substituted (1.12.2005) for s. 205(3) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 46(4)**; S.I. 2005/2714, **art. 3(c)**, (with Sch. para. 8)

Restriction on disclosure of information

206 Restriction on disclosure of information.

(1) Subject to the following provisions of this section, no information with respect to any particular business which—

(a) has been obtained by virtue of any of the provisions of this Act; and

(b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) No person shall disclose any information furnished to him under section F542. . . 204 above or under Chapter III of Part IV of this Act except—

(a) with the consent of the person by whom the information was furnished;

(b) in connection with the execution of that Chapter;

(c) for the purposes of any proceedings arising under that Chapter (including any appeal, application to the Secretary of State or the Director or an arbitration);

(d) for the purposes of any criminal proceedings (whether or not so arising); or

(e) for the purposes of any report of any proceedings falling within paragraph (c) or (d) above.

(3) Subsection (1) above does not apply to any disclosure of information which is made—

(a) for the purpose of facilitating the carrying out by the Secretary of State, the Minister, **[**F543the Environment Agency, the Scottish Environment Protection Agency**]**, the Director **[**F544, the Council**]** , the **[**F545Competition Commission**]** or a county council or local authority of any of his, its or, as the case may be, their functions by virtue of this Act, any of the other consolidation Acts **[**F546, M90the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990 **[**F547, the M91Environment Act 1995**][**F548, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003**]]**;

(b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Act, any of the other consolidation Acts **[**F549, the Water Act 1989 or the Water Act 2003**][**F550or by a licensed water supplier of any of the duties imposed on it by or under this Act**]** ;

(c) in pursuance **[**F551of any duty imposed by section 27H above or**]** section 197(1)(a) or (2) or **[**F552203(1), (1A), (2) or (2A)**]** of the M92Water Resources Act 1991 (information about water flow and pollution);

(d) for the purpose of facilitating the carrying out by any person mentioned in Part I of Schedule 15 to this Act of any of his functions under any of the enactments or instruments specified in Part II of that Schedule;

[F553(e) for the purpose of enabling or assisting the Secretary of State, the Treasury or the Financial Services Authority to exercise any powers conferred by or under

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the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency;

(ea) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;**]**

(f) for the purpose of enabling an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the [M93]Insolvency Act 1986 to carry out its functions as such;

(g) for the purpose of facilitating the carrying out by the Health and Safety Commission or the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the [M94]Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;

(h) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;

(i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

(j) for the purposes of any civil proceedings brought under or by virtue of this Act, any of the other consolidation Acts, **[**[F554], the Water Act 2003**]** or any of the enactments or instruments specified in Part II of Schedule 15 to this Act, or of any arbitration under this Act, any of the other consolidation Acts **[**[F555], the Water Act 1989 or the Water Act 2003**]** ; or

(k) in pursuance of a Community obligation.

(4) Nothing in subsection (1) above shall be construed—

(a) as limiting the matters which may be published under section **[**[F556]38A, 95A or**]** 201 above or may be included in, or made public as part of, a report of **[**[F557]the Environment Agency, the Scottish Environment Protection Agency**]**, the Director, **[**[F558]the Council (or any regional committee)**]** or the **[**[F559]Competition Commission**]**under any provision of this Act **[**[F560], Part I or IIA of [M95]the Environmental Protection Act 1990, the [M96]Water Resources Act 1991**]****[**[F547], the [M97]Environment Act 1995 **[**[F561], regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003**]]**; or

(b) as applying to any information which has been so published or has been made public as part of such a report or to any information exclusively of a statistical nature.

(5) Subject to subsection (6) below, nothing in subsection (1) above shall preclude the disclosure of information—

(a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a relevant undertaker **[**[F562], or with the carrying on by a licensed water supplier of activities under its licence,**]** and is made by one Minister of the Crown or government department to another; or

(b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.

(6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House

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of Parliament; and where such an order designates an authority for the purposes of paragraph (b) of that subsection, the order may—

(a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and

(b) otherwise restrict the circumstances in which disclosure is so permitted.

(7) Any person who discloses any information in contravention of the preceding provisions of this section shall be guilty of an offence.

(8) A person who is guilty of an offence under this section by virtue of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(9) A person who is guilty of an offence under this section by virtue of subsection (2) above shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both.

[F563(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with **[**F564the OFT**]** under Part I of the Competition Act 1998 is subject to **[**F565Part 9 of the Enterprise Act 2002 (Information)**]** and not to subsections (1) to (9) of this section.**]**

(10) In this section "the other consolidation Acts" means the M98Water Resources Act 1991, the M99Statutory Water Companies Act 1991, the M100Land Drainage Act 1991 and the M101Water Consolidation (Consequential Provisions) Act 1991.

Textual Amendments

F542 Words in s. 206(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 121(1), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F543 Words in s. 206(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F544 Words in s. 206(3)(a) inserted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(i)**; S.I. 2005/2714, **art. 2(I)(v)(bb)** (with Sch. 2 para. 8)

F545 Words in s. 206(3)(a)(4)(a) substituted (1.4.1999) by S.I. 1999/506, **art. 30(b)**

F546 Words in s. 206(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F547 Words in s. 206(3)(a)(4)(a) substituted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 7**; S.I. 2000/800, **art. 2**

F548 Words in s. 206(3)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F549 Words in s. 206(3)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(iii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F550 Words in s. 206(3)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 47(2)**; S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)

F551 Words in s. 206(3)(c) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(iv)**; S.I. 2005/2714, **art. 2(l)(v)(bb)** (with Sch. 2 para. 8)

F552 Words in s. 206(3)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 47(3)**; S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)

F553 S. 206(3)(e)(ea) substituted (1.12.2001) for s. 206(3)(e) by S.I. 2001/3649, **arts. 1**, 328

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F554 Words in s. 206(3)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(v)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F555 Words in s. 206(3)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(a)(v)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F556 Words in s. 206(4)(a) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 27**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

F557 Words in s. 206(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F558 Words in s. 206(4)(a) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(b)(i)**; S.I. 2005/2714, **art. 2(l)(v)(bb)** (with Sch. 2 para. 8)

F559 Words in s. 206(3)(a)(4)(a) substituted (1.4.1999) by S.I. 1999/506, **art. 30(b)**

F560 Words in s. 206(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 121(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F561 Words in s. 206(4)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(5)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F562 Words in s. 206(5)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 47(4)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)

F563 S. 206(9A) inserted (1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 13(9)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

F564 Words in s. 206(9A) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(10)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F565 Words in s. 206(9A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(10)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.

Modifications etc. (not altering text)

C61 S. 206 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), **ss. 115**, 120; S.I. 2003/2681, **art. 2**

C62 S. 206 extended (1.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 16**, 17(2).

C63 S. 206(3): disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127(2)(a), **Sch. 4 Pt. I para. 31**

Marginal Citations

M90 1989 c. 15.

M91 1995 c. 25.

M92 1991 c. 57.

M93 1986 c. 45.

M94 1974 c. 37.

M95 1990 c. 43.

M96 1991 c. 57.

M97 1995 c. 25.

M98 1991 c. 57.

M99 1991 c. 58.

M100 1991 c. 59.

M101 1991 c. 60.

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Provision of false information

207 Provision of false information.

(1) If any person, in furnishing any information or making any application under or for the purposes of any provision of this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he 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) Proceedings for an offence under subsection (1) above shall not be instituted except by or with the consent of the Secretary of State [F566]. . . or the Director of Public Prosecutions.

Textual Amendments

F566 Words in s. 207(2) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 5(2), **Sch. 2** (with art. 6)

Modifications etc. (not altering text)

C64 S. 207 extended (01.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss.16**, 17(2).
S. 207: functions exercised concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

PART VIII

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

208 Directions in the interests of national security.

(1) The Secretary of State may, after consultation with a relevant undertaker **[**[F567]or licensed water supplier**]** , give to that undertaker **[**[F568]or supplier (as the case may be)**]** such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with a relevant undertaker **[**[F567]or licensed water supplier**]** , give to that undertaker **[**[F568]or supplier (as the case may be)**]** a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3) It shall be the duty of a relevant undertaker **[**[F569]or licensed water supplier**]** , notwithstanding any other duty imposed on it (whether or not by or under this Act), to comply with any direction given to it by the Secretary of State under this section; and the duty of a relevant undertaker **[**[F569]or licensed water supplier**]** to comply with any such direction shall be enforceable under section 18 above by the Secretary of State.

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[[F570](3A) The Secretary of State may, after consultation with the Council, give to the Council such directions of a general character as appear to the Secretary of State to be requisite or expedient—

(a) in the interests of national security; or

(b) in connection with any civil emergency which may occur.

(3B) If it appears to the Secretary of State to be requisite or expedient to do so—

(a) in the interests of national security; or

(b) in connection with any civil emergency which has occurred or may occur,

he may, after consultation with the Council, give to the Council a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3C) The Council shall comply with any direction given to it by the Secretary of State under this section.**]**

(4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.

(5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.

(6) Any person who discloses any matter in contravention of subsection (5) above shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(7) Any reference in this section to a civil emergency is a reference to any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely, in relation to any area—

(a) so to disrupt water supplies or sewerage services; or

(b) to involve such destruction of or damage to life or property in that area,

as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.

Textual Amendments

F567 Words in s. 208(1)(2) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 48(2)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with Sch. 3 para. 7)

F568 Words in s. 208(1)(2) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 48(2)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with Sch. 3 para. 7)

F569 Words in s. 208(3) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 48(3)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with Sch. 3 para. 7)

F570 S. 208(3A)-(3C) inserted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(6)**; S.I. 2005/2714, **art. 2(l)(v)** (with Sch. para. 8)

Modifications etc. (not altering text)

C65 S. 208: certain functions exercisable concurrently with the Secretary of State (W.) (1.7.1999) by S.IO. 1999/672, art. 2, Sch. 1

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209 Civil liability of undertakers for escapes of water etc.

(1) Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable, except as otherwise provided in this section, for the loss or damage.

(2) A water undertaker shall not incur any liability under subsection (1) above if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.

(3) A water undertaker shall not incur any liability under subsection (1) above in respect of any loss or damage for which the undertaker would not be liable apart from that subsection and which is sustained—

(a) by **[**F571the Environment Agency**]**, a relevant undertaker or any statutory undertakers, within the meaning of section 336(1) of the M102Town and Country Planning Act 1990;

(b) by any public gas supplier within the meaning of Part I of the M103Gas Act 1986 or the holder of a licence under section 6(1) of the M104ElectricityAct 1989;

(c) by any highway authority; or

(d) by any person on whom a right to compensation is conferred by section 82 of the M105New Roads and Street Works Act 1991.

(4) The M106Law Reform (Contributory Negligence) Act 1945, the M107Fatal Accidents Act 1976 and the M108Limitation Act 1980 shall apply in relation to any loss or damage for which a water undertaker is liable under this section, but which is not due to the undertaker's fault, as if it were due to its fault.

(5) Nothing in subsection (1) above affects any entitlement which a water undertaker may have to recover contribution under the M109Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which a water undertaker is liable under that subsection shall be treated as if it were damage.

(6) Where a water undertaker is liable under any enactment or agreement passed or made before 1st April 1982 to make any payment in respect of any loss or damage the undertaker shall not incur liability under subsection (1) above in respect of the same loss or damage.

(7) In this section "fault" has the same meaning as in the M110Law Reform (Contributory Negligence) Act 1945.

(8) Until the coming into force of section 82 of the New Roads and Street Works Act 1991, subsection (3) above shall have effect as if for paragraph (d) there were substituted the following paragraphs—

"(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the Public Utilities Street Works Act 1950; or

(e) by any person on whom a right to compensation under section 26 of that Act of 1950 is conferred.";but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing section 82 of that Act into force on different days for different purposes (including the purposes of this section).

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Textual Amendments

F571 Words in s. 209(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 122** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C66 S. 209(3)(b) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(m)**; S.I. 1996/218, **art. 2**

Marginal Citations

M102 1990 c. 8.
M103 1986 c. 44.
M104 1989 c. 29.
M105 1991 c. 22.
M106 1945 c. 28.
M107 1976 c. 30.
M108 1980 c. 58.
M109 1978 c. 47.
M110 1945 c. 28.

[F572 209A Rights of tenants in relation to metering.

(1) Subject to subsection (3) below, no express or implied term of any tenancy is to be regarded—

(a) as excluding or restricting the exercise by the tenant of any 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,

(b) as preventing the installation or connection, in pursuance of such a notice or consent given by the tenant, of a meter for use in determining the charges which may be fixed in relation to water supplied to the premises comprised in the tenancy, or

(c) as requiring any consent to be obtained in relation to such installation or connection.

(2) In subsection (1) above "tenancy" includes a licence which is treated as a tenancy by virtue of section 79(3) of M111 the Housing Act 1985; and references to a "tenant" are to be construed accordingly.

(3) Subsection (1) above does not apply where the tenancy is a fixed term tenancy for a term of less than six months; and for this purpose "fixed term tenancy" means any tenancy other than a periodic tenancy.**]**

Textual Amendments

F572 S. 209A inserted (1.4.2000) by 1999 c. 11, **s. 11**; S.I. 1999/3440, **art. 3**

Marginal Citations

M111 1985 c.68.

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Offences

210 Offences by bodies corporate.

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

211 Limitation on right to prosecute in respect of sewerage offences.

Proceedings in respect of an offence created by or under any of the relevant sewerage provisions shall not, without the written consent of the Attorney-General, be taken by any person other than—

(a) a party aggrieved;

(b) a sewerage undertaker; or

(c) a body whose function it is to enforce the provisions in question.

Judicial disqualification

212 Judicial disqualification.

No judge of any court or justice of the peace shall be disqualified from acting in relation to any proceedings to which a relevant undertaker is a party by reason only that he is or may become liable to pay a charge to that undertaker in respect of any service that is not the subject-matter of the proceedings.

Powers to make regulations

213 Powers to make regulations.

(1) The powers of the Secretary of State to make regulations under this Act shall be exercisable by statutory instrument subject (except in the case of regulations under section 8(1) or (2) **[**F573or 17D(8)**]** above) to annulment in pursuance of a resolution of either House of Parliament.

[F574(1A) But on the occasion of the first exercise by the Secretary of State of the power to make regulations under each of sections 89 and 90 above, the instrument containing the regulations shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(1B) The power of the Assembly to make regulations under section 89 above shall be exercisable by statutory instrument.**]**

(2) Subject to subsection (3) below, the provisions of any regulations made by the Secretary of State under this Act may include-

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(a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker **[**F575or licensed water supplier**]** to be enforceable under section 18 above by the Secretary of State, by the Director or by either of them;

(b) provision, where such a duty or requirement is so enforceable by either of them, for enforcement by the Director to be subject to such consent or authorisation as may be prescribed;

(c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to section 207 above;

(d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;

[F576(dd) as to awarding costs or expenses of proceedings in any determination under the regulations, including the amount of the costs or expenses and the enforcement of the awards;**]**

(e) different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(f) such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

[F577(2A) Such regulations may include provision—

(a) for the determination of questions of fact or of law which may arise in giving effect to the regulations;

(b) for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions;

(c) as to the mode of proof of any matter;

(d) as to parties and their representation; and

(e) for the right to appear before and be heard by the Secretary of State, the Director and other authorities.

(2B) Any such regulations which prescribe a period within which things are to be done may provide for extending the period so prescribed.**]**

(3) Except to the extent that they would do so apart from this section, the power to make regulations under section 113, 125 or 126 above or under section 214 below or Schedule 8 to this Act—

(a) shall not include the powers conferred by virtue of paragraphs (a) to (d) of subsection (2) above; and

(b) in the case of the power to make regulations under section 214 below, shall also not include the powers conferred by virtue of paragraphs (e) and (f) of that subsection.

Textual Amendments

F573 Words in s. 213(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 49(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

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F574 S. 213(1A)(1B) inserted (18.2.2005 for E. for specified purposes and otherwise prosp.) by Water Act 2003 (c. 37), **ss. 58(8)**, 105(3); S.I. 2005/344, **art. 2**

F575 Words in s. 213(2)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 49(3)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with Sch. 3 para. 7)

F576 S. 213(2)(dd) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para.28**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

F577 S. 213(2A)(2B) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 52**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

Modifications etc. (not altering text)

C67 S. 213 extended (01.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 9(2)**, 17(2).

214 Power to prescribe forms.

(1) The Secretary of State may by regulations prescribe the form of any notice or other document to be used for any of the purposes of the relevant sewerage provisions.

(2) If forms are prescribed under this section, those forms or forms to the like effect may be used in all cases to which those forms are applicable.

Local inquiries

215 Local inquiries.

(1) The Secretary of State may cause a local inquiry to be held in any case where he is authorised by any of the relevant sewerage provisions to determine any difference, to make any order, to give any consent or otherwise to act under any of those provisions.

(2) Subject to subsection (3) below, subsections (2) to (5) of section 250 of the [M112]Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to local inquiries under subsection (1) above or any of the other provisions of this Act as they apply to inquiries under that section.

(3) Subsection (4) of the said section 250 shall apply in accordance with subsection (2) above in relation to such local inquiries under this Act as are held with respect to any matter affecting the carrying out of any function of **[**[F578]the Environment Agency**]** as if the reference to a local authority in that subsection included a reference to **[**[F578]the Environment Agency**]**.

Textual Amendments

F578 Words in s. 215(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 123** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M112 1972 c. 70.

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Construction of Act

216 Provisions relating to the service of documents.

(1) Any document required or authorised by virtue of this Act to be served on any person may be served—

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or

(b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or

(c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control of management of the partnership business.

(2) For the purposes of this section and section 7 of the [M113]Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—

(a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.

(4) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—

(a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or

(b) in the case of service on the occupier, if the premises appear to be or are unoccupied,

that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

(5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

Modifications etc. (not altering text)

C68 S. 216 extended (01.12.1991) by Statutory Water Companies Act 1991 (c. 58, SIF 130), **ss. 15(4)**, 17(2).

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Marginal Citations
M113 1978 c. 30.

217 Construction of provision conferring powers by reference to undertakers' functions.

(1) The purposes to which this section applies shall be the construction of any enactment which, by reference to the functions of a relevant undertaker, confers any power on or in relation to that undertaker.

(2) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include joining with or acting on behalf of—

(a) the **[**F579Environment Agency**]**;

(b) one or more other relevant undertakers; or

(c) the **[**F579Environment Agency**]** and one or more other such undertakers,

for the purpose of carrying out any works or acquiring any land which at least one of the bodies with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of that body's functions under any enactment or of any function which is taken to be a function of that body for the purposes to which this section or section 3 of the M114Water Resources Act 1991 (functions of **[**F579Environment Agency**]** for certain purposes) applies.

(3) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the protection against pollution—

(a) of any waters, whether on the surface or underground, which belong to the **[**F579Environment Agency**]** or any water undertaker or from which the **[**F579Environment Agency**]** or any water undertaker is authorised to take water;

(b) without prejudice to paragraph (a) above, of any reservoir which belongs to or is operated by the **[**F579Environment Agency**]** or any water undertaker or which the **[**F579Environment Agency**]** or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and

(c) of any underground strata from which the **[**F579Environment Agency**]** or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the M115Water Resources Act 1991.

(4) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the furtherance of research into matters in respect of which functions are conferred by or under this Act, the other consolidation Acts or the M116Water Act 1989 on the **[**F579Environment Agency**]**, on water undertakers or on sewerage undertakers.

(5) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the provision of houses and other buildings for the use of persons employed by that undertaker and the provision of recreation grounds for persons so employed.

(6) For the purposes to which this section applies the functions of every water undertaker shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of that undertaker.

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(7) For the purposes to which this section applies the functions of every water undertaker shall be taken to include the doing of anything in pursuance of any arrangements under section 20 of the Water Resources Act 1991 between that undertaker and the **[**[F579]Environment Agency**]**.

(8) In this section "the other consolidation Acts" has the same meaning as in section 206 above.

Textual Amendments

F579 Words in s. 217(2)(3)(4)(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 124** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M114 1991 c. 57.
M115 1991 c. 57.
M116 1989 c. 15.

218 Meaning of "domestic purposes" in relation to water supply.

(1) Subject to the following provisions of this section, in this Act references to domestic purposes, in relation to a supply of water to any premises or in relation to any cognate expression, are references to the drinking, washing, cooking, central heating and sanitary purposes for which water supplied to those premises may be used.

(2) Where the whole or any part of the premises are or are to be occupied as a house, those purposes shall be taken to include—

(a) the purposes of a profession carried on in that house or, where—

(i) that house and another part of the premises are occupied together; and

(ii) the house comprises the greater part of what is so occupied,

in that other part; and

(b) such purposes outside the house (including the washing of vehicles and the watering of gardens) as are connected with the occupation of the house and may be satisfied by a supply of water drawn from a tap inside the house and without the use of a hosepipe or similar apparatus.

(3) No such reference to domestic purposes shall be taken to include a reference—

(a) to the use of a bath having a capacity, measured to the centre line of overflow or in such other manner as may be prescribed, of more than two hundred and thirty litres;

(b) to the purposes of the business of a laundry; or

(c) to any purpose of a business of preparing food or drink for consumption otherwise than on the premises.

219 General interpretation.

(1) In this Act, except in so far as the context otherwise requires—

"accessories", in relation to a water main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe,

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or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any **[**F580electronic communications apparatus**]** unless it—

(a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and

(b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

"analyse", in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

[F581"the Assembly" means the National Assembly for Wales;**]**

[F582"the Authority" means the Water Services Regulation Authority;**]**

"conservancy authority" means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water, and is not a harbour authority or navigation authority;

"contravention" includes a failure to comply, and cognate expressions shall be construed accordingly;

[F583"the Council" means the Consumer Council for Water;**]**

"customer or potential customer", in relation to a company holding an appointment under Chapter I of Part II of this Act, means—

(a) any person for or to whom that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker **[**F584(other than a licensed water supplier)**]** ; or

(b) any person who might become such a person on making an application for the purpose to the company;

"damage", in relation to individuals, includes death and any personal injury, including any disease or impairment of physical or mental condition;

"the Director" means the Director General of Water Services;

"disposal"—

(a) in relation to land or any interest or right in or over land, includes the creation of such an interest or right and a disposal effected by means of the surrender or other termination of any such interest or right; and

(b) in relation to sewage, includes treatment;

and cognate expressions shall be construed accordingly;

"disposal main" means (subject to subsection (2) below) any outfall pipe or other pipe which—

(a) is a pipe for the conveyance of effluent to or from any sewage disposal works, whether of a sewerage undertaker or of any other person; and

(b) is not a public sewer;

"domestic purposes", except in relation to sewers, shall be construed in accordance with section 218 above;

"drain" means (subject to subsection (2) below) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

"effluent" means any liquid, including particles of matter and other substances in suspension in the liquid;

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"enactment" includes an enactment contained in this Act or in any Act passed after this Act;

"engineering or building operations", without prejudice to the generality of that expression, includes—

(a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and

(b) the installation, modification or removal of any machinery or apparatus;

"financial year" means the twelve months ending with 31st March;

"functions", in relation to a relevant undertaker, means the functions of the undertaker under or by virtue of any enactment and shall be construed subject to section 217 above;

"harbour authority" means a person who is a harbour authority within the meaning of **[**F585Chapter II of Part VI of the Merchant Shipping Act 1995**]** and is not a navigation authority;

"highway" and "highway authority" have the same meanings as in the M117Highways Act 1980;

"house" means any building or part of a building which is occupied as a dwelling-house, whether or not a private dwelling-house, or which, if unoccupied, is likely to be so occupied;

"information" includes anything contained in any records, accounts, estimates or returns;

"inland waters", has the same meaning as in the M118Water Resources Act 1991;

[F586"lateral drain" means—

(a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or

(b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under section 102 above or in an agreement made under section 104 above;**]**

[F587"licensed water supplier" shall be construed in accordance with section 17B(9) above;**]**

"limited company" means a company within the meaning of the M119Companies Act 1985 which is limited by shares;

"local authority" means the council of a district or of a London borough or the Common Council of the City of London **[**F588but, in relation to Wales, means the council of a county or county borough**]**;

"local statutory provision" means—

(a) a provision of a local Act (including an Act confirming a provisional order);

(b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;

(c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or

(d) a provision of any other instrument which is in the nature of a local enactment;

"meter" means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises;

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"micro-organism" includes any microscopic biological entity which is capable of replication;

"modifications" includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

F589 . . .

F590 . . .

"navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

"notice" means notice in writing;

[F591"the OFT" means the Office of Fair Trading;**]**

"owner", in relation to any premises, means the person who—

(a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or

(b) would receive the rack-rent if the premises were let at a rack-rent,

and cognate expressions shall be construed accordingly;

"prescribed" means prescribed by regulations made by the Secretary of State;

"protected land", in relation to a company holding an appointment under Chapter I of Part II of this Act, means any land which, or any interest or right in or over which—

(a) was transferred to that company in accordance with a scheme under Schedule 2 to the M120Water Act 1989 or, where that company is a statutory water company, was held by that company at any time during the financial year ending with 31st March 1990;

(b) is or has at any time on or after 1st September 1989 been held by that company for purposes connected with the carrying out of its functions as a water undertaker or sewerage undertaker (including any functions which for the purposes for which section 218 above has effect are taken to be such functions by virtue of subsection (6) or (7) of that section); or

(c) has been transferred to that company in accordance with a scheme under Schedule 2 to this Act from another company in relation to which that land was protected land when the other company held an appointment under that Chapter;

"public authority" means any Minister of the Crown or government department, **[**F592the Environment Agency**]**, any local authority or county council or any person certified by the Secretary of State to be a public authority for the purposes of this Act;

"public sewer" means **[**F593(subject to section 106(1A) above)**]** a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the M121Water Act 1989 or Schedule 2 to this Act or under section 179 above or otherwise, and "private sewer" shall be construed accordingly;

"railway undertakers" means the British Railways Board, **[**F594Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,**]** or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any railway;

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"records" includes computer records and any other records kept otherwise than in a document;

[[F595]"regional committee" means a regional committee of the Council established under section 27A above;**]**

"the relevant sewerage provisions" means the following provisions of this Act, that is to say—

(a) Chapters II and III of Part IV (except sections 98 to 101 and 110 and so much of Chapter III of that Part as provides for regulations under section 138 or has effect by virtue of any such regulations);

(b) sections 160, 171, 172(4), 178, 184, 189, 196 and 204 and paragraph 4 of Schedule 12; and

(c) the other provisions of this Act so far as they have effect for the purposes of any provision falling within paragraph (a) or (b) of this definition;

"relevant undertaker" means a water undertaker or sewerage undertaker;

"resource main" means (subject to subsection (2) below) any pipe, not being a trunk main, which is or is to be used for the purpose of—

(a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or

(b) giving or taking a supply of water in bulk;

"service pipe" means (subject to subsection (2) below **[**[F596]and to section 51E(3) above**]**) so much of a pipe which is, or is to be, connected with a water main for supplying water from that main to any premises as—

(a) is or is to be subject to water pressure from that main; or

(b) would be so subject but for the closing of some valve,

and includes part of any service pipe;

"services" includes facilities;

"sewer" includes (without prejudice to subsection (2) below) all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings;

"sewerage services" includes the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions;

"special administration order" has the meaning given by section 23 above;

"statutory water company" means any company which was a statutory water company for the purposes of the [M122]Water Act 1973 immediately before 1st September 1989;

"stopcock" includes any box or pit in which a stopcock is enclosed and the cover to any such box or pit;

"street" has, subject to subsection (5) below, the same meaning as in Part III of the [M123]New Roads and Street Works 1991;

"subordinate legislation" has the same meaning as in the [M124]Interpretation Act 1978;

"substance" includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

"supply of water in bulk" means a supply of water for distribution by a water undertaker taking the supply;

"surface water" includes water from roofs;

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"trunk main" means a water main which is or is to be used by a water undertaker for the purpose of—

(a) conveying water from a source of supply to a filter or reservoir or from one filter or reservoir to another filter or reservoir; or

(b) conveying water in bulk, whether in the course of taking a supply of water in bulk or otherwise, between different places outside the area of the undertaker, from such a place to any part of that area or from one part of that area to another part of that area;

"underground strata" means strata subjacent to the surface of any land;

"vessel" includes a hovercraft within the meaning of the M125Hovercraft Act 1968;

"water main" means (subject to subsection (2) below) any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker **[**F597or licensed water supplier**]** for the purpose of making a general supply of water available to customers or potential customers of the undertaker **[**F598or supplier**]**, as distinct from for the purpose of providing a supply to particular customers;

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except mains and other pipes which belong to **[**F592the Environment Agency**]** or a water undertaker or are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises.

(2) In this Act—

(a) references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and

(b) references to any sewage disposal works shall include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes;

and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.

(3) Nothing in Part III or IV of this Act by virtue of which a relevant undertaker owes a duty to any particular person to lay any water main, resource main or service pipe or any sewer, **[**F599lateral drain,**]** disposal main or discharge pipe shall be construed—

(a) as conferring any power in addition to the powers conferred apart from those Parts; or

(b) as requiring the undertaker to carry out any works which it has no power to carry out.

(4) References in this Act to the fixing of charges in relation to any premises by reference to volume are references 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.

[F600(4A) In this Act, unless otherwise stated, references to the supply system of a water undertaker are to the water mains and other pipes which it is the undertaker's duty to develop and maintain by virtue of section 37 above.**]**

Status: *Point in time view as at 01/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(5) Until the coming into force of Part III of the [M126]New Roads and Street Works Act 1991, the definition of "street" in subsection (1) above shall have effect as if the reference to that Part were a reference to the [M127]Public Utilities Street Works Act 1950; but nothing in this section shall be taken—

(a) to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this section); or

(b) in the period before the coming into force of that Part, to prevent references in this Act to a street, where the street is a highway which passes over a bridge or through a tunnel, from including that bridge or tunnel.

(6) For the purposes of any provision of this Act by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.

(7) References in this Act to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.

(8) Where by virtue of any provision of this Act any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.

(9) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the [M128]Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act or the [M129]Water Resources Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.

[[F601](10) If the Assembly designates a person as Chief Inspector of Drinking Water for Wales under section 86(1B) above, references in this Act to the Chief Inspector of Drinking Water, as respects anything to be done in relation to him, shall be taken as references to the person designated as the Chief Inspector of Drinking Water by the Secretary of State and also the person designated by the Assembly as the Chief Inspector of Drinking Water for Wales.**]**

Textual Amendments

F580 S. 219(1): words in definition of "accessories" substituted (25.7.2003) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 17 para. 110**; S.I. 2003/1900, **art. 2(1)**, Sch. 1

F581 S. 219(1): definition of "the Assembly" inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(7)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F582 S. 219(1): definition of "the Authority" inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(7)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

F583 S. 219(1): definition of "the Council" inserted (1.8.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 27(7)(b)**; S.I. 2005/968, **art. 3** (with art. 4, Schs. 1, 2)

F584 S. 219(1): words in definition of "customer or potential customer" inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(2)(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)** (with art. 4); S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)

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F585 Words in the definition of "harbour authority" in s. 219(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 89(b)**

F586 S. 219(1): definition of "lateral drain" inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(9)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)

F587 S. 219(1): definition of "licenced water supplier" inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(2)(c)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)**; S.I. 2005/2714, **art. 3**

F588 Words in the definition of "local authority" in s. 219(1) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 2(2)** (with ss. 54(5)(7), 55(5)); S.I. 1996/396, **art. 3**

F589 S. 219(1): definition of "the Monopolies Comismission" repealed (1.4.1999) by S.I. 1999/3434, **art. 30(c)**

F590 Definition of "the NRA" in s. 219(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 125(a), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F591 S. 219(1): definition of "the OFT" inserted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(11)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F592 Words in the definitions of "public authority" and "watercourse" in s. 219(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 125(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F593 S. 219(1): words in definition of "public sewer" inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(6)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)

F594 S. 219(1): words in definition of "railway undertakers" substituted (15.7.2003) by The Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), art. 2, **Sch. 1 para. 15**

F595 S. 219(1): definition of "regional committee" inserted (1.10.2005) by Water Act 2003 (c.37), ss. 101(01), 105(3), **Sch. 7 para. 27(7)(d)**; S.I. 2005/2714, **art. 2(l)** (with Sch. 2 para. 8)

F596 S. 219(1): words in definition of "service pipe" inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 92(6)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with art. 6, Sch. 3)

F597 S. 219(1): words in definition of "water main" inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(2)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)** (with art. 4); S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)

F598 S. 219(1): words in definition of "water main" inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(2)(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)** (with art. 4); S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)

F599 Words in s. 219(3) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 97(9)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with art. 6, Sch. 3)

F600 S. 219(4A) inserted (1.4.2004 for specified purposes and 1.10.2004 for further specified purposes and otherwise 1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 50(3)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3); S.I. 2004/2528, **art. 2(t)** (with art. 4); S.I. 2005/2714, **art. 3** (with Sch. 2 para. 8)

F601 S. 219(10) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 57(9)**, 105(3); S.I. 2004/641, **art. 3(m)** (with art. 6, Sch. 3)

Marginal Citations

M117 1980 c. 66.
M118 1991 c. 57.
M119 1985 c. 6.
M120 1989 c. 15.
M121 1989 c. 15.
M122 1973 c. 37.
M123 1991 c. 22.
M124 1978 c. 30.
M125 1968 c. 59.

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M126 1991 c. 22.
M127 1950 c. 39.
M128 1991 c. 60.
M129 1991 c. 57.

220 Effect of local Acts.

Subject to any provision to the contrary which is contained in Schedule 26 to the Water Act 1989 or in the Water Consolidation (Consequential Provisions) Act 1991, nothing in any local statutory provision passed or made before 1st September 1989 shall be construed as relieving any relevant undertaker from any liability arising by virtue of this Act in respect of any act or omission occurring on or after that date.

Other supplemental provisions

[221 F602Crown application.

(1) Subject to the provisions of this section, this Act shall bind the Crown.

(2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the Environment Agency, a water undertaker or a sewerage undertaker, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in subsection (2) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.

(5) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the M130Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

(6) Subject to subsections (4) and (5) above, the powers conferred by sections 155, 159, 161(2) and 167 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.

(7) In this section—

"the appropriate authority" has the same meaning as it has in Part XIII of the M131Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;

"Crown or Duchy interest" means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

"Crown premises" means premises held by or on behalf of the Crown.

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(8) The provisions of subsection (3) of section 293 of the [M132]Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.**]**

Textual Amendments

F602 S. 221 substituted (1.12.2000) by 1995 c. 25, s. 116, 125(3), **Sch. 21 Pt. I para. 1(1)** (with ss. 7(6), 115, 117)

Marginal Citations

M130 1947 c. 44.
M131 1990 c. 8.
M132 1990 c. 8.

[222 [F603] Application to the Isles of Scilly.

(1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.

(2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.

(3) An order under this section 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, including provision saving provision repealed by or under any enactment.

(4) The power of the Secretary of State 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.**]**

Textual Amendments

F603 S. 222 substituted (1.2.1996 for specified purposes and otherwise*prosp.*) by 1995 c. 25, **ss. 118(4)**, 125(3) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

223 Short title, commencement and extent.

(1) This Act may be cited as the Water Industry Act 1991.

(2) This Act shall come into force on 1st December 1991.

(3) Except for the purpose of giving effect to any scheme under Schedule 2 to this Act, this Act extends to England and Wales only.

Status:
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Changes to legislation:
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